

(1983) 10 MP CK 0003
In the Madhya Pradesh High Court

Sheeladevi Matlani

APPELLANT

Vs

Commissioner For Workman's Compensation and Others

RESPONDENT

Date of Decision : 24-10-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees State Insurance Act, 1948 — Section 53

Citation : (1984) 2 ACC 348 : (1985) ACJ 206

Hon'ble Judges : R.K. Vijayvargiya, J

Bench : Single Bench

Judgement

R.K. Vijayvargiya, J.—The facts giving rise to this petition under Articles 226 and 227 of the Constitution are as follows.

2. The petitioner owns a factory Rajashree Plastic, Indore and carries on the business of manufacture and sale of plastic goods. The said factory is covered under the provisions of the Employees State Insurance Act, 1948 (for short "the Act") since the year 1976. The Employees State Insurance Corporation (for short the Corporation") has allotted "18/7465/90" as the employees Code number to the petitioner's factory. The deceased Narain who was an employee of the petitioner in the said factory suffered an employment injury during the course of his employment with the petitioner and succumbed to the injuries caused to him. The petitioner reported the accident to the Corporation. The respondents No. 2 and 3 submitted an application under the Workmen's Compensation Act before the respondent No. 1 of the award of compensation to them. The petitioner and the Corporation were joined as parties to the said application. The petitioner remained absent and was proceeded with ex-parte. The name of the Corporation was deleted from the application. The respondent No. 1 by order (Ann. "C") passed on 21-1-1980 awarded Rs. 13,500/- as compensation against the petitioner. Thereafter the Additional Tehsildar Indore issued a deemed notice No. A/76/81/82 dated 1-10-82 (Ann. "D"), requiring the petitioner to deposit the amount of compensation as awarded by the respondent No. 1. The petitioner has challenged this demand notice (Ann. "D") in this petition on the ground that as

the deceased Narain was an insured person and the petitioner's factory was covered under the provisions of the Act the respondents Nos. 2 and 3 are not entitled to claim or recover any compensation from the petitioner on account of the death of the deceased caused by an employment injury.

3. In the return filed on behalf of the respondents 2 and 3 the facts are not disputed. However, it is submitted that as the petitioner has failed to avail of alternative remedy to file appeal against the award passed by the respondent No. 1 this petition should not be entertained. It is also contended that the petition is liable to be dismissed because it has been filed after two years of the passing of the award.

4. Having heard learned Counsel for the parties I have come to the conclusion that this petition deserves to be allowed. It is not disputed that the petitioner's factory is covered under the provisions of the Act before the injuries caused to the deceased which resulted in his death. It is also not disputed that the deceased was an insured person and that the fact that the deceased received employment injuries was reported by the petitioner to the Corporation.

5. On the admitted facts the bar of Section 53 of the Act is attracted. Section 53 of the Act reads as follows:

An insured person or his dependents 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 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.

6. As stated above as the deceased Narain was an insured person under the Act, the respondents Nos. 2 and 3 who are his dependents are not entitled to receive or recover from the petitioner who is the employer of the deceased any compensation or damages under the Workmen's Compensation Act. Section 53 of the Act prohibits the respondents Nos. 2 and 3 from receiving or recovering any compensation or damages under the Workmen's Compensation Act from the petitioner. As the provisions of the statute prohibit the respondents Nos. 2 and 3 from recovering or receiving any amount as compensation from the petitioner the award passed by the respondent No. 1 in their favour directing the petitioner to pay them the amount of compensation is of no avail and on that basis also they cannot recover any amount of compensation from the petitioner under the Workmen's Compensation Act. In the circumstances the fact that the petitioner did not prefer any appeal against the award passed by the respondent No. 1 cannot disentitle her to resist the demand which on admitted facts is without the authority of law.

7. As regards delay the petitioner has challenged the illegal demand notice (Ann. "D") which was issued in the month of October, 1982 and shortly thereafter this petition has been filed. In the circumstances it cannot be held that the petitioner is guilty of laches in filing this petition.

8. The learned Counsel for the respondents No. 2 and 3 contended that notice of this petition be issued to the Corporation so that order may be passed in the presence of the Corporation and the respondents No. 2 and 3 may pursue the remedy under the provisions of the Act. As the Corporation was not a party before the respondent No. 1 because its name was deleted by the respondents Nos. 2 and 3 it is not necessary to issue notice of this petition to the Corporation. It is also not necessary to state that nothing in this order shall be construed so as disentitle the respondents Nos. 2 and 3 to pursue the remedy of receiving compensation from the Corporation in accordance with law.

9. As a result of the discussion aforesaid this petition is allowed. It is declared that the respondents Nos. 2 and 3 are not entitled to receive any compensation from the petitioner on account of the death of the deceased Narain caused by the employment injury sustained by him during the course of his employment with the petitioner. The demand notice (Ann. "D") issued by the Additional Tehsildar, Indore for the recovery of the amount of compensation awarded by the respondent No. 1 against the petitioner is quashed. The petitioner has deposited the amount of compensation before the respondent No. 1, the Commissioner for Workmen's Compensation, Indore, pursuant to the order passed by this Court on 10-12-1982. The petitioner shall be entitled to withdraw the said amount from the Commissioner for Workman's Compensation, Indore. In the circumstances of the case the parties shall bear their own costs of this petition. The outstanding amount of security deposit be refunded to the petitioner after verification.