
(2009) 02 KL CK 0043
In the High Court Of Kerala
Case No : M.A.C.A. No. 1527 of 2005

K.P. Kuriakose

APPELLANT

Vs

G. Santhosh Kumar and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 53
Motor Vehicles Act, 1988 — Section 166

Citation : (2009) 1 ILR (Ker) 882 : (2009) 1 KLJ 683 : (2009) 1 KLT 828 :
(2009) 3 LLJ 602 : (2010) 5 RCR(Civil) 145

Hon'ble Judges : R. Basant, J;C.T. Ravi Kumar, J

Bench : Division Bench

Advocate : V. Chitambaresh, T.C. Suresh Menon, Sreekanth K.R. and Jibu P. Thomas, for the Appellant; Sajeevkumar K. Gopal, (SC), P.G. Ganappan, T.M. Sunil, S. Chithra and Johnson P. John (SC), for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—Claimant before the Tribunal is the appellant before us. His claim for compensation for loss suffered as a result of a motor accident was turned down by the Tribunal on the ground that Section 53 of the E.S.I. Act bars the claim of the appellant. The accident and injury are not seen disputed. The Tribunal took the view that Section 53 of the E.S.I. Act as explained in Western India Plywood Limited Vs. P. Ashokan, bars the claim of the appellant/claimant. Admittedly the appellant is receiving disablement benefit under the provisions of the E.S.I. Act. The learned counsel for the appellant submits that the Tribunal has totally misconstrued the provisions of law in coming to the conclusion that a claim u/s 166 of the Motor Vehicles Act is barred by the stipulations of Section 53 of the E.S.I. Act. The counsel submits that the position has been considered by the Supreme Court in the decision in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, . We extract the relevant para 44 below:

Para 44: The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or Workmen's Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee. In *K. Bharathi Devi v. G.I.C.I.* the contention that the deceased contracted life insurance and due to death in air accident the appellant received compensation and the same would be set off and no double advantage of damages under carriage by Air Act be given was negatived.

The learned counsel for the appellant submits that the decision in *Western India plywood Ltd. v. Ashokan* (supra) by a two Judge Bench of the Supreme Court can be understood only in the light of the facts stated, where an employee after having claimed and obtained benefits under the E.S. I. Act had staked a claim for compensation by filing a suit against his employer himself. It was held that Section 53 of the E.S.I. Act is a clear answer to the claim for compensation for employment injury staked against the employer by the plaintiff who had already enjoyed benefits under the E.S.I. Act.

2. We are persuaded to agree that the decision in *Regl. Director E.S.I.C. v. Francis De Costa* (supra) covers the specific issue raised in this case. Claim is raised against a stranger to the contract of employment for compensation on the basis of negligence for causing the accident. The claim is not for compensation for employment injury and in these circumstances the observations in para 44 of *Regl. Director E.S.I.C. v. Francis De Costa* must be preferred. Following the dictum therein we accept that a claim for compensation in tort against a stranger can coexists with a claim for benefits under the E.S.I. Act. The use of the words "any person" in Section 53 of the E.S.I. Act which we extract below cannot take within its sweep the claim in tort against the stranger/tort fearer u/s 166 of the M.V. Act for compensation for the loss suffered in a motor accident caused by negligence.

Bar against receiving or recovery of compensation or damages under any other law:- An insured person or his dependents 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 this Act.

(emphasis supplied)

The expression "any other person" in Section 53 can take within its sweep only such other person who is sought to be made liable, under or on the basis of the contract of employment, to compensate the employee for the "employment

injury" suffered by him. If an injury is suffered in a motor accident and such injury is an employment injury also, Section 53 does not bar the claim in tort u/s 166 of the M.V. Act against the stranger tortfeasor. But bars the claim against the employer under any other law. As held by the Supreme Court in Francis De Costa the insurance coverage under the Act is in addition to and not in substitution of the other remedies against a stranger.

3. Both sides agree that after vacating the finding that the claim is not maintainable and after upholding the finding regarding negligence, the matter may be sent back to the Tribunal for fresh disposal after giving the parties opportunity to adduce further evidence if any necessary. We accept the said request.

4. In the result: i) This Appeal is allowed;

ii) The finding that the claim of the appellant is barred u/s 53 of the E.S.I. Act is vacated;

iii) The finding regarding negligence entered by the Tribunal is upheld as agreed;

iv) The matter is remanded back to the Tribunal for fresh disposal in accordance with law after giving the parties opportunities to adduce evidence if necessary;

Hand over a copy of this judgment to the learned counsel for the appellant. Parties shall appear before the Tribunal without waiting for any further directions on 10-03-09. The Tribunal shall dispose of the matter afresh within a period of one month from 10-03-09.