

(2016) 11 MP CK 0001
MADHYA PRADESH HIGH COURT
Case No: M.P. No. 2421 of 2012

Iffco-Tokio General Insurance
Co. Ltd.

APPELLANT

Vs

Smt. Asha Mishra

RESPONDENT

Date of Decision: Nov. 10, 2016

Acts Referred:

- Employees State Insurance Act, 1948 - Section 53
- Motor Vehicles Act, 1988 - Section 166, Section 168, Section 173

Citation: (2017) 152 FLR 173 : (2017) 1 LLN 453

Hon'ble Judges: Ms. Nandita Dubey, J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ms. Nandita Dubey, J. - Shri Aditya Narayan, learned Counsel for the appellant.

Shri Anoop Shrivastava, learned Counsel for the respondents.

Heard.

2. This appeal under section 173 (1) of Motor Vehicles Act, has been filed by the Insurance Company questioning the correctness of the award made by the Motor Accident Claims Tribunal, Bhopal wherein a suit of Rs. 10,92,000/- was awarded as compensation.

3. The claim petition was filed on the basis that the deceased while returning from his workplace to his home on 25.2.2011 at about 5 p.m. was hit by a motorcycle bearing No. MP 4 MK 0539. He was admitted in the Kasturba Hospital, Bhopal where he succumbed to his injuries.

4. A Appellant/Insurance Company has contested the application on the ground that the deceased was insured under the ESI Act, 1948 and in view of the bar under

section 53 of the ESI Act, 1948, the claim petition was not maintainable. The Claims Tribunal after considering the evidence and law in this regard held that accident occurred due to rash and negligent driving and the deceased had not died in or during the course of employment, and accordingly awarded an amount of Rs. 10,92,000/- as compensation.

5. Learned Counsel for the appellant submits that undisputedly the deceased was insured under the ESI Act, hence in view of the bar created by section 53 of the Act, the awarded is vitiated.

6. Section 53 of the ESI Act reads as under: -

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, or any other law for the time being in force or otherwise, in respect of any employment injury sustained by the insured person as an employee under this Act.

7. A bare perusal of this section makes it clear that the Act bars receiving compensation or damages under the Workmen's Compensation Act or any other law from time being in force or otherwise in respect of an employment injury sustained by the injured person as an employee under the Act.

8. It is very much evident from the record that Insurance Company neither pleaded nor proved that accident arose out of and in course of employment. The submission of Shri Aditya Narayan that since deceased was insured under the ESI Act, 1948, no pleadings are necessary in this regard, in view of the clear bar under section 53, is not sustainable. It is necessary for the person invoking the bar under section 53 to establish that the injury was an employment injury sustained by the injured person in respect of employment.

9. In the instant case, the accident took place while the deceased was returning from the work-place. Unless it can be said that his employment continuous till the time he reaches his home, it can't be said that the injury was caused by an accident arising out of the course of his employment. A road accident may occur anywhere, anytime, unless it is shown it is in course of and arising out of employment, the bar under section 53 against recovery of damages is not applicable.

10. In the case of **Regional Director, E.S.I. Corporation and another v. Francis De Costa and another, (1996) 74 FLR 2326(SC)**, the Hon"ble Apex Court has held: -

"The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or Workmen's Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an

insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee. In *Kandimallan Bharathi Devi v. General Insurance Corporation of India* the contention that the deceased contracted life insurance and due to death in air accident the appellant receive compensation and the same would be set-off and no double advantage of damages under carriage by Air Act be given was negative."

11. The decision relied upon by the learned Counsel for the appellant i.e. **National Insurance Co. Ltd. v. Hamida Khatoon and others, 2010 (125) FLR 331 (SC)**, has no applicability of the present case as in that case the effect of bar created under section 53 of the ESI Act was considered in the background and context of Workmen's Compensation Act. The question whether the injury caused by an accident on a public road while on his way to or from his workplace, can be held as arising out of or in the course of his employment was not examined.

12. In view of the aforesaid, I do not find any merits in the appeal.

13. This appeal is accordingly dismissed.