

(2008) 09 KAR CK 0082
In the Karnataka High Court
Case No : Writ Petition No. 19051 of 2007

S.G. Pandu

APPELLANT

Vs

United India Insurance Company Ltd.

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 46 (c), 53
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2010) ACJ 202 : AIR 2009 Kar 33 : (2009) 2 KCCR 1057

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : V.B. Siddaramaiah, for the Appellant; A.M. Venkatesh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—The point which arises for consideration in this writ petition is, whether the petitioner who is an employee, can claim compensation by filing claim petition u/s 166 of the Motor Vehicles Act 1988 (hereinafter referred to as the M.V. Act) from the respondent, on account of the injury suffered by him during the course of employment, when he has availed the benefits under the provisions of the Employees State Insurance Act, 1948 (hereinafter referred to as ESI Act)?

2. Factual Matrix:

(a) Briefly stated, the facts are that, the petitioner while working as a Private Security Guard in Mallasandra Milk Dairy of Tumkur Taluk from Janardhan Detectives and Security Chambers and while discharging the duties on 29.8.02 and while counting the milk cans of vehicle bearing registration No. KA-37-3799, on its backside, another vehicle bearing registration No. KA-06-4125, driven by its driver rashly and negligently, hit the petitioner, on account of which, he sustained the injuries. The information regarding the case was sent to the jurisdictional police and a case was registered against the driver of the motor

vehicle bearing registration No. KA-06-4125 for the offences punishable under Sections 279 and 337 of IPC. According to the petitioner, he sustained fracture of tibia at upper and middle 1/3rd along with other Injuries and took treatment at Tumkur Government Hospital. Subsequently, he was admitted to ESI Hospital for further treatment wherein, surgery was conducted.

(b) The petitioner filed claim petition u/s 166 of the M.V. Act, in the MACT at Tumkur, in MVC No. 83/03, which was contested by the respondent. After enquiry, the MACT has held the petition as not maintainable and has ordered the return of the petition with a direction to present the same before the proper authority. Feeling aggrieved, this writ petition has been filed.

(c) There is no dispute that, the petitioner being an employee and insured person under the ESI Act and as the injury sustained by him was an employment injury, became entitled to the benefit of Section 46(c) of the ESI Act. He had approached the ESI Corporation, which has granted the benefit available to him under the ESI Act.

3. Contentions:

(a) The main contention urged by Sri. V.B. Siddaramaiah, learned Counsel appearing for the petitioner is that, the claim for compensation made by the petitioner under the M.V. Act was de-hors the contract of service and was based on the law of torts and hence, the bar created by Section 53 of the ESI Act is not at all applicable and the MACT has committed the error in returning the petition for presentation before proper authority.

(b) Per contra, Sri. A.M. Venkatesh, assisted by Sri. Shivanegowda, learned advocates for the respondent, contended that, the ESI Act is a self contained Code and the injured employees like the petitioner are entitled to the benefit, in cases of injury suffered, under the provisions of the ESI Act and such employees, In the case of an employment injury, are debarred from making any claim under any other Act or law. Learned Counsel drew my attention to the relevant provisions of the ESI Act.

(c) In reply, Sri. V.B. Siddaramaiah, learned Counsel contended that, Section 53 of the ESI Act should be construed in such a way that, an aggrieved employee is able to receive adequate compensation on account of the injury sustained by him involving a motor vehicle accident, by approaching the forum provided under the MV Act. Learned Counsel contended that, the amount paid or other benefits received under the ESI Act, cannot be regarded as an adequate measure of compensation for the pain and suffering of the petitioner, the amount spent towards obtaining treatment and the loss in earning capacity and other relevant factors and therefore, Section 53 of the ESI Act should not be construed in such a way, as to prevent an employee from claiming compensation from the owner and insurer of the motor vehicle, which is involved in the accident.

(d) Learned Counsel also contended that the proceedings in the case before the

MACT having come to a fag end, it was not open to the Tribunal to have ordered return of the petition for presentation before the proper authority and the MACT ought to have decided the petition on its merit. According to the learned Counsel, the Tribunal has failed to exercise the jurisdiction vested in it under the provisions of the MV Act.

4. Point for Consideration:

Considering the rival contentions and the record of the writ petition, the point formulated supra, arises for consideration.

5. Statutory Provisions:

To answer the aforesaid point, the relevant provisions of the ESI Act, required to be noticed are;

(a) Section 2(8) defines the term "employment injury" and the same reads as follows:

"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;

(b) Section 53 reads as follows:

"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."

(c) Section 61 reads as follows:

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.

6. Price dents:

The said statutory provisions, were taken note of, considered and their effect and intendment has been held to be as follows:

(i) In the case of K.S. Vasantha v. KSRTC reported in 1982(1) Kar.LJ 202, while considering an appeal wherein, the material facts were that, eight injured persons and the deceased were employees of NGEF and were travelling in a bus belonging to KSRTC on their way to factory. The bus was taken on contract basis by the NGEF to facilitate its Workmen to reach the factory and to return to their respective places from the factory. As a result of an accident to the bus, eight

persons were injured and two died and claims were made u/s 110A of MV Act, 1939 by the injured and the representatives of the deceased, for compensation. The claim petitions were dismissed and in appeal, by taking into consideration Section 53 of the ESI Act, it was held that, where, workmen travelling to work on a transport provided by the employer, had suffered injury by an accident caused to the vehicle, it amounted to "employment injury" and that Section 53 was a bar to any claim by the injured under any other law or the Workmen Compensation Act, 1923 and that their remedy was only to claim compensation or damages from the ESI Corporation.

(ii) In the case of Smt. Annapurna and Ors. v. General Manager, KSRTC, Bangalore and Ors. reported in 1984 Lab IC 1355, wherein, the material facts were that, one Sri. Veerabhadraiah died as a result of injuries sustained by him, when a bus belonging to KSRTC, was driven carelessly by the driver thereof, inside the depot of the said Corporation. The deceased was present there, in the course of his employment and the accident happened in the premises of the depot. His wife and children claimed compensation, by filing a claim petition in the MACT, which was rejected on the ground that, such claim for compensation is not available to the claimants, in view of the provisions u/s 61 of the ESI Act. The Tribunal upheld the contention and rejected the claim, which when questioned in appeal, it was held that, Section 53 created a bar to the recovery of compensation under any law, in cases where the injured had received an employment injury. The appeal was held to be devoid of merit and was dismissed.

(iii) In the case of Mangalamma and Others Vs. Express Newspapers Ltd. and Another, , one Jayaraman was walking in the Express Newspapers Estate and at that time, a vehicle belonging to the Express Newspapers Limited driven by its driver, knocked him down on account of which, he sustained multiple injuries, which ultimately resulted in his death in the hospital. On the basis that, the accident was due to the rash and negligent driving of the vehicle by its driver, the wife and children of the deceased, filed claim petition against the owner and insurer of the said vehicle, which was inter alia opposed on the ground that, the employee was covered by ESI Act and the scheme framed thereunder and the claimants having received the compensation under the ESI Act, they have no right to claim compensation under the MV Act and the claim petition is not maintainable. While considering Section 53 of the Act, it has been held that, the object of Section 53 was to save the employer from facing more than one claim in respect of the same accident and the claimants are not entitled to maintain the claim petition u/s 110A of the MV Act, 1939.

(iv) In the case of A. Trehan Vs. M/s. Associated Electrical Agencies and another, , the material facts were that, the appellant Trehan was an employee of the respondent, received the injuries in the course of his employment. After receiving the benefits from the ESI Corporation under the ESI Act he filed an application under the Workmen Compensation Act, claiming compensation. The employer objected to the maintainability of the application by relying upon

Section 53 of the ESI Act. The Commissioner overruled the employer's objection. The writ petition filed by the employer was dismissed and in the appeal, it was held that, in view of the bar created u/s 53, the application for consideration was not maintainable and when the matter was carried to the Hon'ble Supreme Court by the employee, it has been held as follows:

12. In this background and context we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is against receiving or recovering any compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise in respect of an employment injury. The bar is absolute as can be seen from the use of the words 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" and "under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise". The words "employed by the legislature" are clear and unequivocal. When such a bar is created in clear and express terms it would neither be permissible nor proper to infer a different intention by referring to the previous history of the legislation. That would amount to bypassing the bar and defeating the object of the provision. 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 ESI 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 the bar created by Section 53 the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable.

(v) In the case of Western India Plywood Limited Vs. P. Ashokan, , the material facts were, the respondent who was working with the appellant, met with an accident, as a result, he sustained injury and his hands were amputated. The claim was made under the ESI Act and he was granted the disability benefit of Rs. 250/- per month on account of permanent/partial disablement. Later, the employee filed a suit for recovery of compensation for the injury sustained by him in the accident, which was contested by the employer on the ground that, Section 53 of the ESI Act creates a bar, which was upheld. The order of the Trial Court was reversed by the High Court and when the matter was taken up before the Hon'ble Supreme Court by the employer, it has been held as follows:

11. In view of the aforesaid observations in Trehan's Case AIR 1996 SCW 2375, with which we respectfully agree, it is clear that the respondent could not make a claim for damages. Section 53 disentitles an employee 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 ESI Act. Even

though the ESI Act it 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.

6. Reasons:

(a) The petitioner, in his evidence before the MACT as PW-1, has admitted that he is a holder of ESI Card, that on account of the injury sustained in the accident in question, he took treatment both as inpatient and out-patient at ESI Hospital, Bangalore. Ex.P7 is a communication by Janardhan Detectives and Security Chambers, wherein the petitioner is employed, addressed to the Manager, ESI Corporation, which shows that, the petitioner was working as a security guard and he was deputed to Mallasandra Milk Dairy of Tumkur Taluk, wherein, the petitioner met with an accident during the course of his employment. Since it is not in dispute that being an employee under Janardhan Detectives and Security Chambers, which had deputed the petitioner to work as a security guard in Mallasandra Milk Dairy, the petitioner suffered the injury during the course of his employment and the injury sustained being an employment injury., he availed the benefit of obtaining treatment in the ESI Hospital and that he has received certain monetary benefits from the ESI Corporation, in the face of the bar contained under Sections 53 and 61 of the ESI Act, the petitioner cannot receive or recover any compensation or damages, under any other law, other than those available to him under the ESI Act.

(b) In view of the above, the impugned order passed by the MACT holding that, the petition is not maintainable for want of jurisdiction and directing the petitioner to avail remedy before proper authority, cannot be said to be illegal. No doubt, there is an irregularity, in that, the MACT has directed the return of the petition to the petitioner for presentation before proper authority, by recording a finding that, the petition before the MACT is not maintainable for want of jurisdiction. All that the MACT has held is that, in view of the petitioner having sustained injury during the course of employment and the injury being one falling within the definition of Section 2(8) of the ESI Act, the petition is not maintainable. Hence, it is not a case of railing to exercise jurisdiction vested in the MACT nor is there any arbitrariness or illegality committed, calling for exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The writ petition is devoid of merit.

Conclusion:

(i) The claim petition filed u/s 166 of the MV Act is not maintainable and the MACT has rightly not entertained the same.

(ii) Since it is only a case of a bar of jurisdiction to entertain the petition, it is made clear that, the petitioner is at liberty to approach the ESI Corporation for the relief under the ESI Act.

(iii) Needless to observe that, the ESI Corporation will consider the claim of the petitioner in accordance with law, without raising any objection to the delay, since the petitioner was prosecuting his claim before a wrong forum.

7. In the result, for the reason stated supra, the writ petition fails and the same is hereby dismissed, subject to the observations.

No costs.