

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

455

FAO No.13 of 1997 (O&M)
Date of decision: 20.04.2018

M/s K.C. Agro Aids

...Appellant

Vs.

Ashok Kumar and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Rohit Nagpal, Advocate
for the appellant.

None for the respondent.

AJAY TEWARI, J.(ORAL)

This appeal has been filed against the award dated 25.09.1996 passed under the Workmen's Compensation Act, 1923, awarding a sum of ₹ 29,281/- for the injuries suffered by the claimant while working for the appellant. It may be noticed here that in the reply filed to the claim application, the case of the appellant was that in fact the claimant was not its employee but was the employee of respondent No. 2 and the claim was not maintainable. However, as mentioned above the Commissioner allowed the claim and that is why how the appellant has come up before this Court.

The sole argument raised by the learned counsel is that the appellant was covered under the ESI Act and thus the claimant could have moved under the ESI Act and could not have filed a claim under the Workmen's Compensation Act, in view of Section 53 of the ESI Act. He has, however, accepted that no such plea was taken in the

written statement though it is contended that when the witness of the appellant appeared to give his testimony, he had deposed that the appellant was covered under the ESI Act. He has relied upon **M/s Bharagath Engineering vs. R. Ranganayaki and Another 2003(2) SCC 138**, to contend that in that case the Supreme Court has said that if the establishment is covered by the ESI Act then all employees who are working there, whether registered or not, would come within the ambit of the ESI Act and the bar of Section 53 would be applicable to a claim petition filed by any such employee. I find that there is a marked difference in the facts in that case there in the reply a specific plea was taken regarding the applicability of the ESI Act. Thus in that case the employee had an option to withdraw his petition and approach the Employees State Insurance Corporation. In the present case as noticed above, no such plea was taken. A passing reference thereto in testimony is neither here nor there.

In the circumstances, in my considered opinion, it would not be in the interest of justice, to set aside the award after a period of more than two decades. The petitioner if so advised may claim the amount of compensation from the ESI Corporation.

April 20, 2018

Poonam (II)

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No