

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT: HYDERABAD**

**CORAM:**

**\* THE HON'BLE SRI JUSTICE K. LAKSHMAN**

**+M.A.C.M.A. No.236 OF 2016**

**% Delivered on:22 -06-2020**

**Between:**

# M/s. New India Assurance Company Limited .. Appellant

Vs.

\$ Ravula Shanker @ Shanker Goud & another .. Respondents

! For Appellant : Ms. P. Satya Manjula

^ For Respondent No.1 : Mrs. K. Rajitha

For Respondent No.2 : - - -

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> Head Note :

? Cases Referred :

1. (1996) 4 SCC 255
2. AIR 1997 SC 3883
3. (2009) 13 SCC 361
4. 2013(2) PLR 56
5. 2012 KLT 106
6. Judgment dated 16.06.2014 in MACMA No.1834 of 2012
7. (2009) 6 SCC 121

**HON'BLE SRI JUSTICE K. LAKSHMAN****M.A.C.M.A. No.236 OF 2016****JUDGMENT:**

Feeling aggrieved by the order and decree, dated 27.10.2015, passed in O.P. No.363 of 2013 by the Motor Accidents Claims Tribunal - cum - I Additional District Judge, Nalgonda, the appellant - Insurer preferred the present appeal.

2. Vide the aforesaid order, the Tribunal has awarded an amount of Rs.11,40,840/- towards compensation with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. The Tribunal has also fixed the liability jointly and severally on the appellant and respondent No.2, insurer and owner respectively of lorry bearing registration No.AP 24TB 5238.

3. Respondent No.1 - claimant filed the claim petition before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 seeking an amount of Rs.16,00,000/- towards compensation for the injuries sustained by him in a road accident occurred on 10.04.2013.

4. On the analysis of the entire evidence, both oral and documentary, the Tribunal gave a specific finding that the accident was due to rash and negligent driving of the driver of the lorry bearing registration No.AP 24TB 5238. The appellant herein preferred the present appeal disputing both liability and the quantum of

compensation. The appellant - Insurer challenged the impugned order mainly on the following two grounds:

- i) Respondent No.1 - claimant - injured is covered under the Employees' State Insurance Act, 1948 (for short 'ESI Act'); he has received benefits from the Employees' State Insurance Corporation and, therefore, he cannot claim benefits from the appellant - Insurer. The appellant also contended that in view of bar under Sections 53 and 61 of the ESI Act, the application filed by respondent No.1 -claimant under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act') is not maintainable.
- ii) The Tribunal without appreciating the contentions of the appellant - Insurer with regard to the age, monthly earning capacity of respondent No.1 - claimant - injured and also the principle held by the Hon'ble Supreme Court in catena of decisions, erroneously awarded an amount of Rs.11,14,840/- towards compensation to respondent No.1.

With the said contentions, the appellant - Insurer sought to set aside the impugned order.

5. On the other hand, the learned counsel for respondent No.1 - claimant would contend that though respondent No.1 - injured covered under ESI Act, he has not received any benefits from ESI Corporation. The accident in dispute was not occurred during the

course of employment and, therefore, it is not an employment injury. As such, the application filed by respondent No.1 - Injured under Section 166 of the MV Act is maintainable.

6. The learned counsel for respondent No.1 would also contend that the appellant did not take any plea in their counter before the Tribunal that respondent No.1 - claimant was covered under ESI Act and that the appellant has not filed any document to show that the claimant has received benefits from ESI Corporation. According to him, the Tribunal has rightly awarded an amount of Rs.11,14,840/- towards compensation to the claimant.

7. With the said contentions, the learned counsel for the claimant prayed for dismissal of the present appeal.

8. In view of the above said rival contentions, the points that arise for consideration in the present appeal are:

- (i) Whether the injuries sustained by respondent No.1 - claimant is an employment injuries as defined under Section 2 (8) of the ESI Act?
- (ii) Whether the application filed by respondent No.1 - claimant under Section 166 of the MV Act is maintainable in view of bar under Sections 53 and 61 of the ESI Act?
- (iii) Whether the compensation of Rs.11,14,840/- awarded by the Tribunal fixing liability on the appellant and respondent No.2 is sustainable, both on facts and in law?

9. As discussed above, on the analysis of the entire evidence, the Tribunal gave a finding that the accident had occurred due to rash and negligent driving of the driver of the said lorry. On perusal of the

grounds and also during course of arguments, the appellant did not dispute the said finding. Therefore, the said finding attained finality.

10. On perusal of the entire record, including Exs.A1 - FIR, A2 - charge sheet and depositions of PW.1 and RW.1, the accident is not in dispute. It is the specific contention of respondent No.1 - claimant that on 10.04.2013, respondent No.1 - injured, driver of 104-Ambulance vehicle along with Mr. Katari Saidulu was proceeding from Gudivada to go to Nakrekal, and while respondent No.1 was driving the said vehicle in a normal speed on the extreme left side of the road. On the way, at about 3.30 p.m., near Musi Canal at the outskirts of Kethepally Village, a lorry bearing registration No.AP 24TB 5238 came from Nakrekal side proceeding towards Suryapet being driven by its driver in a rash and negligent manner and dashed the said 104 -Ambulance vehicle. As a result of the said accident, respondent No.1 - claimant and the said Katari Saidulu sustained injuries. Immediately, respondent No.1 was shifted to Kamineni Institute of Medical Sciences, Narketpally for treatment and from there, he was shifted to Omni Hospital, Hyderabad for better treatment. It is also the specific contention of respondent No.1 - claimant that the accident had occurred due to rash and negligent driving of the driver of the lorry bearing registration No.AP 24TB 5238.

11. In Ex.A1 - FIR and Ex.A2 - charge sheet, the said facts are specifically mentioned. In Ex.A2 - charge sheet, the police mentioned

that their investigation reveals that the accident was due to rash and negligent driving of the driver of the above said lorry. They have filed charge sheet against the driver of the said lorry. Exs.A1 and A2 are supported by the deposition of PW.1. In view of the said specific evidence and since nothing contra was elicited from PW.1 during examination by the appellant - Insurer, the Tribunal gave finding that the accident was due to rash and negligent driving of the driver of the aforesaid lorry.

12. The appellant - Insurer filed counter in O.P. No.363 of 2013 before the Tribunal disputing the manner of the accident, age, avocation and health condition of respondent No.1 - claimant and so also the nature of injuries alleged to have sustained by the claimant. It is also contended by the appellant that the driver of the lorry was not having a valid and effective driving license at the time of the accident. It was further contended by the appellant that owner and Insurer of 104-Ambulance vehicle were not added as parties to the application, and in their absence, the application filed by respondent No.1 - claimant under Section 166 of the MV Act is not maintainable.

13. It is relevant to note that there was no pleading in the counter filed by the appellant - Insurer in O.P. No.363 of 2013 before the Tribunal that respondent No.1 - claimant was covered under the provisions of ESI Act and that he has received benefits from ESI Corporation. Therefore, the application filed by him under Section 166 of the MV Act is not maintainable. However, the appellant -

Insurer has examined its Deputy Manager as RW.1. In his deposition, RW.1 has deposed that as per evidence of PW.1, PW.2 and Ex.A7, respondent No.1 - claimant was covered under the ESI Act, as such, he is not entitled for any compensation under the head of medical expenses and disability etc. He has further deposed that respondent No.1 - claimant had already claimed compensation from the Employees State Insurance Corporation, as such, he had submitted only photo copies of Ex.A4 - duplicate discharge summary, Ex.A-5 - Photostat copy of medical bill and Ex.A10 - photo copy of pharmacy bill, but they are not original bills and discharge summary.

14. However, the appellant - Insurer did not file any document to show that respondent No.1 - claimant was covered under the provisions of ESI Act and that he has received benefits from the ESI Corporation. The appellant has also not examined any other witness except RW.1. However, during cross-examination, RW.1 has denied the suggestion that the claimant has not received any benefits under ESI Act. During cross-examination, respondent No.1 - claimant, has admitted that as per Ex.A7 - salary certificate issued by MGR Enterprises & Consultants, a Placement & Manpower Supplies, Nalgonda, he was covered under the ESI Act and that his ESI Card was handed over to the Department of ESI. He has denied the suggestion that he was compensated under disability and medical expenses by ESI. He has further admitted that he is not getting

pension from ESI as he was the outsourcing employee in his company and that he did not receive any amount from ESI Corporation.

15. PW.2, proprietor of the said M.G.R. Enterprises & Consultants, during cross-examination, has admitted that respondent No.1 - claimant was covered under Employees State Insurance (ESI) vide ESI Card No.5204707126 and that even though he was removed from services, he is eligible to get pension from ESI Corporation. He has further admitted that he is not aware whether the claimant has been receiving pension from ESI Corporation. As per Ex.A7, an amount of Rs.140/- was deducted per month towards ESI.

16. From the above depositions of PW.1, PW.2 and RW.1 and on perusal of Ex.A7, it is not in dispute that respondent No.1 - claimant was covered under the provisions of ESI Act with ESI Code No.5204707126 as mentioned in Ex.A7. An amount of Rs.140/- was deducted per month towards monthly contribution. In the present case, the date of accident was 10.04.2013.

17. The appellant - Insurer did not file any document to show that respondent No.1 - claimant has received benefits under ESI Act. It has also not examined any witness to prove the same. The appellant - Insurer did not make any effort to get documentary evidence from ESI Corporation in support of its contention that respondent No.1 - claimant received benefits under ESI Act from ESI Corporation. However, the appellant has contended that respondent No.1 - claimant



did not file originals of Exs.A4, 5 and 10 before the Tribunal for the reason the originals were already submitted to the ESI Corporation for claiming benefits and accordingly he has received the same.

18. As discussed supra, the appellant - Insurer failed to elicit any-thing either from PW.1 or from PW.2 with regard to receipt of benefits from ESI Corporation by respondent No.1. The appellant has also not filed any document through RW.1. It has also not examined any witness in proof of the same. The appellant has also not made any effort to get some document produced in proof of the same from ESI Corporation. In the absence of the same, it is highly difficult to hold that respondent No.1 - claimant got benefits from the ESI Corporation.

19. As discussed supra, it is the contention of respondent No.1 that on 10.04.2013, he along with Katari Saidulu was proceeding from Gudivada to go to Nakrekal in 104- Ambulance Vehicle and they met with an accident. It has not stated by respondent No.1 - claimant that he was on job and the accident had occurred while he was discharging his duty and, therefore it is an employment injury as defined under Section 2 (8) of the ESI Act. There is no pleading by the appellant - Insurer that the said accident had occurred during the course of employment and hence it is an employment injury. The Insurer failed to elicit anything from PW.1 as well as PW.2 during cross-examination to that effect. Ex.A1 - FIR and Ex.A2 - charge sheet and claim petition are silent on the said aspect.

20. As discussed above, it is specifically stated in Ex.A1 - FIR and Ex.A2 - charge sheet and in claim petition and also in the deposition of PW.1 that respondent No.1 - claimant along with Katari Saidulu was proceeding from Gudivada in order to go to Nakrekal in 104-Ambulance vehicle and at that particular point of time, respondent No.1 - claimant was driving the said Ambulance vehicle. The entire pleadings are silent with regard to the accident that occurred during the course of employment of respondent No.1 - claimant and, therefore, it is an employment injury. In view of the same, it cannot be held that the accident had occurred during the course of employment of respondent No.1 - claimant and it is an employment injury as defined under Section 2 (8) of the ESI Act.

21. Even if the accident had occurred during the course of employment of respondent No.1 - claimant, it is an employment injury, the application filed by the claimant under Section 166 of the MV Act, claiming compensation from the appellant - Insurer for the injuries sustained by him in the said accident is maintainable. The said issue of maintainability of application under Section 166 of the MV Act in respect of injured/deceased covered under the ESI Act, more particularly with specific reference to bar under Sections 53 and 61 of the ESI Act came for consideration before the Hon'ble Apex Court and various High Courts including the High Court of Andhra Pradesh.

22. In **A. Trehan v. Associated Electrical Agencies**<sup>1</sup>, the Hon'ble Supreme Court had an occasion to deal with the bar under Section 53 of the ESI Act, the maintainability of claim under the Workmen's Compensation Act and held that the bar under the Workmen's Compensation Act in respect of an employment injury is absolute. In the said case, the claimant was employed by its employer for carrying out repairs of television sets; while he was repairing a television set, a component of it burst that caused an injury to his face and lost vision of his left eye. Therefore, he has approached the ESI Corporation and got benefits under the ESI Act from ESI Corporation.

23. Thereafter, he has filed an application before the Commissioner for Workmen's Compensation against his employer claiming workmen compensation. His employer resisted the said claim and also raised an objection with regard to maintainability of application filed by the claimant. The employer has also specifically resisted the said claim by raising the bar under Section 53 of the ESI Act. But, the Commissioner under the Workmen's Compensation Act rejected the said contention of the employer. Therefore, the employer challenged the same before the Bombay High Court by way of an appeal and the Bombay High Court allowed the said appeal holding that the claim filed by the injured is not maintainable in view of the bar under Section 53 of the ESI Act.

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<sup>1</sup>. (1996) 4 SCC 255

24. The Hon'ble Apex Court uphold the decision of the Bombay High Court and held that bar under Section 53 of the ESI Act is absolute and, therefore, the injured cannot claim benefits under the Workmen's Compensation Act having got benefits under ESI Act.

25. In **Western India Plywood Limited v. P. Ashokan**<sup>2</sup>, the Hon'ble Apex Court followed the above said principle held in **Trehan**<sup>1</sup>. The Hon'ble Apex Court also reiterated the said principle in **National Insurance Co. Ltd. v. Hamida Khatoon**<sup>3</sup>.

26. The Punjab - Haryana High Court also had an occasion to deal with the said aspect in **Mobin Khan v. Neeraj Kumar**<sup>4</sup>. In the said case, the injured was proceeding from his residence to a religious place on his motorcycle along with the pillion rider. The injured had sustained injuries in the accident and received benefits under ESI Act for the injuries suffered by him. He has also filed an application under MV Act. The Insurance Company therein resisted the claim of the injured under MV Act on the very same ground that the claim laid by the injured under MV Act is not maintainable in view of the fact that the injured had already received benefits under ESI Act. The Tribunal rejected the said petition and held that the application filed by the injured under MV Act is not maintainable. On appeal, the Punjab - Haryana High Court held that the accident occurred neither in the place of employment nor when he was going towards the place

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<sup>2</sup>. AIR 1997 SC 3883

<sup>3</sup>. (2009) 13 SCC 361

<sup>4</sup>. 2013(2) PLR 56

of employment and it was occurred during a private visit to a religious place. With the said findings, the Punjab - Haryana High Court held that the claim laid by the injured under MV Act would not be barred under Section 53 of the ESI Act since it was not an employment injury. However, the Punjab - Haryana High Court held that the injured cannot have double benefits claiming benefits under ESI Act as well as MV Act and whatever the amount claimed and received towards reimbursement under ESI Act, he cannot claim the same amount under MV Act. The Punjab - Haryana High Court also referred Section 61 of the ESI Act. Section 61 of the ESI Act deals with 'bar of benefits under other enactments', as per which, 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.

27. It is also relevant that a Division Bench of Karnataka High Court in **Venkataramanappa v. S. Ananda**<sup>5</sup> held that the claim laid by the injured under MV Act is maintainable though he was covered under ESI Act and further held that the amounts received under ESI Act have to be deducted. It was also observed that Section 53 of the ESI Act would not bar the right to compensation against third parties.

28. The High Court of Andhra Pradesh at Hyderabad in an unreported decision in **The Oriental Insurance Co. Ltd., v. G.**

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<sup>5</sup>. 2012 KLT 106

**Nagaraju**<sup>6</sup> by referring various judgments of the Hon'ble Apex Court and other High Courts held that the claim laid under MV Act is maintainable though the injured/deceased was covered under ESI Act. In the said judgment, the definition of 'employment injury', bar under Section 53 of the ESI Act and also Section 61 of the ESI Act were considered. It was held that bar under Section 53 of the ESI Act would apply only if the claimant has received compensation in respect of an employment injury as defined under the ESI Act.

29. In view of the above said principle held by the Hon'ble Apex Court and various other High Courts including the High Court of Andhra Pradesh at Hyderabad and the provisions of ESI Act, now coming to the case on hand, as discussed supra, the appellant - Insurer failed to establish that the accident was occurred during the course of employment and, therefore, it is an employment injury as defined under Section 2 (8) of the ESI Act. There is no evidence, much less convincing evidence, in the present case to come to a conclusion, that the accident in dispute was during the course of employment injury and it is an employment injury. More over, the appellant - Insurer did not file any document or did not examine any witness to show that respondent No.1 - claimant has received benefits from the ESI Corporation for the injuries sustained by him in the accident. In the absence of the same and viewed from any angle, the claim laid by respondent No.1 - claimant under the provisions of MV Act is

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<sup>6</sup>. Judgment dated 16.06.2014 in MACMA No.1834 of 2012

maintainable. Respondent No.1 - claimant is entitled for compensation from the appellant - Insurer.

30. It is relevant to note that, as discussed supra, the Tribunal has awarded an amount of Rs.11,14,840/- with proportionate costs and interest @ 7.5% per annum thereon from the date of petition till the date of realization. Respondent No.1 - claimant did not prefer any appeal seeking enhancement of compensation. The appellant - Insurer disputed the quantum of compensation also.

31. It is the specific contention of respondent No.1 - claimant that he was 31 years old as on the date of accident. However, to prove the same, he has not filed any document in proof of the same. However, in all the documents including FIR, his age was mentioned as 31 years as on the date of accident. In the absence of any contra evidence, the Tribunal has rightly considered the age of respondent No.1 - claimant as 31 years as on the date of accident. The Tribunal has also rightly applied the multiplier '13' by following the principle held in **Sarla Verma v. Delhi Transport Corporation**<sup>7</sup>.

32. With regard to the monthly earning capacity, it is the specific contention of respondent No.1 - claimant that he used to earn Rs.8,000/- per month as driver on 104 Ambulance Vehicle. To prove the same, he has filed Ex.A7 - salary certificate issued by the above said MGR Enterprises & Consultations, Nalgonda and he has also

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<sup>7</sup>. (2009) 6 SCC 121

examined its proprietor as PW.2. Relying on the said Ex.A7 - salary certificate and deposition of PW.2, the Tribunal has considered the monthly earning capacity of respondent No.1 - claimant as Rs.6,900/-. According to this Court, the Tribunal has rightly considered the net pay of respondent No.1 as Rs.6,900/- per month. There is no error in it. This Court also satisfied with the reasons given by the Tribunal.

33. Respondent No.1 - claimant has specifically contended that he sustained grievous injuries, treated in Kamineni Hospital and thereafter in Omni Hospital, Hyderabad, from 11.04.2013 to 16.04.2013. He underwent surgery to his right leg and it was amputated above knee level. According to him, due to the said accident and due to the said amputation he was not in a position to continue his avocation as a driver which he used to do before the accident. He has filed Ex.A6 - disability certificate issued by the District Medical Board, Nalgonda and he has examined PW.3, the doctor who is a Member of the District Medical Board, Nalgonda. As per Ex.A6 - disability certificate, the disability of respondent No.1 - claimant was assessed as 80%. Nothing contra was elicited from PW.3, the doctor, during cross-examination by the appellant – Insurer to disprove Ex.A6. Therefore, the disability of the claimant is considered as 80%. The Tribunal on the analysis of the entire evidence rightly considered the disability of respondent No.1 - claimant as 80%.



34. As discussed supra, on the analysis of the entire evidence, the Tribunal has awarded an amount of Rs.11,14,840/- with proportionate costs and interest @ 7.5% from the date of petition till the date of realization. The Tribunal has rightly fixed the liability jointly and severally on the appellant - Insurer and respondent No.1, owner of the vehicle. This Court is satisfied with the reasons given by the Tribunal in award of compensation at Rs.11,14,840/- with interest @ 7.5% per annum thereon. The appellant - Insurer has failed to establish any ground or reason to interfere in the impugned order by this Court. Thus, the appeal fails, and accordingly the same is liable to be dismissed.

35. In the result, the appeal is dismissed confirming the order and decree, dated 27.10.2015, passed in O.P. No.363 of 2013 by the Tribunal, with the following findings:

- i) An application filed under MV Act claiming compensation by injured/legal representatives of deceased is maintainable even if the injured/deceased is covered under ESI Scheme as per the provisions of the ESI Act;
- ii) Injured/Legal Representatives of deceased are entitled for compensation under the provisions of the MV Act.
- iii) Bar under Section 53 of the ESI Act will apply only if claimant received compensation in respect of an

employment injury as defined under Section 2 (8) of the ESI Act; and

- iv) Injured/Legal Representatives of deceased cannot claim amounts under the provisions of MV Act which were claimed and received by them towards reimbursement under the provisions of ESI Act;

36. In the circumstances of the case, there shall be no order as to costs.

As a sequel, Miscellaneous Applications, if any, pending in the appeal shall stand closed.

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**K. LAKSHMAN, J**

**22<sup>nd</sup> June, 2020**

**Note:**

L.R. copy to be marked: **Yes/No**  
(B/O.) Mgr