

(2003) 12 AP CK 0048
In the Andhra Pradesh High Court
Case No : CMA No. 1327 of 1993

Pauline Decruze and Others	Vs	APPELLANT
M.F. Katha Singh and Others		RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 53
Motor Vehicles Act, 1988 — Section 166

Citation : (2004) 2 ACC 279 : (2005) ACJ 1427 : (2004) 2 ALD 133 : (2004) 2 LLJ 395

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Prabhakar Reddy, for the Appellant; A.V.K.S. Prasad and K. Jawahar, Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This appeal is preferred by the claimants in O.P.No. 370 of 1990 against the order of the Motor Accident Claims Tribunal-cum-District Judge, Rangareddy District at Saroornagar ("the Tribunal" for brevity).

2. A person by name Earnest Cyril Decruze aged about 32 years died in a motor accident occurred on 10-1-1990. His wife and two minor children made an application u/s 166 of the Motor Vehicles Act, 1988 ("the MV Act" for brevity) claiming compensation of Rs. 3,50,000/-. The Tribunal while assessing the compensation payable to the claimants at Rs. 1,50,000/-dismissed the application on the ground that the petitioners are receiving the provident fund under the Employees State Insurance Act, 1948 ("the ESI Act" for brevity). The claimants being aggrieved by the order of the Tribunal preferred this appeal contending that the Tribunal erred in coming to the conclusion that the petitioners are not entitled for any compensation on the sole ground that they were receiving the amount contributed by the deceased employer under the ESI Act.

3. The Tribunal dismissed the petition on the ground that they are barred from claiming any compensation u/s 53 of the said Act. The Tribunal also relied on a judgment of a learned Single Judge of this Court in *National Insurance Co. Ltd. v. Ch. Vijayalakshmi* 1987 (2) ALT 193 wherein it was held that when a Lorry Owners Co-operative Society was contributing subscription under the ESI Act for the insurance of its employee under the said Act by virtue of Section 53, the Tribunal under the MV Act is barred to entertain petition for compensation filed by the legal representatives of the deceased employee.

4. The learned Counsel for the appellants-petitioners relied on a judgment of the Supreme Court in *Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another*, wherein the Supreme Court held that the pecuniary advantage received by claimant to be deductible should have correlation with accidental death and no other form of death.

5. In the case covered by the above decision, the Tribunal resorted to deduct the amount payable to the deceased towards provident fund, which was contributed by him during the course of his employment. The Supreme Court therefore observed as follows:

The receipt of the provident fund is a deferred payment within the contribution made by the employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death.

6. The principle laid down in the above judgment is making the position very clear that despite the claimants receiving any amount from the employer of the deceased, they are entitled to get the compensation under the Motor Vehicles Act on account of the death of the deceased.

7. The decision cited by the learned Counsel for the appellant is on the general principle regarding the payment of the compensation amount under the MV Act irrespective of the benefits the claimants got from the employer of the deceased on account of his death in the accident, but in the case on hand, Section 53 of the ESI Act imposed a bar on the Tribunal under the MV Act to entertain a petition for compensation filed by the Legal Representatives of the deceased employee. Section 53 of the ESI Act reads 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.

8. The bar imposed u/s 53 of the ESI Act applies only in respect of an employment injury sustained by the insured person. The learned Counsel for the appellant submitted that since the deceased met with the accident while proceeding in a van outside the work place, his L.Rs. are entitled to file a petition u/s 166 of the MV Act.

9. The deceased worked in the third respondent-company, which is situated at Somajiguda, as on the date of accident. The accident occurred near Miyapur. The learned Counsel for the appellants submits that since the injuries received by the deceased are not employment injuries, Section 53 of the ESI Act has no application to the present case. In support of his contention, the learned Counsel relied on certain judgments, which are as follows:

10. In *Tribhuwan Singh Vs. Ramesh Chandra and Others*, a learned Single Judge of the Rajasthan High Court held that an injury received by a worker outside the premises of the factory on a public road while proceeding to the factory on cycle due to an accident cannot be treated as an employment injury. The learned Judge further held that the injured neither met with the accident in the course of his employment nor the accident arose out of employment, therefore, notional extension theory cannot be applied to hold that the injured suffered employment injury.

11. In *Madhya Pradesh State Road Trans. Corpn. Vs. Praveer Kumar Bhatnagar and Another*, the Madhya Pradesh High Court held that the injuries suffered by a workman cannot be treated as employment injuries when he received those injuries while alighting the bus owned by his employer which was being operated as a public transport service, therefore, a claim under the MV Act is not barred and the injured is not debarred from receiving compensation.

12. In *Raj Kumari Nigam and Another Vs. Ashok and Others*, the Madhya Pradesh High Court held that when the claimant received injuries in a collision between a mini bus and a truck, those injuries cannot be treated as employment injuries and the claimant is not debarred from claiming compensation under the MV Act. It was further held that in order to attract Section 53 of the ESI Act, the injury must arise out of employment of the victim and in the course of employment.

13. The learned Counsel while laying stress on the point raised by him and by relying on the above decisions, requested to hold that the bar imposed u/s 53 of the ESI Act is not applicable to the case on hand.

14. The accident occurred while the deceased was travelling in the van of his employer and he met with the accident while he was proceeding from the office to the factory on a public road far away from the factory as well as the office. Since the injury did not occur during the course of employment or while he was attending to the work, the bar imposed u/s 53 of the ESI Act cannot be applied,

therefore, the petition made by the claimants u/s 166 of the MV Act is maintainable. The Tribunal rightly assessed the compensation payable to the claimants at Rs. 1,50,000/-, therefore, they are entitled for the said amount towards total compensation payable to them.

15. The appeal is accordingly allowed. The Respondents 1 and 2 are jointly and severally liable to pay compensation to an extent of 50% and Respondents 3 and 4 are jointly and severally liable to pay compensation to an extent of 50%. Out of the total compensation, the Appellants 2 and 3 and Respondent No. 5 are each entitled to Rs. 20,000/- and the first appellant is entitled for the balance amount of Rs. 90,000/- with interest at 9% per annum from the date of petition till the date of realization with proportionate costs.