

---

**(2007) 09 AP CK 0038**  
**In the Andhra Pradesh High Court**  
**Case No : C.M.A. No. 1384 of 1999**

New India Assurance Co. Ltd.

APPELLANT

Vs

Maria Madonna and Others

RESPONDENT

---

**Date of Decision :** 19-09-2007

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 46, 53

**Citation :** (2008) ACJ 2550 : (2007) 6 ALT 516

**Hon'ble Judges :** T. Ch. Surya Rao, J

**Bench :** Single Bench

**Advocate :** C.V. Rajeeva Reddy, for the Appellant; K. Mahender, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

T. Ch. Surya Rao, J.—The instant appeal is directed against the award dated 21-1-1999 passed by the learned Additional Chief Judge, City Civil Court at Secunderabad in O.P. No. 19 of 1997.

2. The unsuccessful third respondent-insurer is the appellant. Respondents 1 to 4 herein are the claimants. Fifth respondent is the driver, sixth respondent is the owner and seventh respondent is the insurer of the offending vehicle. It was the case of the claimants that the deceased who was the husband of the first claimant, father of claimants 2 and 3 and son of the fourth claimant died in a motor accident on 11-8-1996 at about 7.30 p.m. while coming on his scooter bearing No. AAW 7357 from Thimmapur along with one N. Jangaiah as a pillion rider on the extreme left side of the road at Tondapally Railway gate of N.H. No. 7 on account of the rash and negligent driving of the driver of the lorry bearing No. ATT 5336, which was coming in the opposite direction at high speed and dashed the scooter, on account of which, the rider as well as the pillion rider were seriously injured and were shifted to Osmania Hospital, whereat the deceased succumbed to the injuries on the next day, that was on 12-8-1996 and that on account of the death of the deceased the family suffered both financially

and mentally and had lost their bread earner. The deceased was 43 years at the time of the accident and he was working as a Field Officer in Sharp Detectives Private Limited, Secunderabad and earning Rs. 2,40,000/- per month. The petitioners thus claimed compensation of Rs. 3,00,000/- for the pre-matured death of the deceased.

3. The owner and driver of the vehicle remained ex parte. The third respondent resisted the claim on the premise that the compensation claimed was very high. The fourth respondent, employer of the deceased, resisted the claim on the ground that the claimants were not entitled to claim any compensation under the Motor Vehicles Act, since they preferred claim under E.S.I. Act, 1948 and had withdrawn the amount.

4. On the above pleadings, the Court below framed the issues as under:

1. Whether the petitioners are entitled for any compensation, if so, to what amount and against whom?

2. To what relief?

5. At the time of the trial, two witnesses were examined and Exs. A-1 to A-5 were got marked on the side of the claimants and Ex. R-1, copy of insurance policy was marked on the side of the third respondent. No evidence was let in by the fourth respondent.

6. Appreciating the evidence thus adduced on either side, the learned Motor Accidents Claims Tribunal was of the view that the accident in this case was due to rash and negligent driving of the first respondent-driver of the offending vehicle. The Tribunal then proceeded to assess the compensation and eventually arrived at the compensation of Rs. 24,49,000/- and directed the respondents jointly and severally to pay the said amount with interest at 12% per annum from the date of the claim till realization. As aforesaid, the insurer now assailing the said award.

7. The only point that sought to be contended for the appellant is that the claim of the claimants is barred u/s 53 of the Employees State Insurance Act.

8. In view of the short question that falls for determination, it is expedient to notice the provision germane in the context, which reads as under:

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.

A perusal of the said provision shows that the insured person or his dependants are not entitled to receive or recover from the employer or from any other

person any compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force, in respect of an employment injury sustained by the injured person as an employee under the Act. It is obvious, therefore, in respect of an employment injury sustained by the insured person either he or his dependents are barred u/s 53 of the said Act to claim compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act.

9. The learned single Judge of this Court in *Pauline Decruze and Others Vs. M.F. Katha Singh and Others*, placing reliance upon the judgment of the Apex Court in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, held that the bar u/s 53 of the E.S.I. Act applies only when the insured sustained an employment injury during the course of his employment.

10. Countering the said argument, the learned Counsel for the appellant seeks to place reliance upon the judgment of the Apex Court in *A. Trehan Vs. M/s. Associated Electrical Agencies and another*, and the judgment of this Court in *National Insurance Co. Ltd. v. Chavali Vijayalakshmi* 1987 (2) ALT 193 : 1987 ACJ 971. In the former judgment where the insured suffered an injury was obviously an employment injury and became entitled to the benefit of Section 46 of the E.S.I. Act. In view of the matrix in that case the Apex Court was of the view that Section 53 takes away the right of employee insured under the Act to claim compensation under the Workmen's Compensation Act. The said judgment is distinguishable on facts. In the latter judgment too it is obvious from the matrix of that case that the deceased died while inspecting the oil tanker from its top. Therefore, it was also a case of death of the deceased during the course of employment. That apart the contention raised therein was that the bar contained u/s 53 applies only to the employment injury, but not to the cases of death. This Court was of the view that such a bar extends to the cases of death also. Even the said judgment also distinguishable on facts. In view of the clear legal position as discussed hereinabove, the only contention sought to be raised by the appellant cannot be sustained.

11. For the above reasons, the appeal must fail and is dismissed, but, under the circumstances, there shall be no order as to costs.