
(1997) 04 MAD CK 0022
In the Madras High Court
Case No : C.M.A. No. 548 of 1987

United India Insurance Co. Ltd	Vs	APPELLANT
Saraswathi and Others		RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 53
Motor Vehicles Act, 1988 — Section 141, 167

Citation : (1998) ACJ 434 : (1997) 2 LW 339

Hon'ble Judges : C.V. Govardhan, J

Bench : Single Bench

Advocate : R. Vedantham, for the Appellant; A.K. Kumarasamy and K. Padmanabhan, for the Respondent

Final Decision : Allowed

Judgement

C.V. Govardhan, J.—This appeal is against the order passed by the Motor Accidents Claims Tribunal (Additional Subordinate Judge),

Erode in M.C.O.P. No. 330 of 1984.

2. The averments in the petition are as follows: The deceased Subramanian was proceeding in van No. TNJ 3409 from Coimbatore to Salem on

26.4.1982 at about 2.30 a.m. The driver of the van drove it in a rash and negligent manner and dashed against the lorry No. TDQ 9169 near

Nasianoor Pallipalayam Road. Subramanian died in the accident. He was then 32 years old. The petitioners are his wife, parents and minor

daughter. They have lost the breadwinner of the family and hence they have filed a claim for Rs. 2,50,000/-. The fourth respondent is the driver of

the lorry. Fifth respondent is the owner of the same and the sixth respondent is the insurer. The first respondent is the driver of the van belonging to

the second respondent under whom deceased Subramanian was employed.

3. The first respondent remained ex parte.

4. The second respondent in his counter contends as follows: The accident was not due to the rash and negligent driving of the van by its driver.

The accident was only due to the lorry driver. Lorry which was proceeding ahead of the van was suddenly stopped. The first respondent

attempted to swerve the van and avoid the accident, but yet, the van hit at the lorry. It was on account of the rash and negligent driving of the lorry.

The deceased is covered by the Employees' State Insurance Act. A claim has been preferred and it is being processed. The amount will be paid

to the claimants in course of time. Since the van has been insured with the third respondent, compensation if any, can be paid only by the third

respondent and the petition against the second respondent is liable to be dismissed.

5. The third respondent in its counter has contended as follows: The liability of the insurer is limited. The deceased is a non-fare paying passenger

and under the terms and conditions of the policy and as per the contract, the insurance company is not liable since the deceased is also an

employee of the second respondent. The accident was due to the rash and negligent driving of the drivers of both the vehicles.

6. The fifth and the sixth respondents have filed their separate counters disputing their liability.

7. On the above pleadings, the Motor Accidents Claims Tribunal held an enquiry and gave a finding that the accident was due to the rash and

negligent driving of the first respondent, viz., the van driver and awarded a compensation of Rs. 2,07,000/-payable by the respondent Nos. 1 to 3

jointly and severally. The Tribunal has dismissed the claim petition against the respondent Nos. 4 to 6.

8. Aggrieved over the award passed by the Tribunal, the insurance company, third respondent, has come forward with this appeal.

9. The learned Counsel appearing for the appellant has made it clear even at the outset that the appellant is not questioning the finding of the

Tribunal that the accident was due to rash and negligent driving of the van by its driver. But, the appellant is challenging the liability of respondent

Nos. 1 to 3 under the Motor Vehicles Act and their case is that the claimants are

entitled to compensation only under the Employees' State

Insurance Act. According to the learned Counsel, the remedy open to the dependants of the deceased was only under the provisions of the

Employees' State Insurance Act and the Claims Tribunal constituted under the provisions of the Motor Vehicles Act or under any other law for the

time being in force cannot entertain the claim application and pass an award. In support of his above contention, the learned Counsel relies upon

the decisions in *Mangalam v. Express Newspapers Ltd.* 1982 ACJ (Supp) 203 (Madras); *Annapurna v. Karnataka State Road Trans.*

Corporation 1984 ACJ 238 (Karn); and *A. Trehan Vs. M/s. Associated Electrical Agencies and another*, . According to the learned Counsel

appearing for the appellant, the death of Subramanian was caused during the employment of Subramanian under the second respondent and it is

covered by the definition of employment injury as defined u/s 2(8) of the Employees' State Insurance Act and therefore the remedy open to the

petitioners is only under the Employees' State Insurance Act in view of the statutory bar u/s 53 of the abovesaid Act. Section 2(8) of the

Employees' State Insurance Act defines an "employment injury" 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.

Section 53 of Employees' State Insurance Act, is as follows:

Bar against receiving or recovery of compensation or damages under any other law.½An 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.

It is not in dispute that the deceased was an employee of the second respondent and the second respondent has provided for payment of

compensation under the Employees' State Insurance Act. In the decision reported in *Mangalam v. Express Newspapers Ltd.* 1982 ACJ (Supp)

203 (Madias), our High Court has held that where the deceased is an employee of the company and was insured under Employees' State

Insurance Act and suffers an employment injury on account of which claimants/dependants received compensatory benefits under the Employees'

State Insurance Act, the claimants are debarred from claiming compensation u/s 110-A of the Motor Vehicles Act, because once the claimants get

benefit under the Employees' State Insurance Act in relation to an accident, then no claim for compensation u/s 110-A of the Motor Vehicles Act

could be maintained. Similarly, in the decision in Annapurna v. Karnataka State Road Transport Corporation 1984 ACJ 238 (Karnataka), a

Division Bench of the Karnataka High Court has held that where the death of an employee of a transport corporation was, by an accident in the

depot of the Corporation, due to careless driving of a bus, the legal representatives of the deceased cannot claim compensation under Motor

Vehicles Act., since Section 53 of the Employees' State Insurance Act bars other remedies. In the decision in A. Trehan Vs. M/s. Associated

Electrical Agencies and another, , the Supreme Court has referred to the above two decisions, and has observed that the Madras High Court and

Karnataka High Court have considered the effect of the bar created by Section 53 of Employees' State Insurance Act with respect to the claim

for compensation made under Motor Vehicles Act for injuries received because of accident arising out of and in the course of employment and in

their opinion, the view taken by those High Courts with respect to the object of Section 53 of the Employees' State Insurance Act and the nature

and effect of the bar created by it appears to be correct. The Supreme Court has negatived the contention of the employee that the claim for

compensation made by him under the Workmen's Compensation Act was dehors the contract of service and was based on law of Torts and the

bar created by Section 53 was not applicable. In the case on hand, deceased was also an employee of the second respondent. He was also on

duty and the accident had occurred arising out of and in the course of his employment. Therefore, it cannot be stated that it was tortious liability in

order to uphold the claim of the petitioners in the Motor Accidents Claims Tribunal. The learned Counsel appearing for the respondents would

argue that the application before the Employees' State Insurance authorities was only under processing and no order was passed at the time of the

filing of the petition and as per Section 141 of the Motor Vehicles Act, the claimants are entitled to file a claim application before the Motor

Accidents Claims Tribunal and Section 167 of the Act gives an option regarding claims for compensation, to be made either under the Workmen's

Compensation Act or under any other Act, but not under both and in the case on hand, since the claim made by the claimants before the

Employees' State Insurance authorities is only at the stage of processing, it cannot be stated that there is a bar. But, a careful reading of Section

167 of the Motor Vehicles Act would show that the option regarding claims for compensation has to be exercised at the time of filing the petition

and not when the claim application is disposed. In this case, claimants have filed a claim application before the Employees' State Insurance

authorities and it is being processed. They have thus exercised their option by filing an application before the Employees' State Insurance

authorities. Therefore, it cannot be stated that the claimants have got time to exercise their option till an order is passed by the Employees' State

Insurance authorities. The decision of the Supreme Court gives a guideline to hold that the bar created by Section 53 of the Employees' State

Insurance Act with respect to the claim for compensation made under the Motor Vehicles Act for injuries received because of an accident arising

out of and in the course of employment. Therefore, I am of opinion that the argument of the learned Counsel appearing for the respondents that the

claimants are entitled to file an application under the Motor Vehicles Act is not tenable and the objection taken by the appellant with regard to the

maintainability of the claim petition is well founded and the appeal has got to be allowed.

10. In the result, the appeal is allowed setting aside the order passed by the Tribunal and dismissing the petition in M.C.O.P. No. 330 of 1984. No

costs.