

(2014) 12 MP CK 0036
In the Madhya Pradesh High Court
Case No : R.P. No. 702 of 2014

IFFCO Tokyo General Insurance Co. Ltd.	APPELLANT
Vs	
Meena Mahesh and Others	RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 53

Citation : (2015) 1 MPLJ 379

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : Amrit Kaur Ruprah, Advocates for the Appellant

Judgement

R.S. Jha, J.—Smt. Amrit Kaur Ruprah, Advocate for the applicant. Counsel for the applicant has filed this application for review stating that in view of the law laid down by the Supreme Court in the case of National Insurance Co. Ltd. Vs. Hamida Khatoon and Others, , the impugned order passed by this Court in M.A. No. 485/2014 dismissing the appeal filed by the Insurance Company deserves to be reviewed and recalled.

2. It is submitted that in view of the bar created by section 53 of the Employees' State Insurance Act, 1948 (in short ESI Act), the claim under the Motor Vehicles Act was not maintainable and was statutorily barred.

3. Having heard learned counsel for the applicant, it is observed that section 53 of the ESI Act is in the following terms:--

"53. Bar against receiving or recovery of compensation or damages under any other law;- An insured person or his dependants shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923) or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under the Act."

From bare perusal of this section it is clear that the Act bars receiving compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise "in respect of an employment injury sustained by the insured person as an employee under this Act i.e. ESI Act".

4. In the instant case, as has been observed by this Court in the previous order, there is no pleading, proof or evidence whatsoever to indicate that the injury as sustained by the applicant was an employment injury sustained by him as an employee under the ESI Act. The case has been dealt with as a plain and simple case of motor accident in which compensation has been awarded.

5. It is undisputed that the applicant/Insurance Company has neither pleaded, proved or established that the accident arose out of and in the course of employment and was therefore in respect of the employment injury sustained by the insured employee. As stated above, for the purpose of the bar under section 53 of the ESI Act to be applicable, it is necessary for the person invoking the same to establish that the compensation or damages has been claimed in respect of employment injury sustained by the insured person as an employee under the Act.

6. In the instant case, the facts as stated in the claim case and which have emerged from a perusal of award clearly indicate that the present case is a plain and simple motor accident case and is not one where the accident has its origin in the employment or is arising out of and in the course of employment.

7. The aforesaid view taken by me is in consonance with the law laid down by three Judges Bench of Supreme Court in case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, .

8. In view of the aforesaid law laid down by the Supreme Court and the facts and circumstances of the present case, it is clear that the bar against receiving and recovering of compensation or damages contained in section 53 of the ESI Act is not attracted in the present case and consequently the decision relied upon by the learned counsel for the applicant i.e. Hamida Khatoon (supra) has no applicability to the present case and does not render any assistance to the case of applicant/Insurance Company.

9. In view of the aforesaid, I do not find any reason to review or recall the order passed by this Court in M.A. No. 485/2014. The review petition is accordingly dismissed.