
(1997) 04 MAD CK 0052
In the Madras High Court
Case No : C.M.A. No. 548 of 1987

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

Date of Decision : 01-04-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8), 53
Motor Vehicles Act, 1988 — Section 167

Citation : (1999) 3 LLJ 1072 : (1997) 2 LW 340 : (1997) 2 MLJ 218

Hon'ble Judges : Govaardhan, J

Bench : Single Bench

Advocate : R. Vedantham, for the Appellant; A.K. Kumaraswamy and K. Padmanabhan for Kurian and Associates, for the Respondent

Final Decision : Allowed

Judgement

Govardhan, J.—This appeal is against the order passed by the Motor Accident 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 T.N.J. 3409 from Coimbatore to Salem on

April 26, 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 T.D.Q. 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 bread-winner of the family and hence they make a claim for "Rs. 2,50,000. The fourth respondent is the driver of the

lorry. The 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 the deceased Subramanian was employed.

The first respondent remained ex-parte,

3. 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. The 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.

The third respondent in their counter have contended as follows: The liability of the insurer is limited. The deceased is a non-fare paying passenger,

under the terms of the 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.

The fifth and the 6th respondent have filed their separate counters disputing their liability.

4. On the above pleadings, the Motor Accident, 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 respondents 1 to 3 jointly

and severally. The Tribunal has dismissed the claim petition against the respondents 4 to 6.

Aggrieved over the award passed by the Tribunal, the Insurance Company-third respondent has come forward with this appeal.

5. 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 the

respondents 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 dependents 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 reported in *Mangalam v. Express Newspapers Limited* 1982 A.C.J. 203 , *Annapurna v. Karnataka State Road Transport Corporation* 1984 A.C.J. 238 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 above said

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 the Employees' State Insurance Act, is as follows:

Bar against receiving or recovery of compensation or damages under any other law: 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. 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 Limited*, (Supra) our High Court has held that where the deceased is an employee of the company and was insured under the Employees' State Insurance Act and suffers an employment injury on account of which claimants/ dependents received compensation benefits under the E.S.I. Act, the claimants are debarred from claiming compensation u/s 110-A of the Motor Vehicles Act because once the claimants get benefits under the E.S.I. 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 reported in *Annapurna v. Karnataka State Road Transport Corporation* (Supra), a Division Bench of the Karnataka High Court has held that where the death of an employee of Transport Corporation was by an accident in the depot of the Corporation due to careless driving of a bus, the legal representative of the deceased cannot claim compensation under the Motor Vehicles Act, since Section 53 of the E.S.I Act bars other remedies.

In the decision reported in *A. Trehan v. Associated Electrical Agencies* (Supra) the Supreme Court has referred to the above two decisions, and has observed that the Madras High Court and the Karnataka High Court have considered the effect of the bar created by Section 53 of the E.S.I. Act with respect to the claim for compensation made under the 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 E.S.I. Act and the nature and the 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 de hors 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, the 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 E. S. I. 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 E.S.I.

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, the claimants have filed a claim application before the E. S. I. authorities and it is being processed. They have

thus exercised their option by filing an application before the E.S.I. authorities. Therefore, it cannot be stated that the claimants have got time to

exercise their option till an order is passed by the E.S.I authorities. The decision of the Supreme Court gives a guideline to hold that the bar created

by Section 53 of the E.S.I. 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

respondent 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.

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