

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2837 OF 2009

The Manager,
Bedse Pulp Conversion Industries
Pvt. Ltd.F-32, MIDC Area,
Chikalthana,Aurangabad.

= APPELLANT

VERSUS

1. Sau. Hirabai w/o Laxman Nikale (Nikalje),
Age: 50 years, Occu: Household,

2. Laxman s/ Natha Nikale
Age: 55 years, Occu: Labour,
Both R/o. Bhaigaon, Tq. Vaijapur,
Dist. Aurangabad.
At present R/o Galli No.8,
Sanjay Nagar, Mukundwadi,
Aurangabad.

3. Smt. Swati Jagdish Nikale
Age - 28 years, Occu. Nil
R/o. C/o. Sumanbai Thorat,
Galli No.14, Sanjay Nagar,
Mukundwadi, Aurangabad.

4. The Manager,
Employees State Insurance Company,
Branch Office
Naregaon Road, MIDC
Chikalthana, Aurangabad.

= RESPONDENTS

Mrs. Madhaveshwari D. Thube - Mhase, Advocate for
Appellant;

Mr.VD Sonawane, Advocate for Respondent No.1;

Mr.PM Hiwale, Advocate for Resp. No.2

CORAM : P.R.BORA, J.

DATE : 13th April, 2016.

ORAL JUDGMENT

1) Heard the learned counsel appearing for the respective parties.

2) The question raised by the appellant in the present appeal is, - "whether it was open for the Labour Court, which was also designated as the commissioner for Workmen's Compensation, to entertain an application filed by the legal heirs of the deceased claiming compensation under the provisions of the Workmen's Compensation Act, 1923, when the deceased was an 'insured person' under the provisions of Employees' State Insurance Act, 1948?"

3) The appellant has challenged the judgment and Award passed by the Labour Court, Aurangabad in Application (WC) No.38/2002 on 26th August, 2009. Respondent Nos.1 and 2 had filed the aforesaid application before the Labour

Court, Aurangabad, claiming compensation on account of death of their son by name Jagdish, during the course of his employment with the present appellant. In the aforesaid application, the present appellant had raised a specific objection that the application so filed under the provisions of the Workmen's Compensation Act, was not maintainable in view of the Bar provided under Section 53 of The Employees' State Insurance Act, 1948 (for short, the ESI Act). It was the contention of the present appellant in his written statement that deceased Jagdish was covered under the provisions of the ESI Act and as such, the persons claiming to be his dependents were having remedy to approach the Employees' State Insurance authority and the remedy of filing the application under the Workmen's Compensation Act, was not available to them.

4) The learned Counsel appearing for the appellant submitted that the learned Labour Court has not even considered the objection so raised

by the present appellant in his written statement, taking a specific plea that there was a Bar under Section 53 of the ESI Act and the application under the Workmen's Compensation was not maintainable.

5) I have perused the impugned judgment. The learned Labour Court though has recorded the objection raised by the present appellant, as about the maintainability of the application under the Workman Compensation Act in view of the bar under Section 53 of the E.S.I. Act, has not dealt with the said issue and has not recorded any finding thereon.

6) The learned Counsel for the appellant has relied upon the judgment of the Hon'ble Apex Court in the case of A. Trehan Vs. Associated Electrical Agencies and Anr. - (1996) 4 SCC 255, wherein it is held that in view of the clear language of Section 53 of the ESI Act, the insured or his dependents cannot claim any

compensation under the provisions of the Workmen's Compensation Act. The learned Counsel has relied upon one more subsequent judgment of the Hon'ble Apex Court in the case of Western India Plywood Ltd. Vs. A.Ashokan - 1997 (7) SCC 638, wherein, relying on the judgment in the case of A. Trehan (cited supra) the Apex Court has reiterated the similar view.

7) The learned Counsel appearing for the original claimants submitted that, having considered the fact that the claimant had not received any compensation on account of death of their son, who had died during the course of his employment, the learned Labour Court deemed it appropriate to entertain the application filed by the claimants under the provisions of the Workmen Compensation Act, and as such, according to the learned Counsel no interference is required in the impugned Judgment and Award. The learned Counsel however did not dispute that, Section 53 of the ESI Act provides a bar against receiving or recovery of compensation or damages under

any other law.

8) I have carefully considered the submissions advanced on behalf of the learned Counsel appearing for the respective parties. I have also perused the impugned Judgment and Award. As mentioned at the beginning of the Judgment, the only question raised in the present appeal is, - "whether it was open for the labour Court, which was also designated as the commissioner for Workmen's Compensation, to entertain an application filed by the legal heirs of the deceased claiming compensation under the provisions of the Workmen's Compensation Act, 1923, when the deceased was an 'insured person' under the provisions of Employees' State Insurance Act, 1948?"

9) It would be appropriate to reproduce herein below the relevant provisions under the ESI Act, more particularly Section 53 and 61 of the said Act, which read thus:

"53. 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 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.]

"61. Bar of benefits under other enactments.- 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."

10) The plain reading of the aforesaid provisions makes it clear that, the application

so filed by parents of deceased Jagdish before the Labour Court / Commissioner for Workmen Compensation, invoking the provisions of the Workmen Compensation Act, was not maintainable and the learned Labour Court ought not have entertained and adjudicated the said application.

11) The Hon'ble Apex Court in para 12 of its Judgment in the case of A. Trehan Vs. Associated Electrical Agencies and Anr. (cited supra) 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 the bar created by Section 53 the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable.

12) It is not in dispute that the provisions of ESI Act are applicable to the employees of the appellant – company and deceased Jagdish was 'insured person' as defined under Section 2(14) of the ESI Act.. As such, in view of the law laid down by the Hon'ble Apex court, as above, the application filed by the legal heirs of deceased Jagdish before the Labour court under the provisions of the Workmen's Compensation Act, was not maintainable.

13) 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 dependadnts shall not entitled to any claim in respect of an employment injury beyond what is provided under ESI Act.

14) In the above circumstances, in no case, the impugned Judgment and Award can be sustained and deserves to be set aside.

15) The appellant-insurance company in its written statement filed in the proceeding before the Labour Court, had raised a specific plea that provisions of ESI Act were applicable to its employees. It was also submitted that the incident of death of deceased Jagdish during the course of his employment was immediately reported

by the appellant company to ESI Corporation and the Provident Fund authorities and further that all required papers were submitted before the said authorities so as to facilitate the payment of compensation pension and other legal dues to the legal heirs of deceased Jagdish. The appellant company in its written statement had also specifically stated that in view of the Bar under Section 53 of the ESI Act, the application so submitted by the legal heirs of deceased Jagdish under the provisions of Workmen's Compensation Act, was not maintainable. The contentions raised, as aforesaid, by the appellant company have been taken note of by the learned Labour court in paras 3, 4 and 5 of the impugned Judgment. The Labour court, however, did not seem to have considered the said objections merely for the reason that after filing of the written statement, the appellant did not turn up before the court either to cross-examine the applicants or to lead any evidence on its behalf.

16) The approach of the learned Labour Court referred as above was wholly erroneous. When certain legal objections were raised and more particularly as regards to the jurisdiction of the said Court for entertaining the subject application, it was incumbent upon the learned Labour Court to at least read the provisions so referred by the respondent in its written statement. When it was specifically submitted that, there was a bar under Section 53 of the ESI Act against receiving or the recovery of compensation or damages under any other law except the ESI Act, the learned Labour Court was expected to at least read the aforesaid provision before delivering the Judgment. The learned Labour Court, it seems, did not bother even to go through the relevant provisions of E.S.I. Act, which were referred in the written statement filed by the respondent.

17) In fact, when certain objection was raised by the respondent Company, the Labour

Court ought to have framed a specific issue in that regard. No such issue was admittedly framed. That apart, in no case, the learned Labour Court could have decided the matter without going through and knowing the relevant provisions under the ESI Act and more particularly Sections 53 and 61 of the said Act. The entire approach of the Labour Court, as has been noticed, was very casual. Moreover, as brought to my notice by the learned Counsel appearing for the appellant Company, some of the observations made by the learned Labour Court are apparently contrary to the evidence on record.

18) In view of the fact that, the application under the provisions of Workmen's Compensation Act itself was not maintainable, the Judgment and Award passed by the Labour Court cannot be sustained and has to be quashed and set aside. It is accordingly quashed and set aside.

19) It is however, clarified that, it would

be open for the claimants to avail appropriate remedy under the provisions of ESI Act. If the claimants approach the ESI authorities, the ESI authorities shall entertain their request without raising any objection as regards to the delay, if any, occurred on their part in availing the remedy under the provisions of ESI Act. It is accordingly directed.

20) The amount deposited by the appellant either before this Court or before the Labour Court at Aurangabad shall be refunded to it.

21) The First Appeal stand disposed of in the aforesaid terms.

22) Pending Civil Applications, if any, stand disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/