

(1986) 10 AP CK 0006
In the Andhra Pradesh High Court
Case No : A.A.O. No. 493 of 1982

National Insurance Co. Ltd.	Vs	APPELLANT
Chavali Vijayalakshmi and Others		RESPONDENT

Date of Decision : 21-10-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8), 46, 51, 52, 53

Citation : (1986) 10 AP CK 0006

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Advocate : S. Hanumaiah, for the Appellant; K. Satish, for the Respondent

Final Decision : Allowed

Judgement

Jagannadha Rao, J.—This appeal raises a question as to jurisdiction of the Motor Accidents Claims Tribunal to grant relief by way of damages in cases of employees covered by the Employees' State Insurance Act, 1948.

2. The Respondent Nos. 1 to 4 and two others filed the O.P. No. 304 of 1980 as the legal representatives of the deceased for compensation under the Motor Vehicles Act. They impleaded the Krishna Dist. Lorry Owners Motor Spare Parts Co-operative Stores Limited being the owner of the vehicle as the 1st Respondent and the National Insurance Company (Appellant herein) as the 2nd Respondent. It may be noted that the deceased was the clerk of the above Co-operative Stores which owned the vehicle which was an oil tanker. The deceased died while inspecting the oil tanker from its top. The accident occurred on 8.9.1980 and the deceased was 28 years old at that time. The claimants (Respondent Nos. 1 to 4) are the widow and minor children of the deceased.

3. Before the Tribunal, one of the contentions urged for the insurance company was that, by virtue of Section 53 of the Employees' State Insurance Act, 1948 the jurisdiction of the Tribunal was expressly ousted. But the Tribunal came to the conclusion that the ouster only related to cases of "employment injury" and

not to cases of death of employees. The Tribunal proceeded with the merits of the case and awarded a compensation of Rs. 21,000/- in favour of Respondent Nos. 1 to 4.

4. In this appeal, several points have been urged by the learned Counsel for the Appellant, Mr. S. Hanumaiah and one of them is that the Tribunal under the Motor Vehicles Act has no jurisdiction to decide the liability arising out of the present accident. It is argued that Section 53 of the Act is a bar to the maintainability of the petition. The Respondent Nos. 1 to 4 herein, who are the claimants in the O.P. have remained ex parte. The 5th Respondent herein is the 1st Respondent in the O.P., viz., the Cooperative Stores and is represented by Mr. K. Satish.

5. For a proper appreciation of the question arising in the case, it is necessary to refer to the provisions of Section 53 of the Employees' State Insurance Act, 1948.

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.

Relying on the abovesaid provision, the learned Counsel for the Appellant, Mr. S. Hanumaiah, contended that admittedly in this case the employer, viz., the Co-operative Stores, had paid premia in respect of the deceased under the provisions of the Employees' State Insurance Act, 1948 and that, therefore, the dependants are not entitled to receive any other compensation or damages either under the Workmen's Compensation Act, 1923 or under any other law for the time being in force or otherwise.

6. It is, however, contended on behalf of the owner of the vehicle by Mr. K. Satish, that the above provision is applicable only in respect of the "employment injury" as defined in Section 2(8) of the Act and not to cases relating to the death of an employee.

7. Before going into further discussion, it is necessary to refer to the old section, which was replaced by the above section in 1966 under Act 44 of 1966. The old section, in so far as it is material for our purpose, reads as follows:

Disablement and dependants benefits. Where an insured person is or his dependants are 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, or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act then the following provisions shall apply, viz.,

(i) The insured person shall, in lieu of such compensation or damages, receive the disablement benefit provided by this Act (but subject otherwise to the conditions specified in the Workmen's Compensation Act, 1923), from the Corporation and not from the employer or other person.

(ii) If the insured person dies as a result of the employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury), dependants benefit shall be payable at the rates and in the proportion specified in the second Schedule to his widow or widows during her or their widowhood and to minor legitimate or adopted sons and minor legitimate unmarried daughters.

(iii) xxx xxx xxx

(iv) xxx xxx xxx

(v) Save as modified by this Act, the obligations and liabilities imposed on an employer by the Workmen's Compensation Act, 1923, shall continue to apply to him.

8. It will, therefore, be seen that under the old section, in respect of an employment injury, the insured person or his dependants became entitled to compensation or damages as provided under the Act and not the compensation or damages payable under the Workmen's Compensation Act, 1923 or otherwise. However, there was no specific ouster of the jurisdiction of the Tribunal under the Motor Vehicles Act or bar to the maintainability of any application before such Tribunal, under the old section.

9. There is also another section, viz., Section 61, relevant in this context and it reads as follows:

Bar of benefits under other enactments. When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

10. In *Regional Director, Employees State Insurance Corporation, New Delhi Vs. Dyer Meakin Breweries Ltd. and Another*, it was held by the Punjab High Court that in the old Sections 53 and 61 there was a distinction between "similar benefits" and benefits arising under any other law. It was also held that, even if the bar applied to benefits under the Workmen's Compensation Act, it did not bar relief by way of damages for torts under the common law.

11. The Mysore High Court in *Hindustan Aeronautics v. P. Venu* 1972 ACJ 266 (Mys) was also dealing with a case of an accident, which occurred on 15.12.1965, before introduction of the new Section 53 in 1966. The Mysore High Court also relied upon Section 61 of the Act and held that a claim under the Motor Vehicles Act was not barred and that Section 61 of the Act did not debar any right to damages or compensation, arising out of the law of Torts.

12. It was precisely with a view to meet the above situation and to exclude

claims for damages under the law of Torts that the statute was amended by Act 44 of 1966 and the bar was extended not only to benefits under the Workmen's Compensation Act but also to any compensation or damages payable under any other law for the time being in force or otherwise.

13. After amendment of the Act, the question first arose in the Karnataka High Court in Deputy General Manager, K.S.R.T.C v. Gopal Mudaliar 1983 ACJ 128 (Kar), wherein it was held that Section 53 was now a bar also to claim for compensation under the Motor Vehicles Act and that the remedy was only under the special Act, viz., the Employees' State Insurance Act. Again the same view was taken by the Karnataka High Court in K.S. Vasantha v. K.S.R.T.C. 1982 ACJ (Supp) 259 (Karnataka). It was there held that reading Section 2(8) along with Section 51(c) of the Act the injuries sustained and the death of the two persons in question in that case was nothing but an "employment injury" and that the remedy open to the injured and the legal representatives of the deceased was to approach the E.S.I. Corporation, constituted under the Employees' State Insurance Act and not the Tribunal constituted under the Motor Vehicles Act, or under any other law for the time being in force, including the common law right under the law of Torts. It was further held that all other remedies were barred u/s 53 of the Employees' State Insurance Act.

14. The question again arose in Karnataka High Court in Annapurna v. K.S.R.T.C. 1984 ACJ 238 (Kar). It was argued that the words "employment injury" in Section 2(8) did not include cases of death of the employee. This contention was repelled by the Division Bench of the Karnataka High Court, placing reliance upon the other related provisions of Section 52 of the Act which indicated that the dependants may be dependants of a deceased employee. I may point out that Section 46(d) of the Act also shows that cases of death of an insured employee are also covered by the benefits granted under the Employees' State Insurance Act. The Kerala High Court in Abad Fisheries v. Commissioner for Workmen's Compensation 1985 ACJ 349 (Ker), has also taken a similar view.

15. It is true that Section 2(8) of the Act states that "employment injury" means a personal injury to an employee caused by an accident or an occupational disease arising out of and in the course of his employment, being an insurable employment whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India and does not specifically refer to cases of death. But as pointed out above, a reading of Section 52 and Section 46(d) of the Act makes it clear that cases of death are also included within the meaning of employment injury.

16. If cases of death are also included within the benefits payable to the dependant under the Employees' State Insurance Act, it is clear that the right to obtain damages for compensation either under the Workmen's Compensation Act or under any other law for the time being in force or otherwise, the dependants have necessarily to resort to the Tribunal constituted under the Employees' State Insurance Act and cannot approach the Tribunal constituted

under the Motor Vehicles Act. The words "any other law for the time being in force or otherwise" clearly bar the remedy of compensation or damages payable under any statutory enactment as also under the law of Torts or the common law, from the purview of the Tribunal under the Motor Vehicles Act, in case of death or injury to an employee covered by the Employees' State Insurance Act, 1948.

17. For the aforesaid reasons, the petition filed by Respondent Nos. 1 to 4 before the Motor Accidents Claims Tribunal was not maintainable and ought to have been dismissed.

18. During the pendency of this appeal, the Respondent Nos. 1 to 4 were permitted to draw one-half of the award amount without furnishing security. They have already drawn the said amount which was deposited by the insurance company. Of course, there is a joint and several decree against the insurance company, as well as the Co-operative Stores (5th Respondent herein). The 5th Respondent has not appealed.

19. With a view to obviate any hardship to the claimants-Respondent Nos. 1 to 4 who have already drawn one-half of the compensation amount, it would be necessary to issue certain directions enabling them to retain the amount already drawn by them till the authority constituted under the Employees' State Insurance Act determines and pays them the amount payable under that Act, provided such an application can now be filed. In case any amount is deposited or becomes payable under the provisions of the Employees' State Insurance Act, the said amount can be paid to the insurance company towards the amount already paid by it to the claimants. In case the insurance company is not able to recover the said amount from the Respondent Nos. 1 to 4 or otherwise, after conclusion of the proceedings under the Employees' State Insurance Act, it would be open to the insurance company to recover the same from the owner of the vehicle, viz., the Cooperative Stores (5th Respondent herein) against whom there is already a decree which has become final.

20. In the result, the appeal is allowed and the award passed by the lower Tribunal against the Appellant-insurance company is vacated. The Respondent Nos. 1 to 4 or such other claimants who are entitled to the benefits under the Employees' State Insurance Act, 1948 may, if so advised, approach the authority constituted under that Act within a period of six months from today for appropriate relief under the Act, provided such an application is now maintainable. Till the determination of the amount due under that Act the insurance company will not recover the amount already paid by it to Respondent Nos. 1 to 4.

21. In the event of the authority under the Employees' State Insurance Act directing any amount to be payable to the Respondent Nos. 1 to 4 or other claimants, the insurance company will have a first charge or lien on such amount that may become payable to the beneficiaries under the provisions of the

Employees" State Insurance Act. In the event of the insurance company not being able to recover the whole or any part of the amount already paid by it from out of any amount to be adjudicated under the Employees" State Insurance Act, the insurance company will be entitled to recover the same from the 5th Respondent herein, viz., the Co-operative Stores. It is clarified that the award passed by the lower Tribunal against the owner of the vehicle has become final in as much as no appeal has been preferred by the Co-operative Stores. The appeal is allowed accordingly in favour of the Appellant but without costs.