

* THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

+ CIVIL MISCELLANEOUS APPEAL No.797 of 2015

% 01st DECEMBER, 2015.

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Civil Miscellaneous Appeal No.797 of 2015

M/S.ROCKWELL INDUSTRIES LIMITED ..
PETITIONER

VS.

\$ MR.KHAJA MOINUDDIN AND ANOTHER .. RESPONDENTS

! Counsel for the petitioner : Sri Ravishankar Jandhyala

^ Counsel for the respondent : Sri Syed Lateef

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

Civil Miscellanous Appeal No.797 of 2015

Between:

M/S.ROCKWELL INDUSTRIES LIMITED

... Petitioner/Appellant (s)

and

MR.KHAJA MOINUDDIN AND ANOTHER

... Respondents

DATE OF JUDGMENT PRONOUNCED: 01.12.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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<u>1</u>	<u>Whether Reporters of Local newspapers may be allowed to see the Judgments?</u>	<u>Yes/No</u>
-		
<u>2</u>	<u>Whether the copies of judgment may be marked to Law Reports/Journals</u>	<u>Yes/No</u>
-		
<u>3</u>	<u>Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?</u>	<u>Yes/No</u>
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CMA.No.797 OF 2015

JUDGMENT:

This appeal is filed against the order dated 23.09.2015 passed by the Commissioner for Employees' Compensation and Deputy Commissioner of Labour (*for short 'Commissioner'*) in W.C.No.50 of 2012, wherein an amount of Rs.4,08,360/- plus interest @12% p.a. w.e.f 08.07.2005 till the date of realisation, was awarded in favour of the respondents/applicants for the death of their son Mr.Mohd.Muneeruddin, under the provisions of Employees' Compensation Act, 1923, against the employer of the deceased M/s.Rock Well Industries Limited who is the appellant herein.

2. The appellant herein is the opposite party before the Commissioner, which is the Rock Well Industries Limited, represented by its Managing Director, Panjagutta, Hyderabad and the respondents herein are the applicants.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Commissioner in the original

petition.

4. The fact-situation occurring in the instant case is that on 08.06.2005 as per the instructions of the opposite party, the deceased Mohd.Muneeruddin (son of the applicants/respondents) and another employee by name Mr.Ahmed went to Banjara Hills, Hyderabad to deliver refrigerator in the residence of one of the customers of the opposite party by engaging an Auto Trolley bearing No.AP 13U 1597 and delivered the refrigerator and after delivering the refrigerator, when the deceased was returning to the opposite party establishment on the same auto, on the way at about 6.30 P.M., when the auto reached near IAS Colony, the driver of the Auto Trolley drove it in a rash and negligent manner and lost control over the auto and as a result the auto trolley turned turtle and accident occurred; and that immediately after the accident the driver of the auto trolley shifted the injured to Osmania General Hospital, Hyderabad for treatment and while undergoing treatment, the deceased died on the same day and a crime is also registered in Crime No.476 of 2005 under Sec.304(A) of IPC. The grievance of the applicants is that since the deceased died during the course and out of his employment with the opposite party, the opposite party is liable to pay compensation; that the deceased is aged 22 years at the time of accident and the applicants/respondents are dependant on the earnings of the deceased; that inspite of personal knowledge of the accident that occurred on 08.6.2005, the opposite party failed to pay the compensation to the applicants and that even when the applicants approached the Opposite party for payment of compensation, they refused to pay the same. As such, the applicants filed WC.No.50/2012 claiming Rs.4,50,000/- towards compensation along with interest and penalty.

5. The Opposite party/appellant herein filed counter denying all the averments and also the employer-employee relationship. Since the

Opposite Party Company is covered under the Employees State Insurance Act, 1948, the claim under the Employees Compensation Act is not maintainable and sought for dismissal of the claim petition.

6. Basing on the evidence of AW.1 to AW.3 and Exs.A1 to A6 and B1 to B4, the Commissioner, granted an amount of Rs.4,08,360/- plus interest @12% p.a. w.e.f 08.07.2005 till the date of realisation, in favour of the respondents/applicants for the death of their son Mr.Mohd.Muneeruddin, under the provisions of Employees' Compensation Act, 1923 against the employer of the deceased M/s.Rock Well Industries Limited who is the appellant herein

7. Learned counsel for appellant Sri Ravi Shankar Jandhyala submits that the application filed by the respondents under the provisions of Workmen Compensation Act is not maintainable in view of the bar contained under Section 53 of the Employees' State Insurance Act, 1948. He also contended that the Court below has given a finding that the deceased is an employee of the appellant company and that when once the employer's establishment is covered by the Employees' State Insurance Act, the deceased is deemed to be or person insured as per the definition under Section 2(14) of the ESI Act, and his employment comes under 'Insurable employment' as per the definition under Section 2(13A) of the ESI Act and as such, the claim under the Employees Compensation Act is not maintainable. Learned counsel submits that the Court below has not considered the aforesaid aspects and granted compensation and as such, the same is without jurisdiction and the same is in violation of the Employees' State Insurance Act. In support of his contentions he relied on the Judgment in ***A.Trehan v. Associated Electrical Agencies and Another***^[1] and in ***Western India Plywood Limited v. P.Ashokan***^[2].

8. Learned counsel for the respondents submits that the appellant

has not proved that the deceased is an insured person and that they are paying contributions under the ESI Act. He also submits that when notice was issued to the appellant before filing the claim petition, the appellant has not replied and has not taken such a plea, as such, now they are estopped from taking such a plea; and that the appellant before the Court below as well as in the appeal has disputed the employer-employee relationship and as such they are estopped from taking a plea that the application filed by the respondents herein under the provisions of Workmen Compensation Act is not maintainable, in view of the bar contained under Section 53 of the Employees' State Insurance Act, 1948. In support of the same, he relied on the Judgment in ***Dwarka Arm Factory, Bellary v. Khaja Hussain R*** ^[3].

9. The substantial question of Law in this appeal is whether the application filed by the respondents 1 and 2 herein under the Employees Compensation Act, claiming compensation, is maintainable, in view of the bar contained under Section 53 of the Employees' State Insurance Act, 1948.

10. Section 53 of the Employees' State Insurance Act, 1948, 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.”

11. It is the case of respondents that the deceased who is their son is employed with the appellant and working as an AC technician and died during the course of employment. Though the appellant disputed the

employer-employee relationship, basing on the evidence by respondents 1 and 2, the Commissioner for Employees' Compensation and Deputy Commissioner of Labour, at para-22 rendered a finding that the deceased was working as an A.C Technician with the appellant.

12. Para-22 of the order passed by the Commissioner for Employees' Compensation and Deputy Commissioner of Labour in WC.No.50/2012, reads as follows;

“22. As stated above, the public documents as well as the evidence of AW.1 and AW.2 establish that the deceased was working as an A.C.Technician with the opposite party and met with an accident on 08.06.2005 when he was on duty under the employment of the opposite party and died due to grievous injuries sustained in the accident during the course and out of his employment, beyond any reasonable doubt. Therefore, on the strength of above oral and documentary evidence made available on record, it is held that the deceased was an employee within the meaning of the Act, worked as an A.C.Mechanic with the opposite party and died due to the injuries sustained by him in the accident that occurred on 08.06.2005 during the course and out of his employment”.

13. The Commissioner also recorded the argument of the appellant establishment that the establishment is covered under ESI. The Commissioner also found that the appellant establishment is covered under ESI Act and the contention of the learned counsel for the respondents is also that the appellant establishment is covered by the ESI Act. The Court below only on the ground that the appellant has not placed any material on record to show that the deceased was also covered under ESI Act, entertained the application of the respondents under Workmen Compensation Act. But once the establishment in which the deceased was working is covered under the ESI Act, deceased would also be covered under the Act.

14. A reading of Section 53 of the Employees' State Insurance Act,

1948, show that the bar is absolute. Further the Apex Court **A.Trehan** (*cited supra 1*) held at para-12 as follows;

“12. In this background and context we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is against receiving or recovering any compensation or damages under the Workmen’s Compensation Act or any other law for the time being in force or otherwise in respect of an employment injury. The bar is absolute as can be seen from the use of the words 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” and “under the Workmen’s Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise”. The words “employed by the legislature” are clear and unequivocal. When such a bar is created in clear and express terms it would neither be permissible nor proper to infer a different intention by referring to the previous history of the legislation. That would amount to bypassing the bar and defeating the object of the provision. In view of the clear language of the section we find no justification in interpreting or construing it as not taking away the right of the workman who is an insured person and an employee under the ESI Act to claim compensation under the Workmen’s Compensation Act. We are of the opinion that the High Court was right in holding that in view of the bar created by Section 53 the application for compensation filed by the appellant under the Workmen’s Compensation Act was not maintainable.”

15. The aforesaid Judgment of the Apex Court was followed in **Western India Plywood Limited case** (*cited supra 2*) wherein at para-12 it was held as follows;

“12. The ESI Act has been enacted to provide certain benefits to the employees in case of sickness, maternity and employment injury and make provisions in respect thereof. Under this Act contribution is made not only by the employee but also by the employer. The claims by the employees against the employer where the relationship of the employer and employee exists were meant to be governed by the ESI Act alone. It is precisely for this reason that the Madras High Court in *Mangalamma case* had observed that the object of Section 53 of the ESI Act was to save the employer from facing more than one claim in relation to the same accident. This, in our opinion, is the correct reading of the

said provision. This being so the claim of the respondent for damages being barred under Section 53 of the ESI Act, the trial court was right in dismissing the application under Order 33 Rule 1 of the Code of Civil Procedure.”

16. When it is the case of the respondents that their deceased son is an employee of the appellant company and the Court below has also held that the deceased was an employee within the meaning of the ESI Act, and died due to the injuries sustained by him in the accident that occurred during the course and out of his employment, the bar under Section 53 of the ESI Act clearly gets attracted. The Supreme Court clearly enunciated the same in the above referred Judgments.

17. As far as the Judgment relied on by the respondents in ***Dwarka Arm Factory case (cited supra 3)***, the same has no application to the facts of the present case. In the said case though the appellant-employer raised Section-53 of the ESI ACT at the time of admission of the appeal, the learned Judge has not considered the same and dismissed the appeal stating that it would not be just and proper at this stage to allow the appellant to raise such a plea. But in the present case the appellant raised the issue regarding Section 53 in the counter itself filed by it before the Commissioner, stating that the application of the respondents herein is not maintainable. As such, the aforesaid case relied on by the respondents has no application to the facts of the case.

18. In view of the law enunciated by the Supreme Court in the aforesaid decisions relied on by the learned counsel for the appellant this court holds that in view of the bar created by Section 53 of the ESI Act, the application filed by the respondents under Workmen Compensation Act claiming compensation is not maintainable. However, the respondents are at liberty to approach the Employees' Insurance Court seeking necessary relief under the ESI Act.

19. In view of the above facts and circumstances, the appeal is

allowed and the impugned order is set aside granting liberty to the respondents to approach ESI Court seeking necessary relief. Learned counsel for the appellant on instructions has also submitted that they would not raise limitation aspect or dispute the employer and employee relationship in case the respondents approach the Employees' Insurance Court which is recorded and binding on the appellant.

20. Subject to above observations, the appeal is allowed. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand closed.

A.RAJASHEKER REDDY, J

01.12.2015

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[\[1\]](#) (1996) 4 Supreme Court Cases 255

[\[2\]](#) (1997) 7 Supreme Court Cases 638

[\[3\]](#) (1999) ACJ 841