

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 869 of 1996 (O&M)

Date of Decision : 12.03.2018

Babu Ram

.....Appellant

Versus

Gurdev Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. N.D. Achint, Advocate
for the appellant.

Mr. Karan Singla, Advocate with
for respondent no. 2.

Surinder Gupta, J.

Motor Accident Claims Tribunal, Sangrur (later referred to as 'the Tribunal') dismissed the claim petition filed by appellant for the injuries suffered by him in a motor vehicle accident on 11.12.1992 while traveling in bus bearing registration no. PB-11-9094, owned by Pepsu Road Transport Corporation, Patiala with the observation in para 11 of the award as follows:-

*"11. It has also been laid down in **National Insurance Company Limited, Madras and others vs. Saraswathi Mohan and others, AIR 1982 Madras 371** that where an employee could maintain claim under Section 53 of the E.S.I. Act, he would be barred from filing a claim petition under Section 110A of the Motor Vehicle Act. The ratio of this authority is fully applicable in this case. The claimant admittedly is governed by the Employee Insurance Scheme and he has also taken the benefit under the Employee State Insurance Scheme. Therefore, his*

claim petition is not maintainable in this Court and this Court has no jurisdiction to adjudicate upon the matter.”

2. While dismissing the claim petition the Tribunal has not gone into the factum of accident, causing of injuries to claimant, extent of damage suffered by him and the quantum of compensation to which he is entitled. Section 53 of the Employees’ State Insurance Act, 1948 (later referred to as ‘the Act of 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 24 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.”

3. The Tribunal while concluding that injuries suffered by the claimant-appellant while traveling in a bus was during course of his employment, has observed as follows:-

- (i) PW-1 Ishwar Singh, Clerk, ESI Dispensary has stated that claimant has received compensation from Insurance Company;
- (ii) He remained on leave from 11.12.1992 (date of accident) onward on ESI leave, which was sanctioned to him with pay upto the extent of 70% of pay;
- (iii) On 11.12.1992, claimant was on outdoor duty to Sangrur;
- (iv) Claimant was traveling from Jind to Sangrur in the ill-

fated bus to report to his M.D., who was residing at Sangrur, as such, he was to be treated as on duty.

4. On perusal of testimony of PW-1 Ishwar Singh, I find that he had not produced any evidence to prove that claimant had received compensation from Insurance Company. Though, he had deposed that claimant had received compensation from Insurance Company but he could not tell as to from which company he had received the compensation. Employment injury has been defined under Section 2 (8) of the Act of 1948, as follows:-

“2. **Definitions.** — In this Act, unless there is anything repugnant in the subject or context,

(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.”

5. In the present case, claimant was going to Sangrur in a bus to submit report, when it met with an accident, resulting in injuries to claimant. It is not disputed that the claimant has not exercised his option to seek compensation under the Workmen’s Compensation Act, 1923. It is only, when such option has been exercised, provisions of Section 167 of the Motor Vehicle Act, 1988 would disentitle claimant from seeking compensation under the Motor Vehicle Act. Hon’ble Apex Court in case of **Oriental Insurance Co. Ltd. vs. Dyamavva and others, 2013 (2) RCR (Civil) 384,**

contained in Sections 8 and 10 of the Act, has observed as follows:-

“12.In other words, if the claimants had moved an application under Section 10 of the Workmen’s Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen’s compensation Act. Suffice it to state that no such application was ever filed by the respondents-claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the respondents- claimants having never exercised their option to seek compensation under Section 10 of the Workmen’s Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988.”

6. The mere fact that claimant was allowed leave with salary will be a fact to be seen by the Tribunal while computing amount of compensation. There is no evidence that any compensation was paid to claimant under the Workmen’s Compensation Act. Even no suggestion was given to claimant when he appeared as PW-7 that he had opted for grant of compensation under the Workmen’s Compensation Act or had been paid any compensation. In view of above, conclusions drawn by the Tribunal that claim petition was not maintainable and it has no jurisdiction to adjudicate upon the matter, have no basis and are set aside and findings of Tribunal on issues no. 4 and 5 are reversed.

7. The Tribunal has not recorded any finding on merit on issues no. 1 and 2, as such, the matter is remitted to Tribunal to look into the

evidence already on record and record findings on these issues after hearing

counsel for parties. Parties are directed to appear before the Tribunal on 16.04.2018.

8. Keeping in view the fact that it is quite an old matter, the Tribunal will make earnest efforts to decide the claim petition at the earliest, preferably within a period of three months from 16.04.2018.

9. In view of above terms, the instant appeal is disposed of.

March 12, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No