
(1996) 05 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Appeal No. 557 of 1992

Tribhuwan Singh	Vs	APPELLANT
Ramesh Chandra and Others		RESPONDENT

Date of Decision : 18-05-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 46, 53, 61, 75
Motor Vehicles Act, 1988 — Section 166

Citation : (1998) ACJ 579 : (1996) 3 WLC 377

Hon'ble Judges : Gopal Lal Gupta, J

Bench : Single Bench

Advocate : Sandeep Mathur, for the Appellant; Vinod Tyagi, for the Respondent

Judgement

Gopal Lal Gupta, J.—This appeal raises an important question of law which is to the following effect: Whether an employee having been covered by the provisions of Employees' State Insurance Act, 1948, is debarred from getting compensation under Motor Vehicles Act, because of Section 53 of the Employees' State Insurance Act, 1948?

2. Appellant Tribhuwan Singh was employed in the factory known as Novelty Tools Centre which was situated in the Vishwakarma Industrial Area, Jaipur. On 13.3.1989 at about 6.20 p.m., he was going to the factory on his cycle. Jeep RRG 6491 driven by one Ramesh Chandra hit him. Tribhuwan Singh sustained injuries. He claimed compensation of Rs. 3,97,000/-alleging that the jeep was being driven rashly and negligently. The owner and the driver denied the accident. The insurance company amongst other grounds raised a plea that the claimant had received amount under the Employees State Insurance Act, and, therefore, the claim application was not maintainable.

3. The learned Tribunal framed four issues and recorded the evidence of the parties. By the impugned order, learned Tribunal held that because of the bar of Section 53 of the Employees' State Insurance Act (for short "the E.S.I. Act") this claim application was not maintainable. The learned Tribunal in this connection

has relied on the case of K.S. Vasantha v. Karnataka State Road Transport Corporation 1982 ACJ 259 (Karnataka).

4. The contention of Mr. Mathur is four folds. First, the accident had occurred on the public road and therefore, the injury suffered by the claimant could not be held to be "employment injury". In this connection, he has placed reliance on the case of Deputy General Manager, Karnataka State Road Transport Corporation v. Gopal Mudaliar 1983 ACJ 128 (Karnataka) and G.N. Vishwanath v. Andal 1982 ACJ 128 (Karnataka). Second, even if it is held that the appellant had suffered "employment injuries", he was entitled to compensation under the Motor Vehicles Act, because Section 75(1)(e) of the E.S.I. Act has not taken away the right to claim compensation/damages for injury or death of a person arising from a motor accident. Third, in any case, the appellant has not been given any compensation for the permanent disability and he was given benefits for the temporary disability only under the E.S.I. Act. Fourth, Section 92-E of the Motor Vehicles Act has overriding effect and, therefore, in any case, compensation under the principle of "no fault liability" could not be denied to the appellant.

5. Mr. Tyagi, on the other hand, has contended that the learned Tribunal has rightly upheld the objection of the insurance company and because of the bar of Section 53 of the E.S.I. Act, the appellant was not entitled to any compensation.

6. I have given the matter my thoughtful consideration. Section 53 of the E.S.I. Act is to the following effect:

53. 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, 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.

This section was substituted for former Section 53 w.e.f. 28.1.1968.

7. Then Section 75 of the E.S.I. Act provides a list of matters which may be decided by Employees Insurance Court. The relevant clause is (e) of Sub-section (1) of Section 75, which indicates that any question or dispute arising as to the right of any person to any benefit and as to the amount and duration thereof, shall be decided by the E.S.I. Court in accordance with the provisions of this Act.

8. A reading of Section 53 of the E.S.I. Act indicates that an injured person is not entitled to receive compensation or damages under the Workmen's Compensation Act, 1923 or any other law for the time being in force in respect of an "employment injury". The "employment injury" has been defined in Section 2(8) of the Act, which is to the following effect: "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.

9. The words "arising out of and in the course of employment" have been interpreted by the courts in this manner that notional extension theory can be applied and the workman can be given benefit even when he had not suffered injury while in the employment premises or discharging his duties. It is on this principle that the Karnataka High Court in the case of K.S. Vasantha v. Karnataka State Road Transport Corporation 1982 ACJ 259 (Karnataka), relied on by learned Tribunal held that the deceased who was travelling in the bus had suffered the "employment injury" and the legal representatives were not entitled to maintain the claim petitions u/s 110-A of the Motor Vehicles Act, 1939. The facts of that case were that the deceased was employed in the New Government Electric Factory and this factory had arranged a bus belonging to the K.S.R.T.C. to pick up the workers from their respective places. It is in these circumstances that the extension theory was applied and held that the deceased had sustained injuries out of the employment or in connection with the employment. Since the employer in that case had arranged a bus for picking up the workers to transport them to the factory, the deceased were deemed to be on duty right from the time they boarded the bus.

10. However, in the instant case, the facts are that the appellant was going on a cycle and he had not entered into the premises of the employer. The accident had occurred on the public road. In my opinion, in these circumstances, it could not be said that the appellant had met with the accident in the course of his employment or that the injuries were caused by accident arising out of the employment. Thus, the injuries sustained by the insured were not "employment injury". A Division Bench of the Karnataka High Court in the case of G.N. Vishwanath v. Andal 1982 ACJ 128 (Karnataka), held that as the deceased met with an accident when he was going on his cycle on the public road, it was not "employment injury". The same High Court again in the case of Deputy General Manager, Karnataka State Road Trans. Corporation v. Gopal Mudaliar 1983 ACJ 128 (Karnataka), held that the injury sustained in motor accident when the worker was going on a cycle cannot be considered as "employment injury". It is, thus, obvious that even the view of the Karnataka High Court has been that when the deceased or injured met with an accident while on the public road, it could not come within the purview of employment injury. In the instant case, it has not come on record as to what was the distance of the place of accident from the factory. The accident had taken place at Vidhadhar Nagar turn. Therefore, it is difficult to apply the notional extension theory for holding that the appellant had suffered employment injuries. That being so, the bar of Section 53 does not come into play.

11. Apart from this, Section 75 of the E.S.I. Act envisages the matters which can be decided by the E.S.I. Court. Clause (e) is the only relevant clause for our purpose. Under this clause, if an employee has a right to have benefit as to the

amount and duration thereof, he can approach the E.S.I. Court. The benefits have been categorised in Chapter V of the Act. Section 46(1)(c) provides that insured is entitled to the periodical payment when suffers from disablement as a result of employment injury. In my opinion, Section 46 does not envisage remedy where an employee suffers from tortious act. It has been held by Madhya Pradesh High Court in the case of Madhya Pradesh State Road Trans. Corpn. Vs. Praveer Kumar Bhatnagar and Another, that the E.S.I. Court does not deal with a tortfeasor's liability and does not award against him damages/compensation according to the uncodified law of Torts for such of his act of omission or commission as is regarded as a wrong liable to be redressed under the English common law. It has further been held in this case that Section 53 of the E.S.I. Act, cannot kill the indefeasible right of obtaining compensation/damages under Motor Vehicles Act. The learned Judge has interpreted Section 53 of the E.S.I. Act and has held that the term "any other law" which follows immediately the clause "under the Workmen's Compensation Act or" must reasonably mean a law of the same genre as of the named Act, and that Section 110-A of the Motor Vehicles Act (166 of the new Act) is not covered by Section 53. I fully agree with the view taken by the learned Judge in that case. The right to sue arising from the substantial law namely, law of Torts cannot be destroyed by the procedural provision of Section 61 of the E.S.I. Act or Section 53 of the Act.

12. The Hon'ble Supreme Court in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, and in the case of The Hindustan Times Ltd., New Delhi Vs. Their Workmen, has mandated to employ the interpretative technique of construing socially beneficent legislation in such manner as would not suppress remedies available anterior to their enactment. I am, therefore, of the definite view that the right to get compensation/damages under the Motor Vehicles Act, has not been taken away by Section 53 of the E.S.I. Act.

13. In this connection, a Full Bench case of Kerala High Court reported as Asokan v. Western India Plywoods Ltd. 1987 ACJ 358 (Kerala), may usefully be referred to. That was a case where an employee suffered injuries in the factory premises. The injured employee filed a civil suit claiming compensation. It was pleaded by the employer that the suit was barred by virtue of Sections 53 and 61 of the E.S.I. Act. Overruling the objections of the employer, the court held that the suit was maintainable. The following observations of the Full Bench are relevant:

In relation to the interpretation of statutes courts will have a positive role to play. If a section yields two different interpretations, that which leads to an arbitrary or shockingly unreasonable result has to be eschewed. If an interpretation is such that it will expose the enactment to a distinct peril of invalidation as offending a Constitutional provision, the courts would be fully justified in reading down the provision and giving it an interpretation consistent with its constitutionality. Even the courts without much of enthusiastic exuberance of

judicial activism can bring about just results by a meaningful interpretation.

The scheme of the enactment on a close analysis takes care of only such liabilities as are geared to the employment injury. They do not purport to deal with the tortious liability of an employer. The enactment is not one intended to relieve the employer of the alleged hardship arising out of a multiplicity of liabilities, which is simultaneously a tort under common law and a violation of a statutory provision. A different view would produce patently discriminatory results which could hardly be upheld by an alert judicial mind. Take the case of a stranger suffering an injury or meeting with death as a result of negligent operation of an employer's machinery. Doubtless, for the tortious liability, the stranger or his legal representatives can sue, and secure through the process of law, a substantial sum by way of monetary compensation for the loss and suffering arising from such negligent act or omission of the employer. The compensation is calculated on the basis of well-known factors relevant in that connection. Quite often, substantial sums would be awarded by way of compensation. No artificial ceiling as provided under the enactment (the Employees' State Insurance Act) would operate in such a case. Should there be a reduction and sometimes such a drastic reduction in the compensation payable, for the only reason that the victim is none other than the employee? No doubt, he had put on the employee's garb when the accident happened. Can he be differentially treated for that inconsequential attire? The answer, we conceive, must be an emphatic negative. We may therefore reiterate that the scheme of the Act is to give additional benefits to a needy section of employees. The benefits under the Employees' State Insurance Act can be claimed by only those whose wages are below the statutorily fixed amount. The employee also has generally to make his contribution for getting the benefits provided under the Act. A person employed for a higher remuneration would not be deprived of the better benefits, even while he does not make any contribution as in the case of the employee covered by Employees' State Insurance Act. It does not stand to reason that the weaker section of the employees who had made an additional contribution from their wages, should lose all other benefits available under law, to others similarly situated.

14. Moreover, Chapter VII-A has been inserted by Act 48 of 1982 and it came into force w.e.f. 1.10.1982, i.e., after coming into force of Section 53 of the E.S.I. Act. A reading of Section 92-E of the Motor Vehicles Act, 1939 clearly indicates that it has got an overriding effect. The provisions of Chapter VII-A have the effect notwithstanding anything contained in any other provision of the new Act or of any other law for the time being in force. Section 53 was the provision of the law which was in force at the time Chapter VII-A of the Motor Vehicles Act came into force. In my opinion, because of the overriding effect of Section 92-E, the bar of Section 53, even if it was there, has come to an end and a person receiving injury from an accident arising out of the use of the motor vehicle can get compensation under the principle of "no fault liability".

15. For the reasons stated above, I have no hesitation in holding that the Tribunal has erred in holding that the claimant being employee and covered under the E.S.I. Act is debarred from getting compensation under the Motor Vehicles Act, because of bar of Section 53 of the E.S.I. Act. Since evidence of the parties had been recorded, it was the duty of the learned Tribunal to give finding on the issues framed. Since the learned Tribunal has not given the finding on the issues, it has become necessary to remand the case to the Tribunal for deciding it afresh.

16. Consequently, this appeal is allowed in part. The judgment/award of the learned Tribunal is set aside and the case is remanded for deciding the matter afresh in accordance with law.