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C.M.A.No.3654 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3654 of 2021

and

Cross Objection SR.No.21688 of 2022

and

Civil Miscellaneous Petition No.21467 of 2021

C.M.A.No.3654 of 2021:

The Manager,
The Oriental Insurance Co., Ltd.,
No.1, Shankar House, 3rd Floor, RMV Extension,
Mekhri Circle, Bangalore – 560080
Karnataka ... Appellant/1st respondent

Vs.

1. Savithramma
2. Gunashekar
3. Manjunatha
4. Kokila ... Respondents/Petitioners
5. The Director/Insurance Medical Officer,
Employee State Insurance Corporation Limited,
Rajaji Nagar, Bangalore 560010
Karnataka
6. The Director, Ceratizit India Round Tool Solutions Pvt., Ltd.,
Plot No.12-A, Vommasandra Industrial Area,
Attibele Hobli, Anekal Taluk,
Bengaluru District – 560090
Karnataka. ... Respondents/Respondents



C.M.A.No.3654 of 2021

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 15.04.2021 made in M.C.O.P.No.123 of 2019 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Hosur.

For Appellant : Mr. M. Krishnamoorthy
For R1 to R4 : Mr. R. Chandrashekar
For R5 & R6 : Given up

Cross Objection SR. No:21688 of 2022:

1. Savithramma
2. Gunashekar
3. Manjunatha
4. Kokila ... Cross objectors/Respondents

vs.

1. The Manager,
The Oriental Insurance Co., Ltd.,
No.1, Shankar House, 3rd Floor, RMV Extension,
Mekhri Circle, Bangalore – 560080
Karnataka ... Appellant/1st respondent

2. The Director/Insurance Medical Officer,
Employee State Insurance Corporation Limited,
Rajaji Nagar, Bangalore 560010
Karnataka.

3. The Director, Ceratizit India Round Tool Solutions Pvt., Ltd.,
Plot No.12-A, Vommasandra Industrial Area,
Attibele Hobli, Anekal Taluk,
Bengaluru District – 560090
Karnataka. ... Respondents/Respondents

Cross Objection filed under Order 41 Rule 22 read with Section 151 of the Code of Civil Procedure, 1908, against the Judgment and decree



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dated 15.04.2021 made in M.C.O.P.No.123 of 2019 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur.

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For Cross Objectors : Mr. R. Chandrashekar
For R1 : Mr. M. Krishnamoorthy

COMMON JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the compensation awarded to the claimants and against the direction to indemnify the third respondent, who is the employer of the deceased namely Aravind Babu S/o. Gunasekaran and the claimants have filed Cross Ojection against the awarded passed in M.C.O.P.No. 123 of 2019, dated 15.04.2021, on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The deceased Aravind Babu was employed under the third respondent (Director of Company) and was working as a driver. He was returning to his home after finishing his work at the early morning on 04.02.2017 at about 1.15 a.m., by riding his two-wheeler bearing



Registration No.KA 51 EF 3094 belongs to his Company. While he reached near Attibele toll gate on the Bangalore to Hosur Highways, an unknown vehicle hit on the two-wheeler, which resulted in causing severe injuries to him. Immediately he was shifted to various hospitals and after taking treatment, he succumbed. The parents, brother and sister of the deceased have approached the Claims Tribunal seeking compensation for a sum of Rs.1,75,00,000/- by invoking Section 166 of the Motor Vehicles Act.

4. The first respondent and third respondent are the owner of the two-wheeler in which, the deceased has travelled. The second respondent is the Employees State Insurance Corporation. The first respondent has filed counter and contended that the deceased was riding the two-wheeler belongs to his Company hence he steps into the shoes of the owner of the vehicle. There is no coverage for any employee under the Insurance Policy hence the claimants are not entitled to claim compensation on no fault liability. Since the claim petition has been filed under Section 166 of the Motor Vehicles Act, which is based on the fault liability, in this case, the tortfeasor is an unknown person, the claimants are entitled to get compensation only by invoking the provisions of hit and run case provided under the Motor Vehicles Act. Apart from that, the deceased is also covered under the



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Employees State Insurance Act and as per Section 53 of the Employees State Insurance Act, the dependents of the deceased are not entitled to claim compensation either under Workmen Compensation Act or under any other law for the time being in-force. Hence this petition is not maintainable.

5. The learned counsel for the claimants has submitted that since the deceased in this case, is a workmen of the third respondent Company, he died during the course of his employment, under the Workmen Compensation Act, the dependents are entitled to get compensation. The learned counsel further submitted that under Section 167 of the Motor Vehicles Act gives option to the dependents of the deceased to invoke the provisions of the Workmen Compensation Act or the Motor Vehicles Act to claim compensation. He further submitted that under the Employees State Insurance Act, only the medical expenses incurred would be awarded as compensation and the compensation awarded under the head loss of income is concerned, there is no compensation payable.

6. No one appeared for ESI Corporation before this Court in this appeal.



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7. I have considered the rival submissions made on both sides and also perused the records.

8. Section 53 of the Employees' State Insurance Act, 1948 reads 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 daages under the Workmens' 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”.

9. Section 53 of the Employees' State Insurance Act, 1948 cited above is creating a bar against receiving or recovery of compensation or damages under any other law including the Workmen Compensation Act. However, the third respondent – the employer has filed his counter and submitted that the deceased was permitted to use the two-wheeler of the Company and he succumbed during the course of his employment. He has also covered under the medical health insurance policy produced by the



United India Insurance Company Limited. He has also entitled to get benefit under the EPF and ESI Act. Section 46 of the Employees' State Insurance Act, 1948, list out the benefits to be paid to the injured persons including the dependents which reads as follows:

“Section 46 in the Employees' State Insurance Act, 1948

Benefits

(1) Subject to the provisions of this Act, the insured persons, their dependants or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely:

(a) periodical payments to any insured person in case of his sickness certified by a duly appointed medical practioner or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);

(c) periodical payments to an insured person suffering from disablement as a result of an employment



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injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);

(e) medical treatment for and attendance on insured persons (hereinafter referred to as medical benefit); and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as funeral expenses):

Provided that the amount of such payment shall not exceed such amount as may be prescribed by the Central Government and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(2) The Corporation may, at the request of the



appropriate Government, and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person.”

10. Further Section 52 of the Employees' State Insurance Act, 1948 deals with the dependents benefits and the manner in which it has to be paid is given below.

52.Dependant's benefit

(1)If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependant's benefit shall be payable at such rates and for such period and subject to such conditions as may be prescribed by the Central Government to his dependants specified in 3 sub-clause (i), sub-clause (ia) and sub-clause (ii) of clause (6A) of section2.

(2)In case the insured person dies without leaving behind him the dependants as aforesaid, the dependant's benefit shall be paid to the other dependants of the deceased at such rates and for such period and subject to such conditions as may be prescribed by the Central Government.

11. Section 52 of the Employees' State Insurance Act, 1948 cited above was not taken into consideration by the Tribunal. This Court is of the



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view that there is a bar for awarding compensation more particularly, under the Workmen Compensation Act, as stated above. The Tribunal has awarded compensation by invoking the Workmen Compensation Act is not proper hence the same is not sustainable. Further, in this case, it is an admitted case of the claimants that the tortfeasor in this case is an unknown vehicle, since the compensation awarded under Section 166 of the Motor Vehicles Act, based on the fault liability, in the absence of tortfeasor, the insurance company is not liable to pay the compensation. Hence, under Section 166 of the Motor Vehicles Act, no compensation shall be payable to the claimants herein. Even if this Court considered that the deceased in this case, steps into the shoes of the owner of the vehicle, he is entitled to get Rs.1,00,000/- as compensation. But admittedly, in this case, the deceased herein has not steps into the shoes of the owner of the vehicle, since he is an employee of the third respondent Company. However, admittedly he sustained injury only during the course of his employment, hence this Court is of the view that he is entitled to get compensation only under the ESI Act which provides separate Scheme for getting compensation.

12. As far as the contention of the claimants that the claimants are



also covered by the insurance policy is not applicable to the facts of the case since he has driven the vehicle only as an employee and he has been covered under the ESI Act, the compensation could not be awarded under the Workmen Compensation Act as stated supra. However, the claimants are entitled to make appropriate petition before the appropriate Authority under the ESI Act to get the benefits available under the ESI Act. The delay if any happened due to the filing of this Claim Petition and Appeal shall be taken as a valid ground for claiming compensation before the appropriate Authority.

13. With these observations the Civil Miscellaneous Appeal filed by the Insurance Company is allowed. The compensation amount if any already deposited by the insurance company is permitted to withdraw the same. On filing of claim petition or appropriate petition before the second respondent, the second respondent is directed to consider the same and pass Orders on merits and he shall not dispute the claim on the ground that the claim has been made belatedly without considering the limitation. The second respondent is directed to consider the claim if any made before him independently without influenced by the observation made by this Court with regard to the merits of the petition.



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14. Accordingly, the Civil Miscellaneous Appeal filed by the Insurance Company is allowed. The Cross Objection filed by the claimants is dismissed in SR stage itself. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

08.01.2024

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Index:Yes

Speaking Order:Yes

Neutral Citation Case: Yes

To:

1. The Additional District Judge,
Motor Accidents Claims Tribunal,
Hosur.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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