

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Decided on: 31.07.2019

+

CM Nos. 3607/2015, 26690/2019 in MAC.APP. 207/2015
UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr. Sankar N. Sinha, Advocate.

Versus

VIPIN KUMAR & ORS. Respondents
Through: Mr. Rakesh Sherawat and Mr. Vikram Singh, Advocate for Claimants.
Mr. Nitesh Singh and Ms. Laveen Arora, Advocates for DTC.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation on the ground that it was passed by a forum which lacked jurisdiction. It is contended that section 53 of the Employees' State Insurance Act, 1948 (ESI Act) ousts the jurisdiction of payment of any other compensation to an employee, who is covered under the said Act. Section 53 reads as under:-

"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 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."

2. The learned counsel for the appellant states that the claimant suffered from “employment injury” i.e. he met with an accident when he was going to his place of work at around 9/9:30 a.m. resulting in his disability. Section 2(8) of the ESI Act, defines “employment injury” as under:-

“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;

3. Referring to section 53 of the ESI Act the appellant contends that whenever an “employment injury” is sustained by the insured person as an employee under the Act, he shall not be entitled to receive or recover any compensation or damages under any other law. Reliance is placed upon the judgment of the Supreme Court in ***National Insurance Company Limited vs. Hamida Khatoon & Ors., (2009) 13 SCC 361***, which remanded the matter to the High Court, to reconsider the issue as to whether there was a bar under section 53 ESI Act for granting compensation under any statute. The relevant portion of the order reads as under:-

“12. When considered in the background of statutory provisions, noted above, the payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an "insured person", as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no

dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise. We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons."

4. The learned counsel for the appellant also relies upon the judgment of this Court in ***DTC & Ors. vs. Sarita Seth & Ors.***, FAO No. 149/1991, delivered on 27.04.2009, which held that there would be no such bar under section 110A of the Motor Vehicles Act, 1939 as well as under sections 53 and 61 ESI Act, to claim compensation. Evidently, the said judgment had examined section 2 and section 2(8) of the ESI Act, read with section 110A of the Motor Vehicles Act, 1939 (MV Act). The Court would note that section 110A of the MV Act has been excluded in the Motor Vehicles Act, 1988, and hence, to that extent, the said judgment is distinguishable.

5. Mr. Sehrawat, the learned counsel for the claimants, refers to the decision of the Punjab & Haryana High Court in ***TATA AIG General Insurance Company Ltd. vs. Ram Avtar & Ors.*** 2017 LawSuit (P&H) 3323, which has discussed the issue at length and has held that claim for compensation under the Motor Vehicles Act is maintainable to the extent, of granting only such benefits to the claimants which have otherwise not been granted under the ESI Act. Thus, there could be no duplication of the same compensation or relief. The judgment has reasoned as under:-

"18. Having heard learned counsel for the parties, this Court is of the considered opinion that the argument of learned

counsel for the appellant that the claim petition is not maintainable in view of Section 53 of the ESI Act is liable to be rejected. First of all, Section 53 of the ESI Act is part of the ESI Act. Therefore, it shall apply only to the persons or entities regarding whom this Act has been extended or made applicable by the application Section and Definition Section of this Act. The Section I of this Act prescribes that it shall apply to factories. Still further Proviso to Section 1 clarifies that this Act shall not apply to any other factory or establishment whose employees are otherwise in receipt of similar or superior benefits as compared to this Act. Still further Section 2A of this Act prescribes that factories to which this Act applies shall be compulsorily registered under this Act. Still further Section 2 of this Act defines the employee and employer qua which this Act applies. Hence a bare perusal of these provisions shows that the application of this Act, including Section 53 of this Act, is circumscribed by so many conditions. So this Act, including its Section 53 does not have any application where the recipient of benefits is not covered by definition of employee, the person liable to make the payment is not covered by definition of employer and the factory as given by this Act and the benefit is claimed and is required to be paid to him as an employee under this Act. Not only this, the Act itself declares that this Act shall not be applicable even to the employees if the employee is entitled to some better benefits under some other Act and the factory is the government factory or a government controlled factory. Hence the essential feature for application of this Act, including its Section 53, is that on the one side it should be an employee as defined under this Act and on the other side, it should be the employer or the factory as defined under this Act, and further the benefit claimed must be in the capacity of the person as employee under this Act. If either the capacity of the person raising a claim is outside the scope of the applicability of this Act or the person liable to make the payment is outside the scope of the applicability of this Act, then this Act, including Section 53 of this Act, has no application at all. Such a claim shall be totally outside the

scope of applicability of this Act, including Section 53 of it. Hence the claim petition filed by a person under Section 166 of the Motor Vehicles Act shall be barred by Section 53 of this Act only if the person raising a claim is himself an employee of the Insurance Company liable to satisfy the Award of the Motor Vehicles Act. If the relation between the claimant and the Insurance Company is of a stranger then the claim petition by such a person against such a Insurance Company shall not be barred by Section 53 of ESI Act. The word "Any Person" in Section 53 has to be read as a person/entity to whom this Act applies. Giving any other interpretation would mean giving this Act an over-riding effect over all the other Act. However, notably this Section does start with any 'Non-obstante' clause nor does this Act has any other Section giving over-riding effect to the Act over and above other Acts. Section 61 of this Act also bars only 'similar benefits' admissible to an employee under some other Act if such employee is entitled to such benefits under this Act. Hence this Section also prohibits only receiving twice the 'similar benefits' by an employee with respect to his employment injuries, nothing beyond that. So merely because the injured or the dependents of the deceased are getting some benefits under ESI Act is no ground to deny him/them any other benefit available to him/them under any other enactment if the benefits available to him/them under such other enactment are not similar to the one available under ESI Act. Giving any other interpretation to Section 53 of this Act would render Section 61 of this Act as nugatory. This position would be better explained by the following paragraphs.

xxxx

xxxx

xxxx

27. Otherwise also, the word 'as an employee' under this Act; as mentioned in the last line of Section 53 of the Act is also not without any significance. These words would make it clear that the bar against claiming 18 of 26 compensation from anywhere else is contemplated only if the injured/deceased sustained the injuries as an employee under this Act. This would show that the bar created by Section 53 of the Act

would be only regarding any other any other subsequent compensation, if claimed, by the injured or the dependents; in the capacity of injured/deceased being an employee under the ESI Act. This would mean that it is not the claim of compensation under Motor Vehicles Act which would be excluded by Section 53 of the Act, rather, it would be any other compensation, if claimed, under any other Act having provisions for similar compensation for the employees as defined under the ESI Act. This means that Section 53 of the Act only bars receipt of compensation from the employer or any other person under any other labour law which might be providing compensations for the employees/workmen. This is also clarified by the provision of Section 61 of the Act; which specifically says that once a person is provided benefit under the ESI Act, he shall not be entitled to receipt any 'similar benefits' admissible under the provisions of any other enactment. Giving any other unrestricted interpretation to the provisions of Section 53 of the Act would render the Section 61 of the Act as superfluous. And it is well settled that the legislature can not be deemed to have wasted words in any Section of a statute, much less to speak of wasting of a full Section of statute, like Section 61 of the ESI Act. Hence read with Section 61 of the Act, the Section 53 can be interpreted to prohibit only a second claim of similar compensation in his capacity as employee from the employer or from any person required to compensate such an injured person /dependent in his capacity as an employee under the ESI Act. Since there is no commonality between the benefits available under Motor Vehicles Act 19 of 26 and under the provisions of ESI Act, therefore, the provisions of two Acts can not be mixed up to deny compensation to a person under Motor Vehicle Act. In a given case, even the monthly interest earned on the amount awarded under Motor Vehicles Act can be many fold higher than the total amount of benefits available under the provisions of ESI Act. Hence the benefits available under these two enactments are altogether different and separate.

28. While considering this aspect, this Court in FAO No. 881 of 2013 titled as *Paramjit Kaur and others vs. Sanjeev Pathak*

and others decided on 23.08.2017 has held that the benefits available to the dependents under ESI Act are limited in their scope, quantum, consistency, persistence and even quantum entitlement and availability. Therefore, merely because an employee has been granted benefit under ESI Act would not mean that he can not claim compensation under Motor Vehicles Act. It would be appropriate to reproduce the relevant part of the judgment:-

"10. Another reason why two provisions cannot be mixed up to disentitle 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 20 of 26 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 21 of 26 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."

29. Still further a perusal of provision contained in Section 167 of the Motor Vehicle Act shows that the legislature never considered the 22 of 26 compensation available under ESI Act to be comparable to or in exclusion of the compensation available under Motor Vehicles Act. This Section has made a compensation available under Workmen's Compensation Act as an alternate to compensation available under Motor Vehicles Act; by prescribing that a person can claim compensation under either of these two Acts and not under both these Acts, of course this alternative is also applicable to a person in his capacity as a workman or an employee under workman's compensation Act and when claiming compensation from his employer. This shows that although the legislature considered the compensation payable under Workmen Compensation Act to be comparable with the compensation available under Motor Vehicle Act, however, the benefits available under the ESI Act have not been raised to the level of alternate compensation by the legislature. Hence any compensation paid under ESI Act would not be an alternative to the compensation payable under Motor Vehicles Act. These would be two different and independent remedies available to a person.

xxx

31. The judgment relied upon by learned counsel for the appellant i.e. Hamida Khatoon's case (supra) does not support the case of the appellant. A bare perusal of the judgment of the Hon'ble Supreme Court in this case shows that this judgment is based upon discussion of the law relating with the Workmen's Compensation Act, 1923. As mentioned above, the compensation available under provisions of Workmen's Compensation Act has expressly been made alternate to the compensation available to the claimants under Motor Vehicles Act. Therefore, this judgment did not hold the claim petition, per se, to be not maintainable. Rather the Hon'ble Supreme Court in this case only sent back the matter to the MACT concerned to re-work out the

compensation taking note of Section 53 of the Act.”

6. This appeal has been premised on the ground that the learned Tribunal had no jurisdiction to entertain the claim petition because of the bar to jurisdiction under section 53 ESI Act, but as the same has been held otherwise, in the preceding reasoning in ***Tata AIG*** (supra).

7. Therefore, appellant’s argument is untenable. The appeal is without merit and is accordingly dismissed. The pending applications also stand dismissed.

8. 50% of the awarded amount is lying deposited in this Court. Let the same be released to the beneficiary(ies) of the award in terms of the scheme of the disbursement specified therein. The remaining 50%, alongwith interest accrued thereon, too shall be deposited by the appellant within four weeks of receipt of this order and the same shall be disbursed in terms of the award.

9. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, shall be deposited in the ‘Aasra Fund’.

NAJMI WAZIRI, J.

JULY 31, 2019/sb