
(1997) 11 KL CK 0003
In the High Court Of Kerala
Case No : M.F.A. No. 523/90 C

Rosamma, V.T.

APPELLANT

Vs

Regional Director, E.S.I. Corporation

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 53, 61, 75, 82

Citation : (1997) 11 KL CK 0003

Hon'ble Judges : P.A. Mohammed, J; P. Shanmugam, J

Bench : Division Bench

Advocate : C. Mohan, for the Appellant; T.V. Ajayakumar, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—This appeal u/s 82 of the Employees State Insurance Act is directed against the judgment of the Employees Insurance Court, Calicut in E.I.C. No. 71/87. The Appellant's husband V.P. Thadeus alias Baby was an employee under M/s Niddish Transport Corporation, Calicut. He was employed as a driver and in the course of employment he died. Therefore the Appellant filed an application u/s 75 of the Act praying for dependents benefit. The Respondent filed a written statement denying the liability. It was further pleaded that the Appellant had already obtained compensation as per an award under the Workmen's Compensation Act. An amount of Rs. 83,192 had been awarded as compensation payable to the Appellant for the death of Appellant's husband in the Workmen's Compensation Case No. 71/87. That award was produced as Ext. D-2 and in view of this document the Court below held that the Appellant was not entitled to the benefits in the present proceeding before the E.S.I. Court. The application was accordingly dismissed. Being aggrieved by the said judgment the present appeal has been filed by the applicant.

2. The learned Counsel for the Appellant contended that in view of the Full Bench decision of this Court in Asokan v. Western India Plywoods Ltd. 1987 (1) KLT 89 (F.B.) this appeal has to be allowed. Of course the submission of the counsel on

the basis of the above decision is correct. But the said decision of the Full Bench has been reversed by the Supreme Court in *Western India Plywood Ltd. v. Asokan* 1997 (2) KLT 635 (S.C.). The Supreme Court held thus:

In view of the aforesaid observations in *Trehan's* case, with which we respectfully agree, it is clear that the Respondent could not make a claim for damages. Section 53 disentitles an employ who has suffered an employment injury from receiving or recovering compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise. 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 wordings of the section are such that an insured person would not be entitled to make a claim in Torts 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.

(Emphasis supplied)

3. In view of the above principle laid down by the Supreme Court the Appellant who has admittedly received the compensation under the Workmen's Compensation Act as evident from Ext. D-2, is not entitled to claim the dependents' benefit again under the Employees State Insurance Act. Section 61 of the Act provides that when a person is entitled to any of the benefits provided by the Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment. When a person received benefit under any other Act he is not entitled to claim the same benefit under the present Act though the bar is only against receiving the benefit under the provisions of any other enactment. The purpose of Section 61 is that no person shall be allowed to receive the benefit in respect of an employment injury twice. No person shall be allowed to flourish on his own wrong. The Appellant has wrongly invoked the provisions of the Workmen's Compensation Act and obtained the benefit. He has no case that he has refunded the amount awarded under the said Act before invoking the provisions under the E.S.I. Act. That means the Appellant has impliedly waived the benefits under the E.S.I. Act. Allowing the benefit to the Appellant under the E.S.I. Act in the present case would amount to unlawful enrichment which cannot be allowed in view of the purpose of the provision contained in Section 61 of the Act.

4. In view of what is said above, we hold that the Appellant is not entitled to claim any benefit under the E.S.I. Act. We do not find any reason to interfere with the judgment of the Court below. The appeal is accordingly dismissed.