

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1636 OF 2016

Dinesh s/o Nanhaku Rathor
Age: 31 Yrs., occu. Press Operator
R/o House No. 24, Vadgaon (Ko)
Tq. and Dist. Aurangabad. = **APPELLANT**

VERSUS

The Manager,
Varad Industries, Plot No.31,
MIDC, Waluj, Aurangabad,
District Aurangabad. = **RESPONDENT**

Mr.Gautam J.Pahilwan, Advocate for Appellant;
Mr.S.D.Kotkar, Advocate for Sole-Respondent

CORAM : P.R.BORA, J.

DATE : 8th August, 2016.

ORAL JUDGMENT:

1) Heard. Admit. By consent of learned Counsel appearing for the respective parties, heard finally at admissions stage.

2) The present appeal is filed against the judgment and order passed by the Labour court, at Aurangabad in Application (WC) No.7/2014 on 4.2.2016. The present appellant had filed the

aforesaid Application claiming compensation under the provisions of Workmen's Compensation Act (for short, the said Act). The learned Labour court, vide the impugned judgment has dismissed the said application as being not maintainable under the provisions of the Workmen's Compensation Act.

3) Shri Pahilwan, learned Counsel appearing for the appellant, submitted that the Labour court has grossly erred in rejecting the application on the point of maintainability. The learned Counsel relying on the judgment of the Full Bench of Kerala High court in the case of P.Asokan Vs. Western Indian Plywoods Ltd, Cannanonre – AIR 1987 KERALA 103(1), prayed for setting aside the impugned order and consequently to allow the application so filed by the appellant before the Labour court.

4) Shri Kotkar, learned Counsel appearing for respondent, has supported the impugned judgment. The learned Counsel submitted that the

provisions of Employees' State Insurance Act, 1948 (for short, ESI Act) are applicable to the respondent factory and as such, the appellant the appellant could not have filed the application invoking the provisions under the Workmen's Compensation Act. The learned Counsel relied upon the judgment of this court in First Appeal No. 2837/2009 delivered on 13th April, 2016. The learned Counsel, therefore, prayed for dismissal of the appeal.

5) Considered the submissions advanced by the learned Counsel appearing for the parties. Perused the impugned judgment and other material placed on record. The appellant has not disputed that the provisions of ESI Act are applicable to the employees of the respondent factory and the appellant was 'insured person' as defined under Section 2(14) of the ESI Act. The Hon'ble Apex court in para 12 of the judgment in the case of Trehan Vs. Associated Electrical Agencies and Anr. - (1996) 4 SCC 255, has observed thus, -

"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 by-passing 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." "

6) In view of the law laid down by the Hon'ble Apex court in the aforesaid judgment, the application filed by the appellant before the Labour court under the provisions of Workmen's Compensation Act, was thus not maintainable.

7) The Bar created under Section 53 of the ESI Act is not limited only to contractual obligation, but covers every obligation to pay compensation or damages under any law including the Workmen's Compensation Act. Use of the expression "any other law for the time being in force or otherwise" clearly sets out the intention of the Parliament that the 'insured person' or his Dependant shall not be entitled to any claim in respect of an employment injury beyond what is provided under ESI Act.

8) In the above circumstances, it does not appear to me that the learned Labour court has committed any error in dismissing the application

filed by the appellant. No interference is, therefore, required in the impugned judgment. The appeal filed by the appellant is devoid of any merit and deserves to be dismissed and it is accordingly dismissed.

9) It is, however, clarified that it would be open for the appellant to avail an appropriate remedy under the provisions of ESI Act. If the appellant approaches the ESI authorities, the ESI authorities, shall entertain his request and in the event any question is raised as regards to the period of limitation, and any such application is filed for condonation of delay, shall consider the fact that under bonafide belief the appellant was agitating on wrong forum and accordingly pass necessary orders.

sd/-
(P.R.BORA)
JUDGE

bdv/

fldr 9.8.2016