

(1983) 09 AHC CK 0002
In the Allahabad High Court
Case No : F.A.F.O. No. 17 of 1977

Lali Devi and Others

APPELLANT

Vs

Kamlesh Chandra Gupta and Another

RESPONDENT

Date of Decision : 30-09-1983

Acts Referred:

Employees State Insurance Act, 1948 — Section 52, 53
Motor Vehicles Act, 1988 — Section 110A, 110AA, 110D

Citation : (1985) ACJ 19

Hon'ble Judges : O.P. Saxena, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : Sankatha Rai, for the Appellant; S.I. Jafri, D. Sanyal and Sudhir Chandra, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—This is an appeal u/s 110-D of the Motor Vehicles Act against the judgment of the Motor Accidents Claims Tribunal, Varanasi, dated 19th October, 1976, rejecting the claim petition filed by the Appellants.

2. Mr. Niranjana Singh was an employee of the then Benaras Electric Light and Power Company in the year 1974. On 22.3.1974, at about 5.30 p.m. while he was coming on a bicycle from his duty to his house, truck No. USU 2175 knocked him down as a result of which he received injuries and was admitted to hospital on 23.3.1974. Ultimately, he succumbed to his injuries on 27.3.1974. The heirs and legal representatives, who are the Appellants before us in this appeal, filed an application u/s 110-A of the Motor Vehicles Act and claimed rupees one lac. as compensation.

3. The truck, with which the accident had taken place, belonged to Kamlesh Chandra Gupta, Respondent 1. He filed a written statement denying that the accident took place on account of the rash driving of the truck by its driver and also asserted that as the Appellants had been given compensation under the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act"), the

present claim petition was barred by Section 53 of the Act. The insurance company also contested the claim.

4. By its judgment dated 19.10.1976, the Motor Accidents Claims Tribunal held that there was rashness and negligence in driving the truck and the deceased Niranjana Singh had been knocked down by the said truck and received several injuries. The Tribunal found that Niranjana Singh died as a result of the injuries received by him. Taking up issues 2 and 3 together, the Tribunal held that the average income of the deceased was about Rs. 900/- per month. The Tribunal, however, held that as the Appellants were getting Rs. 10.65 paise per day from the employer of the deceased Niranjana Singh under the Act, the claim petition was barred by Section 53.

5. Being aggrieved, the claimants have filed the present appeal.

6. On the controversy whether the truck driver was negligent, no arguments were raised before us. We have examined the evidence ourselves and hold, in agreement with the Motor Accidents Claims Tribunal, that the accident resulted on account of the negligent driving of the truck driver on 22.3.1974 and the truck dashed Niranjana Singh.

7. About the income, the Tribunal held that the deceased Niranjana Singh was getting a monthly salary of Rs. 700/- and that he also used to earn Rs. 200/- to Rs. 400/- per month privately. We have gone through the testimony of the widow of the deceased Niranjana Singh and other witnesses produced on behalf of the claimants and are of opinion that the deceased was drawing Rs. 700/- in all including overtime. But, we are not satisfied from the evidence of Lali Devi, widow of the deceased, that her husband could earn Rs. 200/- to Rs. 400/- per month by doing private work. She could not withstand the cross-examination made on this point. It appears to us that this earning by private work has been introduced with a view to inflate his income for justifying the compensation claimed.

8. The next question that immediately arises is about the bar of the claim petition by virtue of Section 53 of the Employees' State Insurance Act. Section 53 of the Act provides that:

An injured person or his dependents shall not be entitled to receive or recover, whether from the employer of the injured 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.

9. Supporting the judgment of the Motor Accidents Claims Tribunal, Learned Counsel for the Respondent urged that since the deceased had received the injuries during the course of employment and as his dependants were getting compensation under the Act in respect of the employment injury sustained by

the deceased injured as an employee under the Act, the claim petition was not maintainable.

10. The Employees' State Insurance Act provides a scheme of compulsory State insurance for conferring certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with work in factories other than seasonal factories. The insurance fund, out of which the benefits are conferred, is mainly derived from contributions from employers and workmen. The contribution payable in respect of each workman is based on his average wages. This Act deals with special circumstances in which the benefits contemplated by it can be received by the workman or his dependants. It concerns itself only with employment injury and provides a right to an employee to get the benefit as against the employer in the event of receiving employment injury. Upon the death of an employee, his dependants are entitled to get compensation, as provided in the First Schedule to the Act. For injuries other than those stated in the Act and not having been received during the course of the employment, the Act is not applicable. The Act also does not provide for claiming of compensation from a person other than the employer.

11. Keeping the aforesaid object in view, if we were to interpret Section 53, we would find that it has a restrictive object to achieve. The object of Section 53 of the Employees' State Insurance Act, as held by the Madras High Court in *Mangalam v. Express Newspapers Limited* 1982 ACJ (Supp) 203 (Mad) is:

to save the employer from facing more than one claim in relation to the same accident.

In view of the said provision, once the claimant gets the benefit under that Act in relation to an accident, he would not be able to claim compensation u/s 110-A of the Motor Vehicles Act. Section 53, therefore will apply only to a case of an employment injury and as against an employer from whom benefits under the Act have been received or are receivable.

12. Interpreting Section 53 literally and also considering the object and purpose with which it had been enacted to accomplish, we are unable to accept the submission of the Respondent's counsel that in every case of compensation being received by the workman for his personal injuries or on his death by his dependants that the claim petition under the Motor Vehicles Act would be barred. If the legislature would have intended to provide for a bar like the one which was propounded by the Respondent's Learned Counsel before us, the language of the section under discussion would have been different. To accept the interpretation placed by the Respondent's Learned Counsel to Section 53 would amount to reading of something which is not provided for in it.

13. Paragraphs 8 and 9 of Schedule I of the Act framed u/s 52 gives the list of the dependants of the deceased who would be entitled to get compensation in the event of death of an employee. Paragraph 8 confers right on a certain class of persons and only when the deceased employee does not leave a widow or

legitimate or adopted son, dependants" benefits would be payable to the dependants given in paragraph 9. Paragraph 8 also gives the rate at which compensation would be payable. Under this Act, the parents or other dependants of the deceased cannot get compensation simultaneously with those who are mentioned in paragraph 8. The scheme thus envisaged by this Act is special in nature and does not cover the cases of tortious liability for the enforcement of which an application u/s 110-A of the Motor Vehicles Act can be made. Under this section, a legal representative who was a dependant on the person killed is entitled to bring an application for compensation. The criterion for awarding compensation applicable to negligence is different from that of employment injury in respect of which compensation is given to the dependants in the event of death of the employee under the Employees' State Insurance Act. The scheme provided by the Act for payment of compensation is not a substitute of the right of the dependants of the deceased employee to get compensation from persons other than employers. We, therefore, hold that Section 53 did not apply to the present case.

14. Counsel for the Respondent also relied on Section 110-AA of the Motor Vehicles Act for his submission that if not u/s 53 of the Employees' State Insurance Act, the claim was barred u/s 110-AA of the Motor Vehicles Act. We find no merit in this submission. This section lays down that a claimant has an option to claim compensation either under the Workmen's Compensation Act or the Motor Vehicles Act. A person who is entitled to claim compensation under both the Acts, cannot claim compensation under both. He must opt one of the two provisions for getting compensation. Section 110-AA has no application to the facts of the present case.

15. Since the Tribunal held that the claim petition was barred by Section 53, it did not determine the amount of compensation payable to the Appellants. The Tribunal found that the monthly income of the deceased was Rs. 700/- . In arriving at this finding, the Tribunal had taken into consideration the over time wages, which was a variable factor. In one month he received Rs. 172/- , whereas in the months of February and March, 1974, he received Rs. 282/- and Rs. 136/- respectively. After taking the facts of the present case, we consider it reasonable to hold that the deceased Niranjana Singh must have been contributing Rs. 300/- per month to his family. He would have remained in service for thirteen years more, as the age of superannuation was 58 years. For these thirteen years, the family would have received the amount of Rs. 46,800/- out of this amount, we consider it appropriate to deduct 25% on account of the lump sum payment. The amount to which the Appellants are entitled is Rs. 35,000/- .

16. In the result, the appeal succeeds and is allowed in part. The judgment of the Motor Accidents Claims Tribunal, Varanasi, dated 19.10.1976 is set aside and the Appellants are held entitled to get Rs. 35,000/- along with interest at the rate of 6 per cent per annum till payment. We make no order as to costs.