

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.4646 of 2016 (O&M)

Date of decision : 12.08.2016

The New India Assurance Company Ltd.

.....Appellant

Versus

Seems Rani and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Suvir Dewan, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 03.03.2016, passed by the learned Motor Accidents Claims Tribunal, Kapurthala (hereinafter called the "Tribunal"), vide which the respondents No.1 to 4-claimants have been awarded compensation to the tune of ₹ 27,50,000/- along with interest at the rate of 7% per annum on account of death of Baldev Singh in the motor vehicular accident, which took place on 29.10.2014.

2. The present appeal has been preferred by the appellant-Insurance Company (respondent No.3 in the claim petition) to assail the award.

3. Learned counsel for the appellant contended that the deceased was an employee of M/s Choice Agro Factory Pvt. Ltd., Kapurthala. He was insured under the Employee State Insurance Act, 1948

(hereinafter called the “ESI Act”). So, the claimants were not entitled to claim the compensation under the provisions of the Motor Vehicles Act, 1988 (hereinafter called the “Act”) in view of the bar under Section 53 of the ESI Act.

4. He further contended that the learned Tribunal has wrongly awarded the future prospects to the income of the deceased. The matter regarding future prospects has been referred to the Larger Bench of the Hon'ble Apex Court. Thus, he contended that the impugned award is illegal.

5. I have duly considered the aforesaid contentions.

6. This fact is not disputed that deceased Baldev Singh was the employee of M/s Choice Agro Factory Pvt. Ltd., Kapurthala and was also insured under the provisions of the ESI Act. Learned counsel for the appellant has vehemently pleaded that the claimants were not entitled to the compensation under the provisions of the Act in view of the bar under Section 53 of the ESI Act. Section 53 of the ESI Act reads as under:-

“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 Workmens 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.”

7. As per the above phraseology bar imposed under Section 53 of the ESI Act will only be applicable in respect of an **employment injury** sustained by the insured employee during the course of employment. Reference can be made to cases ***Oriental Insurance Co. Ltd. Vs.***

Sundareshan 2010(4) Air Kar R 388 (DB). The employment injury has been defined under Section 2(8) of the ESI Act which reads as under :-

“(8) “employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.”

8. Thus, in order to seek the applicability of the bar under Section 53 of the ESI Act, the appellant Insurance Company was required to establish that deceased Baldev Singh has suffered the injury caused in the accident arising out of and in the course of his employment. But in the instant case except tendering in evidence the copy of the insurance policy the appellant Insurance Company has not led any evidence. Thus, in the absence of evidence the appellant-Insurance Company has not been able to establish that deceased Baldev Singh has suffered the employment injury which resulted into his death. Consequently, the bar under Section 53 of the ESI Act was not attracted and the legal representatives of deceased Baldev Singh were entitled to the compensation under the provisions of the Act.

9. The deceased was a driver by profession. He was a skilled person. So, his income was bound to increase with the passage of time. It is a fact of common knowledge that the income of an individual never remains stagnant. It is bound to increase with the passage of time. That is why even the minimum wages of the labourers are being periodically revised by the government. So, this Court does not find any illegality in awarding the future prospects towards the income of the deceased.

10. Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned award.
11. Therefore, the appeal filed by the appellant-Insurance Company being without any merit, is hereby dismissed.

12.08.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No