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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.881 of 2013 (O&M)
Decided on: 23.08.2017

Paramjit Kaur and others .....Appellants

versus

Sanjeev Pathak and others .....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Sharma, Advocate
for the appellants.

Mr. Maninder Arora, Advocate
for respondent No. 3-Insurance Company

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Rajbir Sehrawat, J. *(Oral)*

1. This is an appeal filed by the claimants challenging the award passed by the Motor Accident Claims Tribunal, Patiala; whereby the claim petition for claiming compensation on account of death of Dharminder Singh in a motor vehicle accident was dismissed by the Tribunal.
2. The facts as involved in the present case are that on 04.05.2011, above said Dharminder Singh and Sudagar Ali were coming on their bicycle from Hindustan Union Lever Limited Factory, Rajpura at about 5.00 PM after their duty. When they reached near Nua Gaja Peer, car bearing registration No. PB-08-AM-8586 (hereinafter referred to as the offending vehicle) came from the

backside, being driven by respondent No.1 at a fast speed in a rash and negligent manner, and struck against the backside of bicycles of Dharminder Singh and his companion, Sudagar Ali. Both these persons fell down from their bicycles. Dharminder Singh suffered injuries on his head and other parts of his body. Both the injured were admitted in A.P.Jain Hospital, Rajpura. From there, Dharminder Singh was referred to Government Medical College and Hospital, Chandigarh. Thereafter, he was further admitted to Gian Sagar, Hospital in Banur. However, while in hospital, Dharminder Singh died on 06.05.2011. It was claimed that the accident had taken place due to rash and negligent driving of the driver of the offending vehicle. In this regard, even a criminal case was registered against the driver of the offending vehicle. In view of the death of Dharminder Singh, the claimants claimed a compensation of Rs. 12,00,000/- along with interest, on account of loss of dependency and love and affection, etc.

3. Upon notice, the respondents appeared and contested the claim petition. In the written statement, filed by respondents No. 1 and 2, the accident was altogether denied. The other contents were also denied by them. However, it was pleaded that the offending vehicle was insured with respondent No. 3. The respondent No. 3, Insurance Company of the offending vehicle, also filed separate written statement. Besides the routine preliminary objections, it was also claimed that the driver of the car was not having a valid and effective driving license and that the car did not have a valid

registration certificate and fitness certificate. The other pleadings regarding the age of the deceased and income etc. were also denied by the respondent No.3-Insurance Company. The respondent No. 3 also denied the accident in question with the offending car.

4. Parties led their respective evidence.

5. After hearing the parties and appreciating the evidence, the Tribunal came to the conclusion that since the claimant No. 1 has admitted that they had received benefits of Insurance and pension etc. under the Employees State Insurance Scheme on account of death of the deceased, therefore, in view of Section 53 of the Employees State Insurance Act, 1948, they cannot claim any compensation under Motor Vehicles Act on account of death of the same person. Therefore, the claim petition filed by the claimants-appellants herein was dismissed as not being maintainable.

6. While assailing the findings recorded by the Tribunal, learned counsel for the appellants has argued that since the death of deceased-Dharminder Singh had not taken place during the course of employment or due to an employment injury sustained by the deceased, as an employee under the said Act, therefore, the Section 53 of the Act is not applicable in this case. Hence, it is his argument that, the claim petition is very much maintainable because the death of the deceased has occurred in a motor vehicle accident which has no connection with the employment of the deceased. To buttress his argument, learned counsel for the

appellant has relied upon the judgment of this Court rendered in ***2015 ACJ 1026, Nanku Ram Versus Mohan Singh and others*** and another judgment rendered in ***2016 ACJ 265, Oriental insurance Co. Ltd. Versus Tilak Raj and others***.

7. On the contrary, learned counsel for the Insurance Company has supported the finding recorded by the Tribunal and has argued that once the employee covered under the Employees State Insurance Act,1948 or his legal representatives receive any compensation under that Act then the employee or his legal representatives cannot claim any compensation from the employer or from any other person under any other law. Therefore, it is his argument that claim petition has rightly been dismissed.

8. After hearing learned counsel for the parties and going through the record; with the assistance of the learned counsel for the parties, this Court is of the opinion that the award passed by the Tribunal is not sustainable in law.

9. Section 53 of the Employees State Insurance Act is reproduced below:-

> ***“Section 53 in The Employees' State Insurance Act, 1948***
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> *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.”*

A bare perusal of Section 53 of the Employees State Insurance Act shows that what is prohibited under Section 53 of this Act is the entitlement of the insured or his dependents to receive any compensation or damages under Workmen's Compensation Act, 1923 or any other law **in respect of an employment injury** sustained by the injured person **as an employee under this Act**. Hence, it is clear that prohibition of receipt of compensation or damages by the insured or his dependents under Employees State Insurance Act operates only if it is claimed in respect of an employment injury and it is claimed as an employee under that Act. The term 'employment injury', has further been defined by the said Act itself in Section 2(8) which is reproduced herein below:-

> "***Section 2(8) of The Employees' State Insurance Act, 1948***
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> (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;*"

A bare perusal of the definition of the 'employment injury' given by the Act shows that the injury shall be deemed to be an 'employment injury' only if it is caused by an accident or an occupational disease arising out of and in the course of the employment of insured, if he is in an insurable employment. Still further, the injury would be an 'employment injury' only if he sustains such injury as an employee under this Act. If the injury sustained by the injured or the death of the insured occurs outside the scope of the employment; the same can not be considered to be an 'employment injury'. Hence, that would not be an impediment in the way of the insured or the dependents of the insured to get the compensation as per their entitlement under any other Act or any other law. Reliance placed by the learned counsel for the appellant upon the judgment of this Court, as mentioned above, is well founded and the same is accepted. As has been held in the above said judgments, the motor vehicle accident; which occurs on a public road, by no means, can be treated to be an injury in the course of employment and, therefore, it shall not be an employment injury as has defined under the Employees State Insurance Act. While traveling, by any means, on the public road a person is not travelling as an employee under the Act, as is required by Section 53 of the Act. Therefore, Section 53 of the Act cannot be deemed to be a provision for excluding the entitlement of the dependents of the deceased to receive compensation as provided under Motor Vehicles Act.

10. Another reason while two provisions cannot be mixed up to dis-entitle the claimants to receive the compensation is; the nature of the benefits/compensation paid/permissible under these two provisions. Under the Employees State Insurance Act, the insured or his dependents are entitled only to the compensation or benefits as specified by the provisions of the Act or the rules or the scheme framed thereunder. On the other hand, the claimants under Motor Vehicles Act are entitled to compensation of the total loss actually caused or proved by them to have been caused on account of death of the deceased. Hence, the nature and the degree of the benefits under the Employees State Insurance Act and the Motor Vehicles Act are altogether different. There are certain benefits

available, by way of judicial interpretations, under the Motor Vehicles Act, which are not even conceived or contemplated by the Employees State Insurance Act. The loss on account of love and affection and compensation on account of loss of consortium are not even contemplated by the Employees State Insurance Act. Still further under the provisions of the Employees State Insurance Act, the benefits given to the dependents do not attained finality and continue to remain subject to review/change under the provisions of Employees State insurance Act. Section 55(a) of the Act provides for review of benefits to the dependents. As per this Section, the benefits are subject to review as per the satisfaction of the Corporation even, in case of any death or birth or marriage or remarriage or cessation of infirmity or attainment of the age of 18 years by a claimant or anyone of them. Hence, the benefits available under Employees State Insurance Act are in the nature of contingent benefits subject to change at any time by the authorities as per their satisfaction; regarding the fulfillment of certain conditions mentioned in the provisions of the Act. On the other hand, the compensation/benefits available to the dependents of a deceased who dies in a motor vehicle accident are absolute and one time payment. Any entitlement to absolute and full scale compensation cannot be excluded by grant of any restricted benefits; which are otherwise also subject to change from time to time. Hence, an attempt to mix and mingle the provisions of Employees State Insurance Act and the provisions of the Motor

Vehicles Act qua the entitlement of the benefits of the dependent of the deceased; is totally misconceived and is without any legally sustainable basis.

11. Otherwise also, the Employees State Insurance Act is a social beneficial legislation. Therefore, the provisions of this Act cannot be interpreted in a manner as to restrict the other benefits available to the insured or his dependents on account of injury or death occurring outside employment of the insured. At the best, Section 53 of the Employees State Insurance Act can be interpreted to restrict the other 'statutory compensation' available to the employee in his capacity as an employee or his dependents under any other statutory labour law which, may have some common cover, regarding the injuries sustained by the insured or regarding the entitlement of the dependents on account of death of the insured.

12. The reason given by the Tribunal that in ordinary insurance, the person purchases the insurance cover by paying the premium and therefore, the compensation received on account of insurance may not be sufficient to exclude the entitlement under Section 53 of the Employees State Insurance Act; is also legally incorrect. Even under the Employees State Insurance Act, the provision is for contribution by the employee as specified by that Act and hence, it cannot be said that under Employees State Insurance Act, the employee does not pay anything to purchase the benefits of insurance under the Employees State Insurance Act.

13. In view of the above, the findings recorded by the Tribunal are found to be illegal and perverse. Therefore, the same are not sustainable in the eyes of law. Hence, the order/award passed by the Tribunal is set aside. The present appeal is allowed.

14. However, since the amount of compensation is yet to be determined as per the evidence led/to be led by the parties, therefore, it would be appropriate if the present case is remanded to the Tribunal for determination of the compensation to which the claimants shall be entitled. Accordingly, the matter is remanded to the Tribunal for deciding the quantum of the compensation to be awarded to the claimants/appellants herein.

15. The parties are directed to appear before the Tribunal on **25.10.2017**.

16. The present appeal is allowed and disposed of with an order of remand as mentioned above. .

23rd August, 2017 **[RAJBIR SEHRAWAT]**
shabha **JUDGE**

Whether speaking/reasoned - Yes
Whether reportable - Yes