

(2013) 09 KAR CK 0249

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 5871 of 2009 (MV)

Sri. T. Suresh Babu

APPELLANT

Vs

Sri. Vijayakumar M. and IFFCO Tokio General Insurance Co.
Ltd.

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Motor Vehicles Act, 1939 — Section 173(1), 43, 53, 61

Citation : (2013) 09 KAR CK 0249

Hon'ble Judges : C.R. Kumaraswamy, J

Bench : Single Bench

Advocate : R. Krishna Reddy, for the Appellant; D. Vijaya Kumar, Advocate for R2, for the Respondent

Final Decision : Disposed Off

Judgement

C.R. Kumaraswamy, J.—This Miscellaneous First Appeal is filed u/s 173(1) of MV Act against the judgment and award dated 25.03.2009 passed in MVC. No. 6046/2008 on the file of the V Additional Judge, Court of Small Causes, Member, MACT, Metropolitan Area, Mayohall Unit, Bangalore, (SCCH. NO. 20) dismissing the claim petition for compensation. Learned counsel for the appellant as well as the learned counsel for the respondents submits that the impugned judgment and award may be set-aside and the matter may be remitted back to the Claims Tribunal.

2. Learned counsel for the appellant relied on the following rulings:-

H.G. Mahesh Vs. Smt. Honnamma and Another, Employees State Insurance Act, 1948 - (Central Act No. 34 of 1948) Section 43, 53 & 61 and Motor Vehicles Act, 1939 (central Act No. 4 of 1939) Section 110-A -Whether a person who has availed benefit under E.S.I. Act for the injuries sustained in a Road Accident is precluded from filing Claim. Petition before the Motor Accidents Claims Tribunal? HELD-On facts it was found that the injured had only availed E.S.I. - Leave and

had not availed any other benefits-Mere availing of leave does not amount to availing benefit u/s 46 of the E.S.I. Act.

New India Assurance Co. Ltd. Vs. Maria Madonna and Others,

Motor Vehicles Act, 1988, section 166 and Employees' State Insurance Act, 1948, section 53 - Claim application-Bar against receiving compensation under any other law Employee sustained fatal injuries when his scooter was hit by a lorry-Tribunal fastened liability on the insurance company--Insurance company disputed its liability on the ground that claimants are not entitled to claim compensation under Motor Vehicles Act as they preferred claim under E.S.I. Act and had withdrawn the amount and their claim is barred u/s 53 of E.S.I. Act-Bar u/s 53 of E.S.I. Act applies only when the insured sustained an employment injury during the course of his employment-Whether claimants are barred from receiving compensation under Motor Vehicles Act-Held: no; deceased had not suffered any employment injury within the contemplation of section 53 of E.S.I. Act.

The Claims Tribunal is directed to frame the preliminary issue whether the claim of the claimants is hit by Section 53 of the Employees' State Insurance Act. The Claims Tribunal is further directed to record the finding in this regard. Thereafter, decide the claim petition in accordance with law within six months from the date of receipt of copy of the order.

With these observation, this Miscellaneous First Appeal is disposed of. Both the parties will have liberty to adduce their evidence in support of their contentions.