
(1997) 03 MP CK 0049

In the Madhya Pradesh High Court

Case No : M.A. No's. 50, 51, 52 and 61 of 1989

Raj Kumari Nigam and Another

APPELLANT

Vs

Ashok and Others

RESPONDENT

Date of Decision : 11-03-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 53

Citation : (1998) ACJ 961

Hon'ble Judges : R.D. Vyas, J

Bench : Single Bench

Advocate : S. Patwa, for the Appellant; M.L. Dhupar, M.D. Sinha, G.K. Neema and Dandvate, for the Respondent

Judgement

R.D. Vyas, J.—These appeals arise against the Claim Case Nos. 6, 8 and 11 of 1987 decided by a common judgment dated 4.8.1988 by the learned 5th Additional M.A.C.T., Indore, who was pleased to award the amounts to the respective respondents of all the appeals except Appeal No. 61 of 1989.

2. The appellants of Appeal Nos. 50, 51 and 52 of 1989 argued that the Tribunal ought not to have granted the claims as the same were hit by Section 53 of the Employees' State Insurance Act, ("E.S.I. Act" for short) which reads as follows:

Section 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.

3. So far as Appeal No. 61 of 1989 is concerned, it is a cross-appeal against Appeal No. 50 of 1989, wherein the appellants Raj Kumari Nigam and Hemant Kumar Nigam have appealed against the quantum of compensation. It was

argued by Mr. M.L. Dhupar, learned Counsel for the appellant that the bar u/s 53 of the E.S.I. Act arises as the injuries received by the deceased in this accident could be termed "employment injury", therefore, the Tribunal ought to have declined to exercise jurisdiction barred under that Act and directed the claimants to approach appropriate forum under the E.S.I. Act. So far as Appeal No. 61 of 1989 is concerned, he advanced one more argument that in any case the liability would be limited as the accident has occurred because of composite negligence on the part of the offending vehicles.

4. Short facts giving rise to these appeals are that Yogendrakumar Nigam, Ambaram and Marry Dissuza were travelling in mini bus No. MBN 7182 from Dewas to Indore on 24.3.1979. The respondent No. 4 Abdul Mazid was driving the mini bus rashly and negligently. At about 9-9.30 in the morning the mini bus came near Shukla farm in village Lasudiya, collided with truck No. MPE 5938 that came from the opposite direction, which was also driven rashly and negligently by the respondent No. 2 Gopal. Yogendrakumar died on the spot. Ambaram also died in the said accident whereas Marry Dissuza received injuries on various parts of her body. She was taken to the hospital and was treated there. She suffered mental and physical pain due to the injuries of her right hand, shoulder and received disability. She is often required to take leave and her chances of promotion have become bleak.

5. The respondent Ashok denied that the truck belonging to him was driven by respondent Gopal recklessly and negligently. It was stated that the driver Gopal was driving the truck cautiously and the accident occurred due to the negligence on the part of the driver of the mini bus. During the pendency of the matter the original claimant Mangilal seems to have died, therefore, his name is deleted in Appeal No. 51 of 1989.

6. The Tribunal after appreciating the evidence held that the appellant and the respondent-owner were liable to pay the compensation as detailed in the judgment to all the claimants except Hemant Kumar who appealed (Appeal No. 61 of 1989) claiming to be the legal representative of the deceased to receive the compensation.

7. Mr. Dhupar appearing in Appeal Nos. 50 to 52 of 1989 argued only one point as aforesaid that the Claims Tribunal had no jurisdiction and the claimants were not entitled to approach the M.A.C. Tribunal under the provisions of Section 53 of the E.S.I. Act.

8. Mr. Patwa, learned Counsel for the respondents in Appeal Nos. 50 to 52 and appellant in Appeal No. 61 of 1989 argued that according to the judgment of this Court in Madhya Pradesh State Road Trans. Corpn. Vs. Praveer Kumar Bhatnagar and Another, the right under the Motor Vehicles Act is not defeated by provisions of Section 53 of the E.S.I. Act. He argued that as the claim arises out of the accident between the two vehicles, it cannot be said that the injury is an employment injury as referred to in Section 53 of the E.S.I. Act. He referred to

Section 2(8) of the E.S.I. Act defining the employment injury as under :

Section 2(8). "Employment injury" means a personal injury to an employee caused by 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.

He argued that injuries that are received are because of the motor accident, it was not arising out of the duty of any of the employees concerned but the claim arises because of the accident and that too because of rash and negligent driving by the drivers of the vehicles.

9. Looking to the judgment in the case of Madhya Pradesh State Road Trans. Corp'n. Vs. Praveer Kumar Bhatnagar and Another, , I am in agreement with the submissions of Mr. Patwa as it cannot be held that the injuries in this case arose out of the employment of the injured employees. It is possible to argue for the appellant that it was in the course of his employment but that does not reply the definition of "employment injury" as it must arise out of and in the course of the employment, therefore, both the conditions must be fulfilled and unless and until both the conditions are fulfilled the injuries cannot be said to be employment injury.

10. With respect to Appeal No. 61 of 1989, Mr. Patwa argued that in view of the Supreme Court judgment in Gujarat State Road Transport Corporation. v. Ramanbhai Prabhathhai 1987 ACJ 561 (SC), the brother of the deceased comes within the expression "legal representative". Mr. S. Patwa also argued that so far as Appeal No. 61 of 1989 is concerned, the appellants are entitled to full claim as also the normal rate of interest at 12 per cent per annum from the date of the application till realisation. He argued that looking to the number of the members of the family being three, considering the Supreme Court's unitwise distribution, the deceased would have spent Rs. 178/- for himself leaving about Rs. 360/- for the appellants and looking to the age of the deceased being 27 years, they would be entitled to around Rs. 4,300/- or so plus bonus amount and applying the multiplier of 17 to the yearly income, the amount of Rs. 76,500/- would be available, added to that amounts spent for the obsequial ceremonies, bringing the body, etc., the appellants ought to have been held to be entitled to anything above Rs. 85,000/-.

11. I agree with the submissions of Mr. Patwa and hold that by an increase of Rs. 20,000/- more than what is granted and granting the benefit of compensation also to the appellant No. 2 being the legal representative of the deceased with an interest at the rate of 12 per cent per annum from the date of application till realisation, the ends of justice would be met.

12. The increase in the rate of interest applies to all the three cases as there is no reason for deviating from the normal practice. On an objection by Mr. Dhupar that in an appeal rate of interest cannot be enhanced, Mr. Patwa has cited

Prakramchand Vs. Chuttan and Others, , a Full Bench decision holding that it is the duty of the appellate Court to enhance the rate of interest to 12 per cent per annum without cross-objections.

13. Looking to the aforesaid, I find no substance in the Appeal Nos. 50 to 52 of 1989 and allow Appeal No. 61 of 1989 to the extent of Rs. 20,000/- more than what has been granted by the Tribunal. The rate of interest in all the three claims is enhanced to 12 per cent per annum from the date of the application till realisation. The appeal No. 61 of 1989 is allowed with costs and the Misc. Appeal Nos. 50 to 52 of 1989 are dismissed with costs.