

K. Hamza and Another Vs. M/S Emitici Engineering Limited, Post Box No. 1, Ennore thermal Power Station Madras 600057

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SooperKanoon Citation : sooperkanoon.com/805155

Court : Chennai

Decided On : Jan-24-2000

Reported in : I(2001)ACC428; 2002ACJ896; 2000(4)CTC614; (2000)IIMLJ151

Judge : K.P. Sivasubramaniam, J.

Acts : Workmen's Compensation Act, 1928 -- Sections 3, 4 and 53; Employees State Insurance Act, 1948 -- Sections 53 and 61; Workmen's Compensation Act, 1923; [Motor Vehicles Act, 1988](#) -- Sections 110A

Appeal No. : C.M.A. No. 959 of 1993

Appellant : K. Hamza and Another

Respondent : M/S Emitici Engineering Limited, Post Box No. 1, Ennore thermal Power Station Madras 600057

Advocate for Def. : Mr. K.K. Kannan, Adv.

Advocate for Pet/Ap. : Mr. Ashok Menon, Adv.

Judgement :

ORDER

1.This appeal is directed against the order of the Deputy Commissioner, of Labour-11 Madras 6 in W.C.No.61 of 1993 dated 23.4.1993.

2. The claimants before the Commissioner of Labour are the appellants before this Court.

3. According to the claimants, one K.M Hannefa aged about 23 years , a workman employed by a contractor with the opposite party on the 5th day of September 1991 received personal injury as a result of the accident arising out of and in the course of his employment resulting in his death. The deceased was working as a structural welder by a contractor with the opposite party. He had reported for duty on 5.9.1991 and he fell down from an height of about 20 feet. His dead body was found lying in the floor on 7.9.1991 which was in a state of early decomposition. The appellants are the dependents of the deceased workman being his father and mother. The monthly wages of the deceased amounts to Rs.1200 and hence the applicants were entitled to receive a sum of Rs.1,06,000 as compensation under the provisions of the Workmen's compensation Act.

4. The respondents / employer in their counter stated that the deceased employee Haneefa was covered under the Employees State Insurance Act and that the Company as well as the employee both have contributed towards Employees State Insurance. Therefore, the claim preferred by the legal heirs of the deceased employee under the Workmen's Compensation Act was not sustainable and the respondent was further advised to state that the petitioner was barred under Section 53 of the Employees State Insurance Act to claim compensation under Workmen's Compensation Act. All the workers of the respondent have been given workmen's Compensation cover under policy Ho.4-710103-01074 of New India Assurance Co., Ltd. It was further stated that the deceased was employed only as a helper and not as a structural welder as claimed by the claimants. On a consideration of the mutual pleadings, the Deputy Commissioner by his order dated 23.4.1993 held that since both the company as well as the employee were covered under the Employees State Insurance Act, the claim was barred under Section 53 of the E.S.I. Act. Hence the petition was dismissed as not maintainable. Hence the present appeal.

5. Learned counsel for the appellants contends that on a proper consideration of the provision under Workmen's Compensation Act being a beneficial, legislation ought to be interpreted in favour of the applicants. He placed strong reliance on the Judgment of the Full Bench of the Kerala High Court in *Asokan v. Westernindia Plywoods Ltd.*, 1987 (1) K.L.T. 89 wherein question arose as to whether the provisions under Section 53 and 61 of the Employees State Insurance Act, 1948 would be a bar for a claim to be made under common law, pursuant to the tortious liability of an employer. The Full Bench after elaborately considering the issue held that the bar under the E.S.I. Act did not apply to tortious liability of an employer.

6. It will be useful to refer to Section 53 and 61 of the E.S.I. Act 1948. Section 53:-

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 (8 of 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'.

Section 61 :

Bar of benefits under other enactments:-

'-When a person is entitled to any of the benefits provided by this Act he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

7. On a plain reading of the both provisions it is irresistible to conclude that the said provisions totally barred any claim made under Workmen's Compensation Act, if the employee was covered under E.S.I. Act.

8. I am unable to read any observation in the Judgment of the Full Bench of the Kerala High Court as holding that notwithstanding the applicability of E.S.I. Act and the employee would be entitled to claim the compensation under the Workmen's Compensation Act also. As stated earlier in that case, the claims related only to the common law liability arising out of tortuous action of the employer. The Judgment does not deal either directly or indirectly with any claim made under Workmen's Compensation Act which is explicitly and specifically barred under Section 53 of the said Act. Learned counsel for the appellants refers to the observations contained in paragraph 31 of the Judgment wherein the Full Bench has dealt with the claim arising under Section 110A of the Motor Vehicles Act and ultimately differs from the division Bench of this Court reported in Mangalamma and others v. Express Newspapers Ltd. and Another : AIR1982 Mad223 . The Division Bench of this Court in its Judgment held that victims of a motor accident who were receiving compensatory benefit under the said Insurance Act held were not entitled to maintain the claim petition under Section 110A of Motor Vehicles Act. The Full Bench of the Kerala High Court, on the basis of their conclusions/observed that they were unable to subscribe to the restricted view taken by the Madras High Court in National Insurance Company Ltd. v. P.Saraswathi Mohan : AIR1982 Mad371 following Mangalamma v. Express Newspapers Ltd., : AIR1982 Mad223 and Aeronautics v. P.V.Perumal A.I.R. 1972 Mys. 255

9. It is not necessary that in this appeal we should enter into a discussion pertaining to the provisions and claims under the Motor Vehicles Act. Suffice to say that Section 53 and 61 of the E.S.I. Act specifically bar any claim to be made under the provisions of the Workmen's Compensation Act. In the face of such explicit and clear statutory mandate, it is not possible to give a 'liberal' interpretation which would be clearly opposed to the statute. The validity of the provisions are also not under challenge.

10. With the result, this appeal is dismissed No costs.