
(1992) 11 MP CK 0023
In the Madhya Pradesh High Court
Case No : M.A. No. 160 of 1992

Madhya Pradesh State Road Trans. Corpn.	APPELLANT
Vs	
Praveer Kumar Bhatnagar and Another	RESPONDENT

Date of Decision : 26-11-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 26, 51, 51A, 52
Motor Vehicles Act, 1988 — Section 140, 144, 169, 173, 51C

Citation : (1994) ACJ 579

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : A.K. Shrivastava, for the Appellant; P.L. Jain, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.—This is owner's appeal preferred u/s 173 of the Motor Vehicles Act, 1988, (for short, "the M.V. Act"), against an award of compensation of Rs. 20,000/- made in favour of claimant-respondent for the injury he suffered in a motor accident on 13.1.1983.

2. The only question forcefully agitated in this appeal by Mr. A.K. Shrivastava, learned counsel appearing for the appellant, is want of jurisdiction of the Motor Accidents Claims Tribunal, (for short, "the Tribunal"), to pass the award and to press that contention he has relied on Section 53, Employees' State Insurance Act, 1948, (for short, "E.S.I. Act"), which is as follows:

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 this Act.

He has also relied on Sections 51A and 51C(1) of the said Act which too are extracted below:

51-A. Presumption as to accident arising in course of employment.--For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

51-C. Accidents happening while travelling in employer's transport.--(1) An accident happening while an insured person is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if--

(a) the accident would have been deemed so to have arisen had he been under such obligation; and

(b) at the time of the accident, the vehicle--

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and

(ii) is not being operated in the ordinary course of public transport service.

3. However, it is to be noted that the plea of statutory bar raised before me in this appeal was not agitated in the same form before the Tribunal. Indeed, the specific plea that owner-appellant raised in the course of trial of the claim petition was that the accident was not caused by bus No. MPG 9570 owned by it. He suffered injury in the course of an accident caused by some other vehicle. On the date of accident, he had gone to the Labour Court to take steps in connection with some of his own case and there met with the accident and the claim against the owner, his employer, was a false claim. It is indeed not disputed that the claimant-respondent was employed as a storekeeper in the Central Workshop of the appellant at Gwalior. The Tribunal found, on the other hand, owner's case not established and accepted rather the case of the claimant that the offending vehicle was a mini bus bearing registration No. MPG 9570 and the claimant was travelling in that bus along with other passengers. On the date of the accident, he had first gone to the Parcel Office of the Railway Station from Central Workshop at Kampoo at about 10.30 a.m. in connection with some official business and when he was returning by the mini bus in question, MPG 9570, he wanted to disembark at a point near the office of Indian Oil, off the Stadium. He could hardly put on the ground one foot and before he could put his other foot also, the driver rashly drove away the vehicle without blowing any horn or giving any warning as a result of which he fell down on the ground and suffered fracture of bones of both arms. He examined the co-passengers Har Prasad and M.L. Maheshwari who supported him. He was confined in J.A. Hospital from 13.1.1983 to 1.2.1983 where his hand was operated upon and one steel rod was inserted.

The Tribunal also found not established the case set up by the owner that the vehicle in question was a loading truck and it was not a public transport vehicle. Having reached the conclusion that the vehicle in question was driven rashly and negligently, the Tribunal made a composite award of damages against the owner-appellant, as aforesaid.

4. It is true, a specific issue (No. 5) was framed to decide the question of claimant's entitlement to award under M.V. Act on the ground that he could be given treatment in the hospital maintained by the Employees' State Insurance Corporation and he was entitled only to the "benefits" contemplated under the E.S.I. Act and not damages awardable under the M.V. Act. That issue was decided against the owner and in doing so, the Tribunal reached the finding that although the claimant had filled up claim form for the "benefits" contemplated under the E.S.I. Act, on that no action was taken. The other finding recorded is that in the Corporation's hospital, there is no provision for such treatment as he could get in the J.A. Hospital for the serious injury that he suffered.

5. This court's Full Bench in Smt. Sarmaniya Bai and Others Vs. Madhya Pradesh Rajya Parivahan Nigam and Others, has taken the view that the Tribunal possessed jurisdiction exercisable by civil court ordinarily to enforce claims founded on tortious liability and the Tribunal is, therefore, possessed of inherent jurisdiction like a civil court to execute its own award; the powers enjoyed by it under provisions of M.V. Act do not exclude or impinge upon its inherent jurisdiction to deal with matters with respect to which no specific provision is made in the M.V. Act or under the Rules framed thereunder. The new forum's jurisdiction (albeit with respect to cases of tortious liability arising from a motor accident only) is obviously plenary like a civil court's; so ouster of its jurisdiction is not to be readily accepted notwithstanding claimant's option contemplated u/s 110-AA (old), 167 (new), to go to Workmen's Compensation Court in appropriate cases.

6. Reference, in this connection, may be made to the holding in Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI), that "wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then even in the absence of an exclusionary provision the civil court's jurisdiction is impliedly barred." If that test is to be applied, other provisions of E.S.I. Act are to be examined to see if the said Act has created for the first time a right not preexisting at common law to enforce tortious liability arising out of a motor accident and created machinery also to enforce that right to bar impliedly Tribunal's jurisdiction in that reward. Because Section 53 of the said Act is not endowed with a non obstante clause to bar expressly Claim Tribunal's jurisdiction exercisable under the M.V. Act, it refers expressly only to Workmen's Compensation Act and debars proceedings under that Act in respect of an "employment injury". However, what meaning is to be

attributed to the expression, "or any other law for the time being in force or otherwise", which immediately follows it, poses really the moot question to be decided in this appeal.

7. Apex Court's Constitution Bench in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, has held that when an express bar is pleaded, the scheme of the particular Act is to be examined to find adequacy or sufficiency of the remedies provided and to examine also if the special law creates a special right or a liability and provides for the determination thereof while requiring all questions about the said right and liability to be determined by the Tribunal constituted thereunder. Importantly, their Lordships also held, "whether remedies normally associated with actions in civil courts are prescribed by the said statute or not" must also be examined. Evidently, these guidelines are to be followed to divine the meaning of the expression "or any other law..." even if it is assumed *arguendo* that those words contemplate an express bar. Such words themselves do not carry the required jural force to destroy the strong presumption against ouster of jurisdiction by a special law professing to encroach on an occupied field providing the adjudicatory forum. That is *Dhulabhai's* mandate.

8. On the scope of the E.S.I. Act, the case of *Employees' State Insurance Corporation v. Swadesh* 1991 MPLJ 914, provides an illuminating study. The Corporation, it has been held, is not a contractual insurer; it is a statutory insurer and the Act deals with its duties and functions. The legal measure was enacted in terms of the constitutional directive embodied in Articles 39 (e) and 42 to make adequate provision for health-care and medicare of workers. *Employees' State Insurance Corporation's* liability to provide the employee the specified statutory "benefits" under the Act with respect to the statutory risk covered was held to be exclusive, dependent solely on "contributions" made both by the employer and the employee to the corpus of "Employees' State Insurance Fund" envisaged u/s 26 of E.S.I. Act. The person entitled to enforce the specified statutory right under the said Act can do so in accordance with the provisions of Section 75 providing for the "question" or "dispute" enumerated thereunder to be decided by the Employees' Insurance Court, (for short, "E.I. Court"). In terms of Section 75(1)(e), that court can decide a "question" or "dispute" relating to "the right of any person to any benefit and as to the amount and duration thereof. Periodical payment to the claimant in the scale and manner statutorily specified is to be made by the Corporation in such forms as, "service benefit", "maternity benefit", "disablement benefit" and "dependants" benefit". It is apparent that the E.I. Court does not deal with a tortfeasor's liability and does not award against him damages/compensation according to the uncodified law of Torts for such of his act of omission or commission as is regarded as a wrong liable to be redressed under the English common law. Indeed, only in respect of an "employment injury", defined in Section 2(8), claim either for "disablement benefit" (as per Section 51) or "dependants" benefit" (as per Section 52) is admissible and liability of the Corporation in that regard the E.I. Court can determine; no "question" or "dispute" relating thereto can be decided

by virtue of Section 75(3) by a civil court. Although both right and remedy contemplated under E.S.I. Act are not pre-existing at common law, civil court's jurisdiction is barred by Section 75(3) expressly to the limited extent in respect of the enumerated matters. The two Acts obviously operate in different fields and deal with different types of rights and obligations; Claims Tribunal's jurisdiction under M.V. Act and of E.I. Court under E.S.I. Act are mutually exclusive.

9. We may refer now to the relevant provisions of M.V. Act, those of Chapters VII-A and VIII of old Act of 1939, re-enacted substantially in Chapters X, XI and XII of the new Act of 1988. In both Acts, provision in similar terms exists to enforce the liability of the "owner" in the case of a motor accident to pay compensation on the principle of "no fault" and that provision has, in categorical terms, been vested with overriding effect as per Sections 92-E (old) and 144 (new). The said provision was enacted as a result of judicial clamour raised in that regard as noticed by this court's Full Bench in *Gaya Prasad and Another Vs. Suresh Kumar*, and taking cue from Apex Court's holding in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, (SC) and *N.K.V. Bros.*" case 1980 ACJ 435 (SC), the view which this court took was that the Tribunal's duty to decide the claim founded on "no fault" liability was inexorable because the right in that regard was indefeasible. The view taken in *Mahila Ramdei's* case 1987 ACJ 764, that the Tribunal is required to act suo motu was reiterated. The sum awardable on the principle of "no fault" liability has remained statutorily fixed. The legislative command of Section 144 (new), 92-E (old), that "notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force" clearly contemplates that any person who is entitled to payment of the sum statutorily specified has the right to have an order from the Claims Tribunal in that regard on proving his claim. Section 53, E.S.I. Act, cannot kill that indefeasible right and indeed it was not meant to do so. The maxim *reductio ad absurdum* supports the proposition that it could not be within the contemplation of the legislature to provide for determination of two parts of the same claim at two different forums.

10. For the view taken I find intrinsic evidence of the legislature's intention of excluding cases of motor accidents, except cases of specified category dealable under Workmen's Compensation Act, on reading conjointly Sections 51A, 51C and 53, E.S.I. Act. The general presumption contemplated u/s 51A is obviously subject to the substantive provision expressly enacted in Section 51C. It will not be a case of an "employment injury" when the injured is a passenger though he is an "employee under the E.S.I. Act", if the employer's vehicle in which he is travelling is "being operated in the ordinary course of public transport service". Legislature clearly meant to bring within the purview of the E.S.I. Act only a limited class of cases by expressly specifying so albeit in terms of deeming provision of Section 51C(1) and taking special care to exclude simultaneously the category of cases embraced by Sub-clause (ii) of clause (b), even when the case is of an "employee under the Act" who suffers injury or dies in a motor accident involving the employer's vehicle. Not only is the deeming provision to be strictly

construed to fulfil the limited purpose it is meant to serve, it is imperative that its harmonious coexistence is maintained with Section 144 (new), 92-E (old), M.V. Act and to achieve that object the expression "or any other law..." of Section 53 is to be read in ejusdem generis sense; the maxim *noscitur a sociis* also mandates that course. The term "any other law" which follows immediately the clause "under the Workmen's Compensation Act or" must reasonably mean a law of the same genre as of the named Act. This construction accords well with similar provision in the M.V. Act [section 110-AA (old), 169 (new)] contemplating "option" of the claimant to invoke concurrent jurisdiction made available in the case of the Workmen's Compensation Court instead of the Claims Tribunal. In the final analysis the result sought to be obtained by Section 53 of the E.S.I. Act, is that the said "option" would be affected in case of persons to whom the deeming provision of Section 51C [minus its clause (b) (ii)] is found applicable on facts established.

11. In the instant case, facts proved attract directly and undoubtedly the exclusionary clause (b) (ii) of Section 51C. It has been established on evidence that the vehicle involved in the accident was a "public transport vehicle" and it was being so used at the time of accident. I find, therefore, no scope to accept the contention that the claimant-respondent had suffered an "employment injury" within the contemplation of the deeming provision of Section 51C(1) of the E.S.I. Act, so as to debar his claim lodged with the Tribunal being entertained and decided in contravention of Section 53 of the said Act.

12. At the Bar, case-law is cited to support rival contentions to which I may refer now. Learned counsel Mr. P.L. Jain, appearing for the claimant-respondent, relied on Kerala High Court's Full Bench decision in *Asokan v. Western India Plywoods Ltd.* 1987 ACJ 358 and the decision considered therein of Mysore High Court's Division Bench in *Hindustan Aeronautics v. P. Venu* 1972 ACJ 266 . In the last-mentioned Division Bench decision, award passed u/s 110-A was challenged, invoking Section 61, E.S.I. Act. The view taken was that Section 61 referred to an "enactment" and the uncodified law of Torts was not an "enactment" and on that ground, the bar thereunder was held not applicable. It was also held that the right to sue originating from the substantive law, namely, law of Torts, was not meant to be destroyed by the procedural provision of Section 61, E.S.I. Act: In the Full Bench case, the plea was raised, u/s 53, E.S.I. Act, against civil court's jurisdiction being barred to hear and decide an application of the claimant to sue as an indigent person. The claim had arisen from an accident in the roller mill installed in the factory of the employer resulting in amputation of claimant's left hand and compensation in the sum of Rs. 1,50,000/-was claimed. It was held that a suit by the employee against his employer claiming compensation for injury sustained by him owing to negligence of employer was not hit by Sections 53 and 61, E.S.I. Act. For the view taken, reliance was placed, inter alia, on two decisions of the Apex Court in the cases of *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, and *The Hindustan Times Ltd., New Delhi Vs. Their*

Workmen, to employ the interpretative technique of construing socially beneficent legislations in such manner as would not suppress remedies available anterior to their enactment. I am in respectful agreement with that view.

13. Learned counsel for the owner-appellant Mr. Shrivastava's reliance on the decision he cited may now be examined. On facts, K.S. Vasantha's case 1982 ACJ 259, is distinguishable because the bar pleaded u/s 53, E.S.I. Act, could be validly upheld by applying Section 51C(1) as in that case, unlike the instant case, the vehicle in which the claimants-employees were travelling was "not being operated in the ordinary course of public transport service". They were not the employees of Karnataka State Road Transport Corporation, owning the vehicle; but were employed in "New Government Electric Factory" and that factory had arranged a bus belonging to the Corporation for picking up the said workers from their respective places. It is true, at para 9 of the report, the court expressed the contrary view that the expression "any other law" of Section 53, E.S.I. Act, is not to be read in ejusdem generis sense, but for that view the reason given is that the construction is "contrary to settled principle of interpretation and construction of statutes"; beyond that nothing is stated. In any case, the ratio (as manifested in para 13 of the report) is founded on Sections 2(8) and 51C, E.S.I. Act, in reaching the conclusion that it was a case of "employment injury" within the meaning of the term used in Section 53, E.S.I. Act and, therefore, Claims Tribunal had no jurisdiction to entertain and decide the claim. Annapurna's case 1984 ACJ 238, is also a decision of Karnataka High Court and indeed, based on its earlier decision in K.S. Vasantha's case 1982 ACJ 259, just discussed. At para 8, applying Sections 2(8) and 51C, similarly, the claim was held not triable by the Tribunal under M.V. Act. Reliance of Mr. Shrivastava on Abad Fisheries" case 1985 ACJ 349, is obviously misconceived because that decision is overruled by the Full Bench in Asokan's case 1987 ACJ 358. It is true, a learned single Judge of Andhra Pradesh High Court in National Insurance Co. Ltd. v. Chavaii Vijayalakshmi 1987 ACJ 971, has followed decisions in Abad Fisheries, Annapurna and K.S. Vasantha's cases (supra) (herein discussed) and has taken the same view on the interpretation of Section 53, but with due respect, it is not possible for me to accept that view having taken already a contrary view for reasons of my own, stated above. Briefly recapitulating, I reiterate, Section 75(1)(e), E.S.I. Act, not having taken away the right to claim compensation/damages for injury or death of a person arising from a motor accident, being enforced at the forum of civil court or any other forum, that right cannot be deemed killed by Section 53. The deeming provision of Section 51C enumerating expressly the circumstances constituting deeming "employment injury" must be given restricted meaning in order that the overriding effect of M.V. Act in terms of Section 140 (new) and 92-A (old) is maintained to enforce legislature's command contemplated thereunder.

14. In the result, the appeal fails. The award passed by Claims Tribunal u/s 110-B, M.V. Act, 1939, is upheld as valid and enforceable. I hold that the Tribunal had jurisdiction to pass that award and the application made by the claimant-

respondent u/s 110-A being not barred by Section 53, E.S.I. Act, that was correctly entertained and decided by the Tribunal. That award is confirmed. However, parties are left to bear their own costs.