



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.12.2021
Pronounced on : 21.02.2022

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THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A.No.483 of 2018

E. Natarajan .. Appellant/ Petitioner

Versus

1.V.Dhanagopal

2.United India Insurance Company Ltd.,
Motor Third Party Claims HUB,
Silinghi Buildings,
No.134, Greams Road,
Chennai-600 006.

.. Respondents/ Respondents

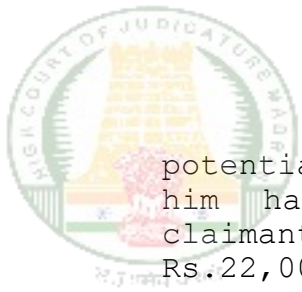
This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.01.2018 made in M.C.O.P.No.6240 of 2013 on the file of the II Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Mr.M.Swamikannu
For R2 : Mr.P.Sankaranarayanan
For R1 : Ex-parte

JUDGMENT

The claimant, who is the victim of a freak accident, involving the lorry bearing Registration No.TN-67-4577, has come forward with this Civil Miscellaneous Appeal, aggrieved by the dismissal of his claim petition in M.C.O.P.No.6240 of 2013 on the file of the learned II Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai.

2. According to the claimant, on 02.07.2013, while he was working as security guard at Prince Towers Construction Spot, the lorry bearing Registration No.TN-67-4577, loaded with iron pipes, came for unloading. At that time, the claimant, facilitated the driver of the lorry to take the vehicle in the reverse direction. Before un-loading the iron pipes, the driver of the lorry, according to the claimant, had driven it in a very high speed due to which, the iron pipes loaded in the lorry fell on him. With the result, the claimant sustained severe injury in the left side of his skull over ear leading to smashing of skull bone for about 2 inches diameter, brain exposed and having only skin cover leading to contusion of brain, blood clotting and other bodily injuries. The claimant was taken to Government KMC Hospital, Kilpauk, Chennai, where he was admitted as an inpatient from 02.07.2013 to 13.07.2013. According to the claimant, the accident has totally ruined his



potential to earn or in other words, the injuries sustained by him had totally deprived his livelihood. Therefore, the claimant has filed the claim petition, claiming compensation of Rs.22,00,000/-.

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3. The claim petition was opposed by the 2nd respondent/Insurance Company by contending that the claimant, as a Security Guard, ought not to have taken up the role of a cleaner of the lorry, who alone is supposed to give signal to the driver while taking reverse. However, the claimant on his own volunteered to help the driver of the lorry and in that process, he sustained injuries. Therefore, it was contended that the claimant himself has contributed to the accident. Moreover, the lorry was taken in the reverse and the question of driving it in a rash and negligent manner will not arise. Above all, it was contended that the claimant has to seek compensation for the injuries sustained only from his employer, without doing so, the present claim petition has been filed. It was specifically stated that the present claim petition has been filed by the claimant to make fortune out of mis-fortune, which need not be entertained by the Tribunal. It was also stated that the claimant, after discharge from the hospital, is continuing his normal work and therefore, it cannot be said that the injuries he sustained had deprived of his livelihood.

4. It is also the defense of the Insurance Company that the lorry was not owned by the person, who has insured with the Insurance Company. Therefore, even in the counter affidavit filed before the claims Tribunal, the Insurance Company has taken a specific defense that in the event of the claim petition being allowed, they may be permitted to pay the compensation amount to the claimant and to recover it from the owner of the lorry. In paragraph No.8 of the counter, it was stated by the Insurance Company that "if the Insurance Company is directed to pay the compensation amount to the claimant and thereafter liberty to recover such compensation either from the insured or from the owner of the vehicle may be granted without filing any separate suit or application for the same as per the decision rendered by the Hon'ble Supreme Court reported in 2013 ACJ 534 FBCS." Accordingly, the Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, on behalf of the claimant, the claimant examined himself as P.W.1, one Mr.Venkatesan as P.W.2 and Doctor Amarnath Sowlee as P.W.3 and marked Exs.P1 to P12. On behalf of the respondents, one Mr. Akilan, Social Security Officer was examined as R.W.1 and Exs.R1-ESI document and five other documents namely Ex.R2 to R6 were marked. The Tribunal upon considering the oral and documentary evidence found that the claimant is in receipt of compensation from the Employees State Insurance Corporation. For this purpose, the Tribunal relied on the deposition of R.W.1 who has stated that a sum of Rs.185.50 is being paid to the claimant and a total sum of Rs.5,025/- is being paid to him if there are 30 days in a particular calendar month and Rs.5,751/- if there are 31 days. By placing reliance on the deposition of R.W.1 as also Section



53 of the Employee State Insurance Act, (in short the Act) the Tribunal concluded that there is a clear bar under Section 53 of the Act to file the present claim petition. The claimant having received the compensation from the Employees State Insurance Corporation cannot maintain the present application under Section 166 of the Motor Vehicles Act. The parallel remedy sought for by the claimant by filing the present claim petition is therefore not maintainable and accordingly, the Tribunal dismissed the claim petition.

6. The learned counsel appearing for the appellant vehemently contended that the Tribunal did not properly consider the scope and ambit of Section 53 of the Act. Section 53 only bars a person from filing two claim petition before one and the same forum, one against the employer and another against the insurer of the vehicle. Section 53 also bars a person from claiming compensation, one from the Workmen Compensation Tribunal and other invoking the Motor Vehicles Act. In the present case, even though the claimant is in receipt of compensation for the injuries he sustained from the Employees State Insurance Corporation, it will not be a bar for him to file the present claim petition under Section 166 of the Motor Vehicles Act. This was the ratio laid down by this Court in catena of decisions. He placed reliance on the judgment dated 24.04.2012 passed by this Court in C.M.A.No.3365 of 2011. In that case, the claimant was working as Sweeper, met with an accident and sustained fatal injuries within the work place. In that case also the claimant was in receipt of compensation paid by Employees State Insurance Corporation. Notwithstanding the same, this Court by referring to several judgments, has held that there is no bar for the claimant to seek for compensation, from the employer and the tort-feasor as well.

7. For the same preposition, the learned counsel for the appellant also placed reliance on the judgment dated 27.02.2020 passed in C.M.A.No.2926 of 2018. In that case, this Court placed reliance on the decision of the Hon'ble Supreme Court in United India Insurance Company Limited, Vs. Vipin Kumar & Others, reported in 2019 SCC Online Delhi 9802, wherein, it was specifically held that the provisions of the two Acts cannot be mixed up to deny compensation to a person under the Motor Vehicles Act. It was also held by the Delhi High Court that in a given case, even the monthly interest earned on the amount awarded under Motor Vehicles Act can be manifold higher than the total amount of benefits available under the provisions of the ESI Act. Hence, the benefits available under these two enactments are altogether different and separate. It was also stated by the learned counsel for the appellant that by following the decision of the Delhi High Court, this Court in the judgment dated 27.02.2020 mentioned supra, as held that "the compensation under Motor Vehicles Act, is for tortious liability and the benefit granted under the provisions of ESI Act is not a bar for granting compensation for the death or bodily injuries caused in an accident involving the motor vehicle. Therefore, the learned counsel for the appellant/claimant submitted that the order passed by the trial



Court has to be set aside and compensation has to be awarded in favour of the claimant/appellant.

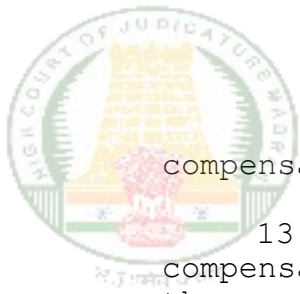
8. As regards the quantum of compensation, it is stated that the claimant was 45 years old at the time of accident and he was in receipt of a sum of Rs.7,500/- per month as salary, apart from batta and other allowances. By reason of the injuries sustained in the accident, the claimant has lost his total earning capacity. The Doctor/P.W.3 has assessed the injuries sustained by the claimant at 70%. Therefore, by taking Rs.7,500/- as the monthly income of the claimant, appropriate compensation has to be awarded.

9. Per Contra, the learned counsel for the respondents would justify the award passed by the Tribunal. According to the learned counsel, Section 53 of the Act is a clear bar for the claimant to file the instant claim petition under Section 166 of the Motor Vehicles Act. In this context, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No.3324 of 2009 in National Insurance Co.Ltd., Vs. Hamida Khatoon and Others, wherein the Hon'ble Supreme Court has held that in view of the bar created by Section 53 of the ESI Act, the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable. It was also held that the rules and regulations clearly spell out that the insurance cover under the Act is distinct and different from the contract of insurance in general.

10. He also relied on the decision in the case of The Regional Director, Employees State Insurance Corporation and Another Vs. Francis de Costa and Another. Further reliance was made to the decision of the Hon'ble Supreme Court in A.Trehan Vs. Associated Electrical Agencies and Another, reported in 1996 SCC (4) 255. In Trehan's case also the Hon'ble Supreme Court has reiterated that in view of the bar created by Section 53 of the Act, the claim petition under Section 166 of The Motor Vehicles Act is not maintainable. By placing reliance on the above decisions, the learned counsel for the respondents prayed for dismissal of the claim petition.

11. Heard the learned counsel for the appellant as well as the learned counsel for the respondent-Insurance Company and perused the materials placed on record.

12. Admittedly, the accident had taken place while the claimant was working as a Security Guard in Prince Towers Construction. At the time of accident, the claimant was very well in duty as a Security Guard. Unfortunately, while the lorry was taken in the reverse direction, the iron pipes loaded in the lorry fell on the claimant and he sustained injuries. This is not disputed by the respondents in this appeal. The main plank of contention in this appeal is there is an express bar contained under Section 53 of the ESI Act and therefore, the Tribunal is right in dismissing the claim petition after noticing that the claimant is already in receipt of



compensation paid by the Employees State Insurance Corporation.

13. No doubt, it is true that the claimant in receipt of compensation of around Rs.5,000/- per month. Notwithstanding the receipt of compensation, the present claim petition has been filed.

14. The main point arise for consideration in this case is whether Section 53 of the ESI Act is a bar for considering the present claim petition. Section 53 of the Act reads as follows:-

"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 (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."

15. In National Insurance Co.Ltd. Vs. Hamida Khatoon and Others, relied on by the learned counsel for the respondents, the claimant was traveling by Matador No.URF-9761. At that time, a truck bearing Registration No.PIJ-5166 belonging to Border Security Force dashed against the said vehicle resulting in serious injuries on the claimant and he succumbed to the injuries. It was held by the Hon'ble Supreme Court that such injuries sustained by the claimant was in the course of his employment and therefore an application under Workmen Compensation Act alone is maintainable and the invocation of the provisions of Motor Vehicles Act before the Motor Accidents Claims Tribunal is bared under Section 53 of the ESI Act.

16. In Regional Director, ESI Corporation and Another Vs. Francis De Costa and Another, delivered on 11.09.1996, the Hon'ble Supreme Court had considered a case where the claimant was proceeding to his work place in a bicycle and at that time, he was hit by a lorry belonging to his employer. Therefore, the Hon'ble Supreme Court had an occasion to consider whether such injury suffered by the claimant was during the course of his employment or not. Ultimately, it was held that the accident took place prior to the employee reaching his work place and it has no nexus to the employment or his employer cannot be made responsible for the injuries he suffered even before he reached his place of work. It was therefore held that the employee was unable to prove that the accident had any connection with the work he was doing at the factory or he has suffered such injuries during the course of his employment. Therefore, the said decision relied on by the learned counsel for the respondent-Insurance Company has no application to the facts of this case.



17. These two decisions, in effect, does not relates to a case where the claimant has received compensation from ESI Corporation through her employer inter alia filed an application involving the provision of Workmen's Compensation Act against his employer attracting the bar under Section 53 of ESI Act. Therefore, these two decisions are factually distinguishable. Once the compensation was received by the claimant for the injuries he suffered from the Commissioner of Workmen's Compensation against his employer, then such an employee is precluded from invoking the provisions contained under the Employee State Insurance Corporation Act against the very same employer or from filing an application under the Motor Vehicles Act. In the present case, the facts are different.

18. In this case, the claimant was working as a Security Guard, he suffered injuries when the lorry was proceeding in the reverse direction and the iron pipes loaded thereon fell on him. For such injuries admittedly, the claimant has received compensation from the Employee State Insurance Corporation. However, the claim petition filed under Section 166 of the Motor Vehicles Act is not against his employer. Rather, the present claim petition is filed against the insurer of the lorry on the ground of negligence in driving the vehicle. In such circumstances, there is no bar for the claimant to maintain the claim petition. Therefore, this Court holds that the claim petition filed by the claimant is maintainable and the receipt of compensation of Rs.5,000/- by the claimant from the Employees State Insurance Corporation will not be a bar or embargo for him to maintain the claim petition. Therefore the bar under Section 53 of the ESI Act cannot be pressed into service in this Case. In order to lend support to this conclusion, I am fortified by the decisions of this Court in the following cases.

(i) The Branch Manager, Tata AIG General Insurance Co.Ltd. Vs. Jothilakshmi and Others

12.It is the contention of the appellant that the claim petition is not maintainable under Motor Vehicles Act, on the ground that respondents 1 to 6 are receiving the benefits under provisions of EST Act and Sections 53 and 61 of the ESI Act specifically bar the claim of compensation under any other enactments. The said contention is without merits. The benefits granted under ESI Act is different from the compensation awarded under Motor Vehicles Act. The compensation under Motor Vehicles Act is for tortuous liability and the benefits granted under the provisions of ESI Act is not a bar for granting compensation for the death caused in a accident involving the Motor Vehicle. Further all the dependants of the deceased are entitled to compensation under Motor Vehicles Act. For the above reason, the finding of the Tribunal that the claim petition under Motor Vehicles Act is maintainable is valid."



(ii) M/s.Royal Sundaram Alliance Insurance Co.Ltd.,
Vs. S.Ajantha and Others

"5.The stand of the learned counsel for the appellant is that in view of the bar imposed under Section 53 of the ESI Act, which has been extracted above, since the claimants had the benefits under the ESI Act, they are not entitled to claim any compensation under the Motor Vehicles Act. The judgments relied on by the learned counsel for the claimants, which have been extracted above, clearly indicate that two claims cannot be made as against the same forum, but, as against different forums, namely, the employer and the tort-feasor, no bar is imposed. As far as the argument of the learned counsel for the appellant that since the words used in Section 53 is "any other law for the time being in force", claiming benefits under two Acts is prohibited is concerned, this Court is not able to accept this argument of the learned counsel for the appellant in view of the above cited judgments of the Hon'ble Apex Court and other High Courts. The stand of the learned counsel for the claimants is double claim cannot be made as against a single forum namely, the tort-feasor or the employer, but two claims, one as against the employer under the ESI Act and the other as against the tort-feasor, under the Motor Vehicles Act for the wrongful act committed by the insured can be made. Consequently, the words used "any other law" will not support the stand of the learned counsel for the appellant. Moreover, since the stand of the learned counsel for the claimants is supported by documents, this Court is of the opinion that the order passed by the Tribunal has to be confirmed. Hence, the Civil Miscellaneous Appeal is dismissed."

19. Therefore, this Court holds that the claim petition is maintainable and the bar under Section 53 of the Act cannot be sustained.

20. As regards the quantum, admittedly, the claimant was 45 years old at the time of accident. He was working as Security Guard and was earning a sum of Rs.7,500 per month. The Doctor-P.W.3 assessed his disability at 70%. The injury suffered by the claimant are elaborately narrated in column No.11 of the claim petition. The claimant was taking treatment for a period of about 11 days in Government KMC, Hospital, Kilpauk, Chennai. Therefore, on the basis of the above facts for the purpose of awarding compensation a sum of Rs.5,000/- is taken as monthly income of the claimant. Even though, the Doctor has assessed 70% as disability, this Court assess the disability of the claimant at 50%. Therefore, even if a sum of Rs.4,000/- per percentage of disability is awarded, a sum of



Rs.2,00,000/- (Rs.4,000/- X 50) can be awarded towards disability suffered by the claimant.

21. The claimant was admitted as an in-patient and thereafter he was discharged. According to him even after discharge, he could not attend to his employment. Therefore, for the pain and suffering sustained by the claimant a sum of Rs.75,000/- is hereby awarded.

22. For the loss of income during the period of treatment, for 10 months a sum of Rs.50,000/- is hereby awarded. Taking note of the nature of injuries suffered by the claimant, this Court is of the view that a sum of Rs.10,000/- can be awarded towards extra nourishment. Similarly, a sum of Rs.10,000/- is awarded towards attendant charges and a sum of Rs.50,000/- is hereby awarded towards future medical expenses. The award of the compensation under these heads, in the opinion of this Court, will be a fair and reasonable compensation and will be proportionate to the injuries sustained by the claimant.

23. Even though it is claimed that the claimant received a sum of Rs.5,000/- per month from the Employees State Insurance Corporation, such amount is measly and not in consonance with the nature of injuries suffered by the claimant and therefore notwithstanding the amount received by the claimant from the ESI Corporation month after month, the above amounts are awarded towards compensation which are proportionate to the injuries suffered by the claimant. Thus, in all the claimant is entitled for a compensation of Rs.3,95,000/-.

For Disability	Rs. 2,00,000/-
Pain and sufferings	Rs. 75,000/-
Loss of income	Rs. 50,000/-
Extra nourishment	Rs. 10,000/-
Attendant charges	Rs. 10,000/-
Future medical expenses	Rs. 50,000/-

Total	Rs. 3,95,000/-

24. In the result, the judgment and decree dated 18.01.2018 made in M.C.O.P.No.6240 of 2013 on the file of the Motor Accidents Claims Tribunal, Court of Small Causes, Chennai is set aside. Accordingly, this CMA is allowed to the extent indicated above. The amount determined in this appeal is directed to be paid by the Insurance Company with interest at the rate of 9% per annum from the date of filing the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment, at the first instance and recover the same from the 1st respondent, owner of the vehicle. On such deposit the claimant is permitted to withdraw the entire compensation amount with accrued



interest. The appellant-claimant is also directed to pay court fee proportionate to the amount of compensation determined in this appeal. No Costs.

gbi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judge,
Motor Accidents Claims Tribunal II,
Court of Small Causes,
Chennai.

Copy to:
The Section Officer,
VR Section,
High Court, Madras .

+1 cc to Mr.P.Sankaranarayanan, Advocate Sr.NO.11348

+1 cc to Mr.T.Senthil Velmurugan, Advocate Sr.NO. 11417

C.M.A.No.483 of 2018

bs (CO)

A.SK(13/06/2022)