

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:27.5.2019

FAO-62 of 2015(O&M)

National Insurance Company Limited

---Appellant

vs.

Smt.Saroj and others

---Respondents

FAO-1468 of 2015(O&M)

Saroj and another

---Appellants

vs.

Pardeep Singh @ Pardeep Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.D.P.Gupta, Advocate
for the National Insurance Company
Mr.Sanjay Jain, Advocate
for the claimants
,
Mr. Sunil K. Tandon, Advocate
for the driver and owner

Rekha Mittal, J.

This order will dispose of FAO Nos. 62 and 1468 of 2015 as these have emerged out of same award dated 9.10.2014 passed by the Motor Accidents Claims Tribunal, Ambala (in short “the Tribunal”) whereby compensation has been assessed on account of death of Sunil Kumar Dhiman in a motor vehicular accident that took place on 5.11.2012.

The plea of claimants is that Sunil Kumar Dhiman was going from his house to Nahar Factory, Lalru while driving motor cycle No. HR-

01-AA-8476. At about 7.30. A.M., when he reached near T-point of village Sauntly, Tehsil Naraingarh District Ambala, Mahindra Tractor-trolley bearing No. HR-01K-4459 came from opposite side at a very high speed and took abrupt turn towards village Sauntly and hit motor cycle of the deceased. The deceased fell down on the road and suffered multiple grievous injuries and died in PGI, Chandigarh on the same day. They claimed compensation to the tune of Rs. 16,00,000/-.

The Tribunal awarded Rs. 5,69,124/-, detailed hereunder:-

Monthly income of the deceased	Rs. 6061/-
Deduction for personal expenses	50%
Multiplier	14
Loss of dependency	Rs.5,09,124/-
Funeral expenses	Rs. 10,000/-
Loss of love and affection to mother	Rs. 50,000/-

FAO No. 62 of 2015 has been filed by the National Insurance Company Limited (hereinafter referred to as “the insurance company”) whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to challenge maintainability of the application for compensation as well as quantum of compensation.

FAO Nos. 62 and 1468 of 2015.

The primary contention raised by counsel for the insurance company is that as the deceased sustained employment injury covered under the provisions of Employees State Insurance Act, 1948 (in short “ESI Act”), the application for compensation before the Tribunal is barred under

Section 53 of the ESI Act. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **A.Trehan vs. M/s Associated Electrical Agencies 1996(3) S.C.T. 621**. Further reference has been made to Division Bench judgments of the Karnataka High Court **Annapurna and others vs. Karnataka State Road Transport Corporation, Bangalore and others (1984) 2 ACC 268**, the Bombay High Court **Ganpat Partap Bhogle vs. H.L. Roche and others (1994) ACJ 1101** and Single Bench judgment of this Court **United India Insurance Company Limited vs. Somwati and others 2012(1) RCR (Civil)938**. In addition, it is argued that the claimants filed an application before the ESI authorities and they have been paid Rs. 60,000/- in lump sum and monthly pensionary benefit as per documents Exs. R1 to R8, proved by Ravinder Gupta RW1 , Head Clerk, ESI Corporation, Lalru.

Counsel representing the claimants, on the contrary, has refuted contention of the insurance company that injury sustained by the deceased was an employment injury within the meaning of Section 2(8) of the ESI Act. It is argued that in view of provisions of Section 51E of the ESI Act, the injury sustained by the victim cannot be said to be employment injury as he met with accident near Naraingarh at about 7.30 a.m. but the place of his work was Nahar Factory, Lalru. It is further argued that no evidence has been adduced by the insurance company with regard to distance between the place of accident and premises of Nahar Factory, Lalru nor there is evidence as to the time when duty of the deceased was to start. In support of his contention, he has relied upon judgment of this court **Oriental Insurance Company Limited vs. Tilak Raj and others (2015-1) Vol.178**

PLR 526.

Another submission made by counsel is that the present claim has not been preferred against employer of the deceased namely Nahar Factory, Lalru, therefore, the judgments relied upon by the insurance company otherwise have got no bearing on the facts of the case in hand as in all those cases, compensation was sought to be claimed either under the Employees Compensation Act, 1923 (in short “the Act”) or the Motor Vehicles Act, 1988 (in short “1988 Act”) against the employer and in those circumstances the principle of vexing twice got attracted. It is further argued that provisions of Section 53 of the ESI Act cannot be construed in a manner to debar the claimants to claim compensation against a third person with regard to his tortious liability. For this purpose, reference has been made to judgments of this Court **Nanku Ram vs. Mohan Singh and others (2014-3) vol. 175 PLR 453, Mobin Khan vs. Neeraj Kumar and others 2013-2) Vol. 170 PLR 56, New India Assurance Company vs. Urmila and others along with connected case 2016(2) RCR (Civil) 480, Kiran Rani and others vs. Pepsu Road Transport Corporation and others 2007(2) RCR (Civil) 486, The New India Assurance Company Limited vs. Seema Rani and others 2017(1) PLR 340 and TATA AIG General Insurance company Limited vs. Ram Avtar and others 2018(2) RCR (Civil) 701.**

To challenge quantum of compensation assessed by the Tribunal, counsel for the insurance company would argue that the Tribunal has relied upon Ex. P2 to assess income of deceased at Rs. 6,061/- per month but the Tribunal has seriously erred by failing to take into

consideration that total salary of the deceased including basic pay Rs. 4200 and HRA Rs. 420/- was Rs. 4620/- and the remaining amount pertains to provident fund (Employee's share), bonus, ESI benefit, Earned leave benefit and gratuity benefit and the aforesaid benefits would have been available to the deceased had he remained working with the establishment concerned. It is further argued that in the document Ex. P3, there is a detailed reference to total emoluments of the deceased to the tune of Rs. 4471/- out of which net pay was Rs. 3902/- after deducting Rs. 488/- towards provident fund and Rs. 79/- for ESI contribution. It is vehemently argued that in case contention of the insurance company with regard to non-maintainability of application for compensation is not allowed, compensation allowed by the Tribunal may be modified by applying appropriate income.

Counsel representing the claimants, on the contrary, has supported assessment of compensation made by the Tribunal. He has prayed that the claimants lost their young son aged 22 years in a road accident and no amount of money can compensate them for the same.

I have heard counsel for the parties, perused the paper book and records.

Before adverting to the submissions made by counsel for the insurance company with regard to implications of Section 53 of the ESI Act in the light of judgments relied upon by counsel for the parties, it is appropriate to deal with whether the injury sustained by the deceased can be said to be an employment injury within the ambit and purview of Section 2 (8) of the ESI Act. There is no challenge to averments raised in the

application for compensation that the deceased was going from his house to Nahar Factory, Lalru. At about 7.30 a.m., when he reached near T-point of village Sauntly, Tehsil Naraingarh District Ambala, unfortunate occurrence took place in which he sustained multiple grievous injuries that proved fatal while he was under treatment at PGI, Chandigarh. As has been rightly argued by counsel for the claimants, there is no evidence on record with regard to distance between the place of occurrence and work place of Sunil Kumar Dhiman. There is nothing on record suggestive of the fact that the deceased had already entered the premises of his work place or even the area of Lalru where Nahar factory was situated. This court in **Tilak Raj and others' case (supra)** in which the insurance company therein was represented by the same counsel by considering the provisions of Section 53 of the ESI Act, judgment of this Court in **Smt. Sheela vs. Employees State Insurance (1989-2) 96 PLR 548** and judgment of Hon'ble the Supreme Court **Saurashtra Salt Manufacturing Company vs. Bai Valu Raja AIE 1958 SC 881** has held in paras 13 and 14, quoted thus:-

“ 13. A plain reading of the aforesaid extract from para 8 of the judgment leaves no manner of doubt that a workman is not in the course of his employment from the moment he leaves his home and is on his way to work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening with him.

14. In the case at hand, the injured victim (claimant) was on a

public road i.e. a public place, therefore, I do not accept contention of the Company that he sustained injuries in the course of employment to oust jurisdiction of the Tribunal under the Act to entertain an application for grant of compensation. This apart, the Act contains provisions to grant compensation even in cases of “no fault liability” and in “hit and run” motor accidents. There is no provision in the Act which excludes the jurisdiction of the Tribunal to grant compensation if the injured/victim happens to be an employee covered within the purview of the 1948 Act. In this view of the matter, I do not find any merit in the contention of the Company that application for grant of compensation is not sustainable in view of the provisions of the 1948 Act.”

When the facts and circumstances of the present case are examined in the light of judgment **Tilak Raj and others' case (supra)** as well as provisions of Section 51E of the ESI Act, I find it difficult to accept contention of the insurance company that injury sustained by the victim was an employment injury, therefore, the provisions of the ESI Act can be invoked to create bar under Section 53 of the ESI Act. That being so, the question with regard to maintainability of claim against a third party for tortious liability but in regard to employment injury would be examined in detail, in an appropriate case. In this view of the matter, the principal contention raise by the insurance company is not tenable and accordingly rejected.

To be fair to the insurance company, counsel has also sought to

contest entitlement of the claimants on the premise that they filed an application for grant of benefits under the ESI Act and the ESI Corporation accepted their claim and awarded a sum of Rs. 60,000/- in lump sum and benefit of monthly pension. The mere fact that the claimants filed an application for grant of benefit under the ESI Act or the same was allowed by the Corporation would not create estoppel as injury sustained by the deceased was not an employment injury, in view of findings recorded hereinbefore. If the claimants have received any benefit under the ESI Act on a wrongful assumption and they are otherwise not entitled to said benefit, the claimants may refund the amount to the ESI Corporation or the Corporation may initiate proceedings for recovery, if so permitted in law.

This brings the court to quantum of compensation assessed by the Tribunal. The Tribunal has rightly allowed deduction of 50% for personal and living expenses. However, multiplier applied by the Tribunal is allowed to the tune of 18 in the light of judgments of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298 Munna Lal Jain vs. Vipin Kumar Sharma 2015(3) RCR (Civil) 447** and **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

The Tribunal has assessed income of the deceased at Rs. 6061/- per month. Perusal of documents Ex. P2 and P3 reveals that document Ex. P2 also makes reference to certain benefits including PF contribution by the employer, ESI benefits, EL benefit etc. making gross salary to the tune of Rs. 6061/. In Ex. P2, it is mentioned that designation of Sunil Kumar Dhiman was Assistant- ITI and his monthly gross salary was Rs. 6061/-.

Since the benefits mentioned in Ex. P2 were not occasional benefits rather available each month, it is difficult to accept contention of the insurance company that the Tribunal has committed error by relying upon document Ex. P2 while assessing income of the deceased. The claimants shall be entitle to increase in income for future prospects @ 50%. In this manner, loss of dependency is calculated at Rs. 9,81,882/-[6061 x 12 x18=13,09,176+6,54,588(50%)=19,63,764-9,81,882(50%)].

The Tribunal has awarded a sum of Rs. 60,000/- under conventional heads. In the light of judgments in **Pranay Sethi and others' case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, admissible amount would be Rs. 30,000/-, detailed hereunder:-

Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/

Total compensation is Rs.10,11,882/- and the additional amount is Rs. 4,42,758/-[10,51,882 – 5,69,124], payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased, to be invested in fixed deposit for a period of three years.

In view of what has been discussed hereinbefore, appeal filed by the insurance company fails and is accordingly dismissed. However, appeal preferred by the claimants is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

27.5.2019
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No

