

(2000) 09 MP CK 0034
In the Madhya Pradesh High Court
Case No : M.A. No. 329 of 1999

Regional Director, E.S.I. Corporation and Another	APPELLANT
Vs	
Ram Singh and Another	RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8)

Citation : (2000) 87 FLR 832 : (2001) 1 LLJ 791

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : R.P. Joshi, for the Appellant;

Final Decision : Allowed

Judgement

A.M. Sapre, J.—Regional Director, Employees" State Insurance Corporation, has preferred this miscellaneous appeal u/s 82 of the Employees" State Insurance Act, 1948, questioning the legality and validity of an order dated February 15, 1999, passed by the Employees" Insurance Court, Ujjain, in case No. 5/92 (ESI). By impugned award the learned Employees" State Insurance Court is pleased to allow the application made by the respondents u/s 75 of E.S.I. Act. In order to appreciate the facts involved in the appeal it is necessary to state them infra.

2. The respondents claiming to be in the employment of respondent No. 2 (Esco Ujjain Pipe and Company Limited, Ujjain) as a Badlee employee, met with an accident on February 20, 1991. It is now a matter of record that on the said date i.e. February 20, 1991, the respondent No. 1 while returning from the Factory premises, his Scooter which he was driving got slipped, thereby respondent No. 1 fell down on the road. This resulted into some fracture in his left leg. The respondent then got himself admitted in the hospital on February 22, 1991 till August 25, 1991 and took treatment for the injuries that he had sustained.

3. This gave rise to making an application by the respondent No. 1 u/s 75 of the Act before the E.S.I. Court against the appellant and also against the employer

claiming for the loss suffered due to injury that he suffered in the said accident. According to respondent No. 1 the injury that he sustained was essentially an employment injury as defined u/s 28 of the Employees' State Insurance Act, and therefore he is entitled to claim compensation under the Act.

4. The claim petition was defended by the appellant and it was essentially contended that the so called injury suffered by the claimant (respondent No. 1) is not an injury which can be termed as an employment injury. It was the case of the appellant that the injury was neither sustained in the course of the employment nor it arises out of the employment and has got therefore no connection whatsoever even remotely with the nature of employment. It was also contended that accident in question occurred on a public road when claimant was returning to his house when in mid-way on account of his own negligence he fell down from his own Scooter. It was, therefore, contended that on claimants own showing the so called accident and the resultant injury has got nothing to do with the employment and hence no compensation is payable by any of the non-applicants and in any event by the appellant. The application was, therefore, prayed to be dismissed as not maintainable.

5. Parties went to trial and by impugned award, the learned E.I. Court was pleased to hold appellant liable to pay a sum of Rs. 7,254/-, holding that the injury was an employment injury, thereby making appellant liable to pay the compensation. It is this award which is challenged by the non-applicant No. 2 before this Court.

6. Heard Shri R.P. Joshi, learned counsel for the appellant. None for the respondents though served and also SPC issued for the date of hearing.

7. Having heard the learned counsel for the appellant and having perused the record of the case, I am of the view that award passed by the E.I. Court suffers from errors on the face of it and therefore deserves to be quashed. In my opinion, this case is fully covered by the judgment of the Supreme Court rendered in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, . In an identical case, their Lordships of Supreme Court while interpreting Section 2(8) of the Act held that if an accident occurs far away from the Factory while the employee was on his way back to his house then, it cannot be said to be an employment injury. This is what their Lordships ultimately held in paragraph 27 onwards while accepting the case of the appellant:

"We are of the view that in the facts of this case, it cannot be said that the injury suffered by the workman one kilometer away from the factory while he was on his way to the factory was caused by an accident arising out of and in the course of his employment."

In the case *Dover Navigation Company Limited v. Isabella Craig* 1940 AC 190 it was observed by LORD WRIGHT that:

"Nothing could be simpler than the words arising out of and in the course of the

employment". It is clear that there are two conditions to be fulfilled. What arises "in the course of" the employment is to be distinguished from what arises "out of the employment." The former words relate to time conditioned by reference to the man's service the latter to casualty. Not every accident which occurs to a man during the time when he is on his employment, i.e., directly or indirectly engaged on what he is employed to do gives a claim to compensation unless it also arises out of the employment. Hence the section imports a distinction which does not define. The language is simple and unqualified."

"29. Although the facts of this case are quite dissimilar, the principles laid down in this case are instructive and should be borne in mind. In order to succeed it has to be proved by the employee that (1) there was an accident, (2) the accident had a causal connection with the employment, and (3) the accident must have been suffered in course of employment. In the facts of this case we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event it was not suffered in the course of employment.

30. The appeal, therefore, succeeds. The judgment dated November 25, 1977 passed by the High Court is set aside. However in terms of the order passed by this Court on April 16, 1979, the appellants will have to bear the costs of this appeal in any event. The costs are assessed at Rs. 3000/- and will be paid by the appellant to the first respondent within a period of four weeks from date. The first respondent will also be entitled to retain the money paid to him by the Regional Director, Employees' State Insurance Corporation pursuant to the order of this Court passed on April 16, 1979."

8. Applying the ratio of their Lordships of the Supreme Court in the case of The Regional Director, E.S.I. Corporation and Anr. v. Francis De Costa and Anr. (supra), if I examine the facts of this case then it is discernible that then even according to the case of the claimant he met with an accident when his scooter got slipped on a public road when he was returning from an employment. This certainly cannot be said to be an accident arising out of an employment and during the course of an employment Though it was an unfortunate accident but then no blame can be put either on the employer or on the appellant who were in no way responsible for this cause.

9. Accordingly and in view of the aforesaid discussion, appeal is allowed and the award is set aside.