

---

**(2006) 03 RAJ CK 0090**  
**In the Rajasthan High Court**

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mohan Kanwar and Others

RESPONDENT

---

**Date of Decision :** 28-03-2006

**Acts Referred:**

Employees Compensation Act, 1923 — Section 2, 22  
Employees State Insurance Act, 1948 — Section 53, 61  
Motor Vehicles Act, 1988 — Section 140, 166

**Citation :** (2007) ACJ 420

**Hon'ble Judges :** Dinesh Maheshwari, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

Dinesh Maheshwari, J.—These two appeals preferred respectively by the insurer of one of the vehicles involved in the accident and by the claimants against the same award dated 1.9.1998 made by Motor Accidents Claims Tribunal-I, Jodhpur in M.A.C. Case No. 604 of 1995 were heard together and are taken up for disposal by this common judgment. The insurer contends that the victim being driver of the Roadways bus involved in the accident, having suffered employment injury and being covered under the Employees' State Insurance Act, 1948 (hereinafter referred to as "the E.S.I. Act"/"the Act of 1948"), the claimants are not entitled to claim compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act"/"the Act of 1988"). On the other hand, the claimants seek enhancement of the amount of compensation awarded by the Tribunal.

2. The facts relevant for determination of the questions involved in these appeals could be noticed thus: The claimants, appellants in C.M.A. No. 714 of 1998, submitted the claim application under sections 140 and 166 of the Act of 1988 with the submissions that they were respectively the wife, children and parents of the deceased Indra Singh who was in the employment of Rajasthan State Road Transport Corporation ("R.S.R.T.C.") as driver earning an average income

of Rs. 2,455 per month. Narrating the accident, it was averred that on 2.7.1993, the deceased Indra Singh was driving a bus bearing registration No. 2818 and started from Chaba for Jodhpur. At about 10.30 a.m. after taking passengers from Phalodi Road Bus Stand, he proceeded further and after about 1 1/2 km from the bus stand, the non-applicant No. 1 brought driving a truck bearing registration No. RJF 3571 rashly and negligently in the middle of the road; the deceased lowered down the speed of his bus and took it towards left hand side, yet the non-applicant No. 1 hit the bus head-on that resulted in bursting the front tyre of the bus and the bus went down the road before coming to a halt; the deceased driver of the bus sustained various injuries and fell out; he was removed to the hospital and despite all efforts, could not be saved and met with his untimely death on 9.7.1993. It was asserted that there was no fault of the deceased bus driver and the accident was caused by rash and negligent driving of truck bearing registration No. RJF 3571 by non-applicant No. 1 in the middle of the road. For quantification of compensation, it was pointed out that the deceased was 35 years of age and earning average Rs. 2,455 per month; that the claimants were his widow 27 years of age and the children in the age group of 6 years to 3 months and the parents in the age group of 75-70 years. It was submitted that the deceased was the only earning member of the family and all the claimants were totally dependent upon him. An amount of Rs. 5,00,000 was claimed for loss of income and further Rs. 1,00,000 towards the loss of retiral benefits; further compensation was claimed towards loss of property, funeral expenses and so also non-pecuniary losses. The applicants claimed Rs. 9,02,000 u/s 166 of the Act of 1988 and separate amount of Rs. 25,000 u/s 140. The claim application was submitted against the driver, owner and insurer of the truck No. RJF 3571.

3. The driver and owner of the truck remained ex parte and the insurer while stating general denial of the claim averments submitted that in the police investigation, it was found that the accident was caused because of the fault of deceased bus driver Indra Singh and, therefore, the claimants were not entitled to claim any compensation. In the alternative, it was submitted that if any fault be found of the truck driver, liability be fixed on the principles of contributory negligence. It was also alleged that the truck driver was not having valid driving licence and was not plying in the control and at the instructions of the insured. Another objection was stated in the manner that the deceased Indra Singh fell in the category of "employee" within the meaning of E.S.I. Act and under the said Act, the risk was covered and, therefore, unless claimants establish that they have not recovered any compensation under the E.S.I. Act, they were not entitled to claim compensation before the Tribunal.

4. On the pleadings of the parties, the Claims Tribunal framed relevant issues for determination of the questions involved in the case particularly about the cause and liability towards accident, the quantum of compensation and as to whether the non-applicants were not liable for compensation in view of the objections taken in the reply?

5. In oral evidence claimants examined Mohan Kanwar (wife of the deceased) as AW 1, Aman Singh, AW 2 and Anop Singh, AW 3 (both alleged to be occupants of the bus at the time of accident); whereas the non-applicants examined Sagarmal, NAW 1, Assistant Administrative Officer with the insurer and Kalu Ram, NAW 2, driver of truck involved in the accident. In documentary evidence claimants produced post-mortem of the deceased, Exh. 1 and his salary certificate Exh. 2; whereas the non-applicants produced copy of insurance policy, Exh. A1, first information report, Exh. A2 and final report submitted by the police, Exh. A3.

6. After hearing the parties and considering the evidence produced on record, learned Judge of the Tribunal found that the accident occurred in the middle of the road in head-on collision of both vehicles and there was no traffic on the road. It was also noticed that the bus travelled at least 40 paces ahead after the accident and came to a halt after hitting some stones. With reference to the oral evidence on record and so also the police investigation report, Exh. A3, the learned Judge came to the conclusion that the accident was caused by the rash and negligent driving of both the drivers and they were equally responsible for the accident.

7. On the question of quantum of compensation, learned Judge found the salary of deceased at Rs. 1,990 per month and providing for future prospects, this amount was enhanced 1.5 times and taking his average salary at Rs. 3,000 per month and deducting 1/3rd for his personal expenditure, dependency was taken at Rs. 2,000 per month and in view of the age of the deceased of 35 years, multiplier of 16 was applied, assessing the pecuniary loss at Rs. 3,84,000. Learned Judge also provided for Rs. 2,500 towards funeral expenses, Rs. 500 towards transportation, Rs. 10,000 towards loss of consortium to the wife, Rs. 5,000 each to the children towards loss of love and affection and Rs. 2,000 each to the parents for the loss of services of their son and further amount of Rs. 2,000 towards pain and suffering of the deceased during his treatment; and in this manner arrived at a figure of Rs. 4,23,000 towards losses (Rs. 3,84,000 + Rs. 2,500 + Rs. 500 + Rs. 10,000 + Rs. 20,000 + Rs. 4,000 + Rs. 2,000). In view of the contributory negligence of the deceased and both the drivers having been found equally responsible, the claimants were held entitled to 50 per cent of the amount as compensation, i.e., Rs. 2,11,500 and deducting Rs. 25,000 awarded as the interim compensation, the claimants were held entitled to an amount of Rs. 1,86,500 with interest at the rate of 12 per cent per annum from the date of application, i.e., 23.11.1993.

8. An objection was raised by insurer that the claimants were getting Rs. 1,848 per month as pension under the E.S.I. Act and this amount was required to be adjusted in the amount of compensation. Learned Judge observed that there was no such law requiring this amount to be adjusted in the award of compensation in the motor vehicle accident cases and, therefore, such objection was overruled.

9. Assailing the award aforesaid, thrust of the submissions of learned counsel

appearing for the insurer appellant in C.M.A. No. 702 of 1998 has been that it was an admitted case of claimants that they were getting pension under the E.S.I. Act and in view of sections 53 and 61 of the E.S.I. Act, claimants were not entitled to claim any compensation under Motor Vehicles Act. The learned counsel has strenuously contended that the provisions of Section 53 of the E.S.I. Act put a complete bar on the claimants to claim any compensation in this case particularly when they are getting pension under the E.S.I. Act. The deceased being covered under the E.S.I. Act and having received employment injury, his dependants are not entitled to receive or recover whether from R.S.R.T.C. or from any other person, any compensation under any law for the time being in force or otherwise and according to learned counsel Mr. R.K. Mehta, the Tribunal has been seriously in error in not considering the bar operating against the claimants to maintain such a claim application under the Act of 1988. The learned counsel for the insurer has relied upon the decisions of various Hon'ble High Courts as that in *Mangalam v. Express Newspapers Ltd.* 1982 ACJ 203 (Madras); *National Insurance Co. Ltd. v. P. Saraswathi Mohan* 1982 ACJ 249 (Madras); *Annapurna v. Karnataka State Road Trans. Corporation* 1984 ACJ 238 (Karnataka); *United India Insurance Co. Ltd. Vs. K.N. Thipperudraiah and Others*, ; *Manpreet Kaur and Others Vs. Assistant Labour Commissioner for Workmen's Compensation and Others*, *Shivalik Steel and Alloys Pvt. Ltd. Vs. Workmen's Compensation Commissioner and Others*, and *Ganpat Pratap Bhogle Vs. H.L. Roche and Others*, Learned Counsel has also relied upon the decision of Hon'ble Apex Court in *A. Trehan Vs. M/s. Associated Electrical Agencies and another*,

10. Per contra, learned counsel Mr. Rajesh Panwar appearing for the claimants has contended that the provisions of sections 53 and 61 of the E.S.I. Act apply only to a person who seek compensation from the employer and they put a bar on the person concerned for not recovering benefit only from the employer over again under any other enactment and do not operate as a bar for recovering compensation on account of a third person's tortious act. Learned Counsel for the claimants has further submitted that all the cases sought to be relied upon by the insurer relate to the claim for compensation from the employer and have no application to the facts of the present case. The learned counsel Mr. Pan-war submitted that the correct principles applicable to the present case would be as available from the decision of this Court in *Tribhuvan Singh Vs. Ramesh Chandra and Others*, The learned counsel also referred to the observations of the Hon'ble Supreme Court in the case of *Western India Plywood Limited Vs. P. Ashokan*, and submitted that Hon'ble Apex Court has clearly drawn a line of distinction between the cases where the employee covered under the E.S.I. Act claims compensation from his employer or the like person and those cases where the victim is of course such an employee, but his claim for compensation is directed against a third party. Learned Counsel for the claimants has also pressed their appeal for enhancement of compensation with the submissions that the Tribunal was in error in taking 50 per cent contribution of the deceased and in not

properly appreciating the evidence available on record and in relying upon the statement of Kalu Ram, the truck driver and the opinion expressed in the police investigation memo and that Tribunal was in error in not taking future prospects properly into consideration and in view of the age of the deceased, appropriate enhancement at double the income ought to have been provided to arrive at a true figure of pecuniary loss.

11. From the rival submissions, the points arising for determination in these appeals are:

(1) Whether the Tribunal has erred in taking equal contribution of the deceased to the accident?

(2) Whether the Tribunal has erred in quantifying the amount of compensation?

(3) Whether the Tribunal has erred in allowing compensation under the Motor Vehicles Act, 1988 and the claim application was not maintainable in view of sections 53 and 61 of Employees' State Insurance Act, 1948?

12. Having given an anxious consideration to the rival submissions and having scanned through the entire record and having examined the law applicable to the case, this Court is clearly of the opinion that both these appeals remain bereft of substance and deserve to be dismissed and the impugned award deserves to be affirmed.

13. So far the question of negligence and liability towards accident is concerned, from the material that has been placed on record, it is apparent that the accident has occurred in middle of the road with head-on collision of two vehicles. Normally in such a situation, the accident is the result of equal negligence of both the drivers of on-coming vehicles. It has not been shown that the truck driver had covered his entire lane and then intruded into the wrong side so as to hit the on-coming vehicle. Significant feature of the case is that the bus in question that was driven by the deceased Indra Singh did not come to a halt at the point of impact but continued to run ahead and covered a distance of about 40 paces. Similarly the truck has also continued to run ahead and has covered a distance of about 100 paces after the point of impact. Both the parties have omitted to produce site inspection report on record and the police investigation report produced on record has stated total fault of the bus driver alone. Even if such report be not accepted towards proof of negligence, in view of omission of the claimants to produce site inspection report on record, there is no reason to disbelieve the facts stated in the said report particularly the fact that the bus covered a sufficiently long distance before coming to a halt after the accident. Such position is admitted in the statements of eyewitnesses, AW 2 and AW 3 also. Obviously, the bus was in a higher speed.

14. It has also been admitted by the claimants' witnesses that the road was of sufficient width for passing of two vehicles. In such a case of collision in middle of the road, omission on the part of both the drivers to take reasonable care is

but apparent. In the overall circumstances of the case, the learned Judge of the Tribunal cannot be said to be in error in finding both the drivers equally at fault and there is nothing on record to take any other view of the matter.

15. So far as the quantification of compensation is concerned, the learned Judge of the Tribunal has taken a very reasonable view of the matter and in view of the age of the deceased at 35 years, has provided for reasonable enhancement towards future prospects and has taken average income 1.5 times the last drawn income and has provided for  $\frac{1}{3}$ rd for personal expenditure of the deceased and a multiplier of 16. Further reasonable amount towards other losses and so also towards non-pecuniary losses has been allowed and in view of 50 per cent contributory negligence of the deceased, 50 per cent of the loss has been awarded as compensation and interest has also been allowed at the rate of 12 per cent per annum from the date of filing of the application. All the relevant principles have been taken into consideration and applied for arriving at a figure of just compensation and, therefore, the quantum of compensation needs no interference.

16. Coming to the question of maintainability of the claim for compensation under the Motor Vehicles Act, 1988, this Court is clearly of the opinion that the objection sought to be raised by the insurer remains fundamentally baseless and the decisions relied upon by learned counsel for the insurer have no application to the facts of the present case.

17. Factual matrix relevant for determination of the questions involved in this case has been noticed hereinabove and it is at once apparent that the claimants are claiming compensation on account of loss suffered by them because of this motor accident not from the employer of the deceased; but only from the driver, owner and insurer of the truck involved in the accident. It is a different matter that the liability of the truck driver has been assigned at 50 per cent only but the persons concerned with the truck remain directly liable for this 50 per cent amount of compensation to which the claimants are entitled because of the tortious deed of the truck driver and any attempt to avoid this liability with reference to sections 53 and 61 of the E.S.I. Act cannot be countenanced.

18. Sections 53 and 61 of the E.S.I. Act read thus:

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.

61. 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.

19. The provisions aforesaid deal with the remedy of the employee or his dependants for compensation or damages under the Workmen's Compensation Act or any other law for the time being in force in respect of any employment injury sustained by the insured as an employee under the E.S.I. Act, whether from the employer or from any other person. Any claim in relation to an employment injury as referred in Section 53 of the E.S.I. Act obviously refers to a claim which is relatable to the employment and such provisions have no implication, effect or operation upon a claim filed by such insured person or his dependants against a third party.

20. So far the cases sought to be relied upon by learned counsel for the insurer are concerned, in the case of Mangalam 1982 ACJ 203 (Madras), the deceased Jayaraman was working with the Express Newspapers Estate, Madras and a lorry belonging to non-applicant Express Newspapers Ltd. knocked him down resulting ultimately in his death. Respondent No. 1 itself was answering to the description of the employer and the dependants of the deceased were getting benefit under E.S.I. Act, hence their claim application under Motor Vehicles Act was held to be barred. In the same decision, the Hon'ble Madras High Court observed in relation to Section 53 that -

The object of the said section appears to be to see that the employer is not faced with more than one claim in relation to the same accident. Employees' State Insurance Act has been enacted subsequent to the Motor Vehicles Act. Therefore, once the claimants get the benefit under the Employees' State Insurance Act in relation to an accident, then no claim for compensation u/s 110-A of the Motor Vehicles Act could be maintained.

(Emphasis supplied)

21. The Hon'ble Madras High Court has, therefore, clearly pointed out the principle behind the provisions of Section 53 of the E.S.I. Act that the employer be not vexed twice in relation to the same accident. The facts of the case in other decision of Madras High Court in P. Saraswathi Mohan 1982 ACJ 249 (Madras), are not given and it is not borne out if the claim was sought to be maintained against the employer or not. However, the said decision only refers to the ratio in Mangalam's case 1982 ACJ 203 (Madras) and not beyond.

22. In the case of Annapurna 1984 ACJ 238 (Karnataka), one Veerabhadraiah had died as a result of injuries sustained by him when a bus belonging to Karnataka State Road Transport Corporation was driven carelessly by its driver inside the Corporation Depot where the deceased was present in the course of his employment. Again the claim for compensation under the Motor Vehicles Act was made against the Karnataka State Road Transport Corporation and it was held that it being an employment injury, the remedy open was to approach the E.S.I. Corporation and not the Tribunal under Motor Vehicles Act.

23. In the case of United India Insurance Co. Ltd. Vs. K.N. Thipperudraiah and Others, K.N. Thipperudraiah and M.R. Sathyamurthy who were employees of

Karnataka Soap and Detergent Ltd. and covered under the E.S.I. Act were travelling in a van belonging to the employer and the said van collided with a bus belonging to Tourist Development Corporation of Karnataka Government. The claim for compensation was made against the owner and insurer of both the vehicles and the Hon''ble Karnataka High Court relying upon some of its previous decisions and also the decision of the Supreme Court in A. Trehan Vs. M/s. Associated Electrical Agencies and another, came to the conclusion that the claim petitions would come within the purview of sections 53 and 61 of the E.S.I. Act.

24. The Hon''ble Punjab and Haryana High Court in Manpreet Kaur and Others Vs. Assistant Labour Commissioner for Workmen's Compensation and Others, was again concerned with a case of the dependants of an employee/ driver of respondent No. 2 who died in an accident while on duty and the claim for compensation was made under Workmen's Compensation Act and a petition u/s 140 of Motor Vehicles Act was also filed for no fault liability. Relying on A. A. Trehan Vs. M/s. Associated Electrical Agencies and another, it was held that once the claimants have received benefit under the E.S.I. Act, they were not entitled to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. The claim was made essentially against the employer.

25. In Shivalik Steel and Alloys Pvt. Ltd. Vs. Workmen's Compensation Commissioner and Others, again the deceased Ashok Kumar was working in the factory of the appellant company and was covered under the E.S.I. Scheme but the claim was made under the Workmen's Compensation Act, 1923. In the context of his making claim under the Workmen's Compensation Act, the Hon''ble Himachal Pradesh High Court observed that the bar of Section 53 of the Act operates absolute and that the substitution of Section 53 of the Amendment Act of 1966 appeared to be deliberate, admitting of no room for any controversy as to the manner or extent of the bar in respect of the claims made by such persons from the employer of the insured person under the Workmen's Compensation Act, 1923.

26. So far the decision of the Hon''ble Bombay High Court in Ganpat Pratap Bhogle Vs. H.L. Roche and Others, is concerned certain facts and factors leading to that decision are required to be noticed. The claimant was an employee in Forbes Forbes Campbell & Co. Ltd. and he was proceeding to the place of work in a bus engaged by the employer that met with an accident causing injuries to the appellant. It was not in dispute that he had received benefits available under the E.S.I. Act. The claim for damages under the M. V. Act was resisted by the employer and the owner of the bus on the ground that claim was barred u/s 53 of the E.S.I. Act and the objection was upheld by Tribunal and the High Court affirmed such rejection while dismissing the appeal. The factor relevant is that the said appeal in Ganpat Pratap Bhogle's case (supra), was companion to another appeal in the case of Associated Electrical Agencies Vs. Commissioner for Workmen's Compensation and Others, and the decision in Ganpat Pratap Bhogle (supra), was delivered on the same day and following the same reasons as



recorded in the decision in Associated Electrical Agencies" case. The said case is reported in Associated Electrical Agencies Vs. Commissioner for Workmen's Compensation and Others, .

27. The facts of the above said case of Associated Electrical Agencies Vs. Commissioner for Workmen's Compensation and Others, , show that an employee of Associated Electrical Agencies while carrying out repairs of a television set suffered injury because of a component of the set bursting. The employee being an insured person under the E.S.I. Act approached the E.S.I. Corporation and was granted benefits as claimed. The same employee then adopted proceedings under the Workmen's Compensation Act, 1923 for the loss of vision of one eye in the said incident. Such claim for compensation before Workmen's Compensation Commissioner was resisted with reference to Section 53 of E.S.I. Act and though the Commissioner overruled such objection, the Hon'ble Bombay High Court while allowing the appeal held that such a claim under the Workmen's Compensation Act was not maintainable.

28. It is at once apparent on a look at the fact situation of Associated Electrical Agencies Vs. Commissioner for Workmen's Compensation and Others, , that the claim therein was made under the Workmen's Compensation Act by an employee getting benefit under the E.S.I. Act against the same employer in relation to the same injury. Therefore, the decision in Ganpat Pratap Bhogle Vs. H.L. Roche and Others, rendered only on the ratio of Associated Electrical Agencies could be read only to the extent of the ratio available from Associated Electrical Agencies (supra) and the decision of the Hon'ble Bombay High Court in Ganpat Pratap Bhogle's case (supra) cannot be read as an authority for the proposition that Section 53 puts a blanket ban on every kind of claim even against third person. It is also to be noticed that in Ganpat Pratap Bhogle's case (supra) the employee suffered injury on account of tortious deed of a person driving the motor vehicle for the employer of victim and by the very nature of such claim, the said decision cannot be applied to the facts of present case.

29. Having noticed the fact situation of the decisions of Hon'ble High Court as relied upon by learned counsel for insurer, it could be summed up that essentially in all such cases, the claim for compensation was made under some law different than the E.S.I. Act against either the employer or the employer with some other person or a person acting for and on behalf of the employer.

30. Learned Counsel for the insurer has also relied upon the decision of Apex Court in A A. Trehan Vs. M/s. Associated Electrical Agencies and another, . It could instantly be noticed that the said decision by the Apex Court in A. Trehan's case (supra) is rendered in an appeal arising from the decision of Bombay High Court in the case of Associated Electrical Agencies Vs. Commissioner for Workmen's Compensation and Others, , that has been referred hereinabove though not cited by either of the parties. As noticed above, in Associated Electrical Agencies" case (supra), Bombay High Court was dealing with a claim made against the Associated Electrical Agencies by one of its employees who

sustained injury while repairing a television set during the course of his employment. Employee approached the Corporation for benefits and was granted such benefits under the E.S.I. Act at the rate of Rs. 289.90 per month. The same employee thereafter claimed compensation for loss of vision of one eye in the same incident and then adopted the proceedings u/s 22(2) of the Workmen's Compensation Act, 1923 against the same employer. The question was about maintainability of such an action under Workmen's Compensation Act and Bombay High Court held that such an application was barred by the operation of Section 53 of the E.S.I. Act. This decision of Bombay High Court dated 4.8.1994 in Appeal No. 676 of 1993 has been affirmed in appeal by the Hon''ble Apex Court in A. Trehan's case (supra).

31. The only contention raised before the Hon''ble Supreme Court was that claim for compensation made by the appellant under the Workmen's Compensation Act was dehors the contract of service and was based on law of Torts and, therefore, the bar created by Section 53 of the E.S.I. Act was not applicable. After examining the scheme of two enactments, namely, E.S.I. Act and Workmen's Compensation Act, the Hon''ble Apex Court found that both the enactments provide for compensation to a workman/employee for personal injury caused to him by accident arising out of and in the course of his employment that the E.S.I. Act, a later enactment has wider coverage and is more comprehensive and provides for more compensation albeit with periodical payments and not in lump sum as available under the Workmen's Compensation Act. The Hon''ble Supreme Court observed that even if it be assumed that the workman had better right under the Workmen's Compensation Act, the legislature could take away or modify that right and in that context, the Hon''ble Apex Court observed that the E.S.I. Act was not intended to create another remedy for claiming compensation. The Hon''ble Apex Court observed:

While enacting the E.S.I. Act the intention of the legislature could not have been to create another remedy and a forum for claiming compensation for an injury received by the employee by accident arising out of and in the course of his employment.

32. The Hon''ble Apex Court proceeded to consider the effect of bar created by Section 53 of the E.S.I. Act and with reference to the clear language employed by the section, found that the High Court was justified in finding that in view of the bar created by Section 53 the application under the Workmen's Compensation Act was not maintainable. The Hon''ble Supreme Court held-

In view of the clear language of the section we find no justification in interpreting or construing it as not taking away the right of the workman who is an insured person and an employee under the E.S.I. Act to claim compensation under the Workmen's Compensation Act. We are of the opinion that the High Court was right in holding that in view of the bar created by Section 53 the application for compensation filed by the appellant under Workmen's Compensation Act was not maintainable.

33. In the context of the aforesaid, the Hon''ble Apex Court approved the views taken by the High Courts of Madras and Karnataka including the decisions in Mangalam 1982 ACJ 203 (Madras) and Annapurna 1984 ACJ 238 (Karnataka), with respect to the object of Section 53 of the E.S.I. Act and nature and effect of bar created by it.

34. Learned Counsel for the claimants has referred to the decision of the Hon''ble single Judge of this Court in the case of Tribhuwan Singh Vs. Ramesh Chandra and Others, The fact situation therein has been that Tribhuwan Singh was employed in a factory known as Novelty Tools Centre and he was going to the factory on his bicycle. A jeep bearing No. RRG 6491 driven by one Ramesh Chandra hit him causing injuries and he claimed compensation for injuries sustained for rash and negligent driving of the jeep. The owner and driver of the jeep denied the accident and the insurance company raised the plea, as raised in the present case that claimant had received the amount under the E.S.I. Act and, therefore, the claim application was not maintainable. Tribunal relying upon a decision of Karnataka High Court in K.S. Vasantha v. Karnataka State Road Trans. Corporation 1982 ACJ 259 (Karnataka), held that the claim application was not maintainable because of bar of Section 53f of the E.S.I. Act. The learned single Judge of this Court distinguished the case of K.S. Vasantha (supra) finding that therein the deceased was employed in the New Government Electric Factory that had arranged a bus belonging to K.S.R.T.C. to pick up the workers from their respective places and in those circumstances, extension theory was applied and deceased was held to have sustained injuries out of employment or in connection with the employment and the deceased was deemed to be on duty. In the case at hand, it was found by the Hon''ble single Judge of this Court that the appellant was going on a bicycle and had not entered into the premises of the employer and the incident had occurred on the public road and, therefore, it could not be said that the appellant met with the accident in the course of his employment or that the injuries were caused by accident arising out of employment and, therefore, injuries were not "employment injury". Learned Judge referred to a decision of Hon''ble Madhya Pradesh High Court in the case of Madhya Pradesh State Road Trans. Corpn. Vs. Praveer Kumar Bhatnagar and Another, wherein it was held that E.I. Court does not deal with a tortfeasor's liability and does not award him damages/compensation under the law of Torts and while agreeing with the views so taken on the operation of Section 53 of the E.S.I. Act, the Hon''ble single Judge of this Court held,-

The right to sue arising from the substantial law, namely, the law of Torts cannot be destroyed by the procedural provision of Section 61 of the E.S.I. Act or Section 53 of the Act.

35. Another reasoning employed in the case of Tribhuwan Singh Vs. Ramesh Chandra and Others, has been that Chapter VIIA was inserted in the Motor Vehicles Act with effect from 1.10.1982, i.e., after coming into force of Section 53 of the E.S.I. Act and Section 92-E of the M.V. Act indicated overriding effect of

Chapter VIIA and it was held that even if the bar of Section 53 was available, that has come to an end and a person receiving injury from an accident arising out of the use of the motor vehicle can get compensation under the principles of "no fault liability". Therefore, the decision of the Tribunal was not approved and the matter was remitted back to the Tribunal for deciding the claim application on merits. The learned Judge has of course referred to another decision in *Asokan v. Western India Plywoods Ltd.* 1987 ACJ 358 (Kerala), that has been disapproved by the Hon'ble Supreme Court in *A. A. Trehan Vs. M/s. Associated Electrical Agencies and another*,

36. Learned Counsel for the claimants has further referred to the decision of the Supreme Court in *Western India Plywood Limited Vs. P. Ashokan*, and observations therein have been strongly relied upon by the learned counsel for sustaining of the claimants' action under the Motor Vehicles Act. It is borne out from the factual foundation that the judgment that was impugned in the said case of *Western India Plywood Ltd.* (supra) had already been considered and disapproved in *A. A. Trehan Vs. M/s. Associated Electrical Agencies and another*, , by the Hon'ble Apex Court. The facts of the case in *Western India Plywood Ltd.* (supra) were that the appellant company was owning and operating a plywood factory and the respondent who was working with the company met with an accident when he was feeding the DAP compound into the roller mill by pushing it with his own hand and as a result of the accident, one of his hands was amputated. Under the E.S.I. Act the employee was allowed disablement benefit of Rs. 260 per month. The same employee sought permission to file a suit in forma pauperis for claiming compensation of Rs. 1,50,000 for injuries and such application was rejected by the subordinate court upholding the objection of bar of Section 53 of the E.S.I. Act. In High Court of Kerala the matter was referred to a Full Bench that held that provisions of sections 53 and 61 of the E.S.I. Act did not bar an action by an insured employee under tort for compensation against the employer. The Hon'ble Supreme Court referred to the provisions of Section 2(8) dealing with the employment injury and so also of sections 53 and 61 of the E.S.I. Act and after referring to various decisions of the High Courts and so also of the Hon'ble Supreme Court in *A. Trehan's case* (supra), it was noticed by the Hon'ble Supreme Court that the judgment under appeal was already considered and disapproved in *A. A. Trehan Vs. M/s. Associated Electrical Agencies and another*, and such observations in *A. Trehan's case* (supra) were agreed to in the appeal at hands and it was held that the respondents could not make a claim for damages particularly in view of Section 53 of the E.S.I. Act and in that context, it was observed that the words "or otherwise" were of greater magnitude and the claim in torts was also barred. The Hon'ble Supreme Court observed that,-

...The use of the expression "or otherwise" would clearly indicate that this section is not limited to ousting the relief claimed only under any statute but the wording of the section is such that an insured person would not be entitled to make a claim in tort which has the force of law under the E.S.I. Act. Even though the E.S.I. Act is a beneficial legislation the legislature had thought it fit to

prohibit an insured person from receiving or recovering compensation or damages under any other law, including torts, in cases where the injury had been sustained by him is an employment injury.

37. On the scheme and object of E.S.I. Act, the Supreme Court observed that,-

(14) The E.S.I. Act has been enacted to provide certain benefits to the employees in case of sickness, maternity and employment injury and make provisions in respect thereof. Under this Act, contribution is made not only by the employee but also by the employer. The claims made by the employees against the employer where the relationship of the employer and employee exists were meant to be governed by the E.S.I. Act alone. It is precisely for this reason that Madras High Court in Mangalam's case 1982 ACJ 203 (Madras), had observed that the object of Section 53 of the E.S.I. Act was to save the employer from facing more than one claim in relation to the same accident. This, in our opinion, is the correct reading of the said provision. This being so the claim of the respondent for damages being barred u/s 53 of the E.S.I. Act, the trial court was right in dismissing the application under Order 33, rule 1 of the Code of Civil Procedure.

(Emphasis supplied)

38. The observations of Hon''ble Madras High Court in Mangalam's case 1982 ACJ 203 (Madras), about the object of Section 53 that it was to save the employer from facing more than one claim has been held by the Hon''ble Apex Court to be the correct reading of the said provision. These very observations of Madras High Court have already been noticed hereinbefore.

39. At this juncture, one may conclude with the authoritative pronouncement by the Hon''ble Supreme Court in A. A. Trehan Vs. M/s. Associated Electrical Agencies and another, and Western India Plywood Limited Vs. P. Ashokan, that once there is a case of employment injury (its connotations could be very many), if the employee is covered under the E.S.I. Act and is entitled to benefits thereunder, his claim against the employer under the Workmen's Compensation Act or even under the law of Torts is effectively barred because of sections 53 and 61 of the E.S.I. Act.

40. But however, the entire principles aforesaid would have no application to the case at hand for the simple reason that in the present case though the deceased was a driver on R.S.R.T.C. bus, he met with an accident having been hit by another truck and died because of injuries sustained in such accident and the claim for compensation is maintained only against the driver, owner and insurer of the offending truck. This Court is clearly of opinion that these persons related to the truck and representing an entirely different set of tortfeasors cannot claim immunity from their liability of compensation with reference to the E.S.I. Act.

41. It appears that in view of its wider implications, a submission was made before the Hon''ble Apex Court in Western India Plywood Limited Vs. P. Ashokan,

that qua the employer, may be there is only one remedy available under the E.S.I. Act, but against the third person, Section 53 cannot be taken as a defence and the Hon''ble Supreme Court observed that there was considerable force in this submission but it was not necessary for the decision of that case to decide this issue finally as the claim in the said case was not made against third party but against the employer itself. Such observations of the Hon''ble Supreme Court could usefully be noticed,-

(16) During the course of hearing it had been argued that Section 53 should not be construed in such a way that an insured person cannot raise a claim against a third party in the event of his suffering an employment injury. It was submitted that though qua the employer only one remedy may be available, namely, under the E.S.I. Act but as far as third persons are concerned Section 53 cannot be taken up as a defence to an action in tort in a claim being made for damages because E.S.I. Act creates certain rights as a result of employment qua the employer and has no application as far as third parties are concerned. In this connection it was submitted that the use of the words "employment injury" in Section 53 relates to a claim which is relatable to employment of the insured person with his employer.

(17) In our opinion, though there is considerable force in the said submission but it is not necessary for the decision of the present case to decide this issue finally because in the instant case the claim which was sought to be made was not against the third party but against the employer itself. Perhaps this question may require consideration in an appropriate case.

42. The aforesaid observations make it apparent that Hon''ble Apex Court has not laid down against existence of the liability of a third party and, on the contrary, the distinction submitted before the Hon''ble Supreme Court has been noted with the observation that there was considerable force in it; although the Hon''ble Supreme Court has not finally pronounced on this aspect of the matter as the same was not relevant to the fact situation of the said case in *Western India Plywood Limited Vs. P. Ashokan*, Therefore, the suggestions as put forward on behalf of the insurer in the present case are not correct and are required to be rejected.

43. This Court is clearly of opinion that if the submissions of learned counsel for the insurer are accepted, the same would lead to the proposition that whenever an employee covered under the E.S.I. Act suffers an employment injury, even if because of or at the hands of a person absolutely unconnected with such employment or the employer, such a tortfeasor would enjoy immunity from damages because of the victim's employment being covered under the protective umbrella of State insurance. It cannot be gainsaid that 50 per cent of the liability for the accident in the present case has been of the truck driver. There could still be cases involving entire responsibility of third person for bringing about death of or injury to an E.S.I. covered employee. Neither Motor Vehicles Act nor the E.S.I. Act proceed on any such principle that the tortfeasor

who is a third party qua an employee or employer gets benefited or goes scot-free having nothing to answer for his tortious deed. If such liability would be permitted to be avoided with reference to Section 53 of E.S.I. Act the result would be of providing exemption to a tortfeasor to answer for his tortious deed only because a beneficial piece of legislation of E.S.I. Act provides for relief to the victim if there is a causal connection of the injury with his employment. Such interpretation has never been approved by the Hon'ble Supreme Court and, on the contrary, as indicated by the Hon'ble Supreme Court in *Western India Plywood Limited Vs. P. Ashokan*, the liability of the third party tortfeasor is not taken away by Section 53 of the E.S.I. Act. A social security legislation like E.S.I. Act operating in an entirely different arena cannot be permitted to be used by a tortfeasor to suggest that it provides him with immunity from his liability.

44. The bar of Section 53 is obviously to protect the employer from being vexed twice for the same cause and this Court is clearly of opinion that the suggestion by the appellant insurer of the offending truck having no co-relation whatsoever with the employer of the deceased, that the bar of Section 53 or Section 61 of the E.S.I. Act would operate to its benefit also, remains fundamentally baseless. As noticed hereinbefore, the Claims Tribunal has awarded compensation towards 50 per cent liability of the truck concerned and in the context of such liability, the E.S.I. Act creates no bar. The contentions made on behalf of the insurer deserve to be and are rejected.

45. As a result of the aforesaid, both the appeals deserve to be and are hereby dismissed. In the circumstances of the case, the parties are left to bear their own costs.