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HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 172 of 2013**

1. Ashok Yadav son of late Dhannu Lal Yadav, aged 45 years
 2. Smt. Lata Bai Yadav wife of Ashok Yadav, aged 43 years
- Both R/o Chuna Bhatti, Gudiyari, Near New Over Bridge,
Raipur, Tahsil and District Raipur, Chhattisgarh

---- Appellants**Versus**

1. Shakur Mohammad son of Mohammad Vakil, aged 36 years, R/o Ekta Nagar, Sector 11, Zone 2, Khursipar, Bhilai, District Durg, Chhattisgarh
2. Mahamaya Steel Industries, Divisional Office of Rajesh Steel Limited, Plot No.B-89, Sector-C, Urla, Raipur, District Raipur, Suhela, District Raipur, Chhattisgarh
3. The National Insurance Company Limited, through Divisional Office, Mobin Mahan, IInd Floor, J.E. Road, Raipur, Chhattisgarh

---- Respondents

For Appellants : Shri Raghvendra Pradhan, Advocate.
 For Respondents No.1 & 2 : None.
 For Respondent No.3 : Shri Dashrath Gupta, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Parth Prateem Sahu, Judge****26.08.2020**

1. This is claimants' appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 16.07.2012 passed by the First Additional Motor Accident Claims Tribunal, Raipur Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.67 of 2009 whereby learned Claims Tribunal

allowed the claim application in part and awarded a sum of Rs.1,09,000/- as compensation.

2. Facts relevant for disposal of this appeal, are that, on 28.02.2009 Pawan Yadav was working as Crane Helper at Mahamaya Steel Industries, Sarora and during the course of his employment, he came under the wheels of Crawler Crane bearing No.CG-04/DB/2458 (hereinafter referred to as 'Crane') driven by non-applicant No.1 and died on spot.
3. The claimants who are parents of the deceased Pawan Yadav filed an application under Section 166 of the M.V. Act seeking compensation of Rs.22,40,000/- from the non-applicants therein.
4. Non-applicant No.1 did not choose to appear before learned Claims Tribunal and was proceeded *ex parte*.
5. Non-applicant No.2 submitted reply to claim application pleading therein that accident was not on account of rash and negligent driving of Crane by non-applicant No.1, but on account of self negligence of late Pawan Yadav, the accident took place within the premises of Mahamaya Steel Industries, Sarora, which is not a public place, therefore, claim application was not maintainable. It was further pleaded that late Pawan Yadav was an employee of Mahamaya Steel Industries, Sarora and working as Crane Helper; he was insured under Employees' State Insurance

Act, 1948 (hereinafter referred to as 'ESI Act') and after his death, father and mother/claimants are getting monthly pension from the Employees' State Insurance Corporation, Regional Office, Raipur. Non-applicant No.2 on the date of accident itself had paid the amount of compensation of Rs.50,000/-, hence claimants are not entitled for any amount of compensation. It was also pleaded that on the date of accident, Crane bearing No.CG-04/DB/2458 was insured with non-applicant No.3 and non-applicant No.1 was possessed with valid and effective driving licence, hence, the liability to satisfy the amount of compensation, if any, would be upon the Insurance Company.

6. Non-applicant No.3/Insurance Company submitted its separate reply to claim application pleading therein that on the date of accident, driver of the Crane was not possessed with valid and effective driving licence, there was no valid permit and fitness of the Crane. Apart from the aforementioned technical plea, Insurance Company has denied the contents of claim application. It was further pleaded that there was breach of policy conditions as such, Insurance Company is not liable for satisfy any amount of compensation.
7. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as six issues for

consideration including the issue with regard to jurisdiction of the Claims Tribunal and held that accident took place on account of rash and negligent driving of Crane bearing No.CG-04/DB/2458 by non-applicant No.1, owned by non-applicant No.2, in which, Pawan Yadav died; breach of conditions of insurance policy was not found to be proved; the issue with regard to whether Claims Tribunal was not having jurisdiction has been decided in 'negative' and awarded a total sum of Rs.1,09,000/- as compensation.

8. Shri Raghvendra Pradhan, learned counsel for the appellants/claimants submits that learned Claims Tribunal erred in awarding very meager amount of compensation, the income assessed of the deceased is on lower side, not awarded any amount towards future prospects, applying the wrong multiplier of 10 instead of 15, awarding meager amount towards other conventional heads and prays for suitable enhancement of amount of compensation. He submits that Claims Tribunal erred in deducting the amount of pension receiving by the appellants as it is contrary to law laid down by Hon'ble Supreme Court in case of **Vimal Kanwar and others v. Kishore Dan and others**, reported in **(2013) 7 SCC 476**.
9. Per contra, Shri Dashrath Gupta, learned counsel for respondent No.3/Insurance Company supported the

impugned award and submits that learned Claims Tribunal has not committed error in deducting the amount of Rs.1,20,000/-, which the parents are receiving as pension from the Employees' State Insurance Corporation, Regional Office, Raipur under the ESI Act. The claimants cannot be benefited twice for same accident.

10. We have heard the learned counsel appearing for the respective parties and perused the record carefully.

11. Perusal of the award would show that learned Claims Tribunal in first paragraph of its award has taken into consideration that initially the claim application was dismissed vide award dated 02.02.2010 to be not maintainable as barred under Section 53 of the ESI Act. The award dated 02.02.2010 was put to challenge before this Court in MAC No.806 of 2010 and after allowing the appeal, this Hon'ble Court remitted back the case to the Claims Tribunal for deciding the case afresh after formulating additional issue. Learned Claims Tribunal has formulated additional issue, which reads as under :

	अतिरिक्त वादप्रश्न	
06.	क्या इस प्रकरण की सुनवाई की अधिकारिता इस अधिकरण को नहीं है ?	प्रमाणित नहीं

12. To consider the additional issue No.6 with regard to jurisdiction of Claims Tribunal to entertain the claim

application under Section 166 of the M.V. Act, we have perused the pleadings of claim application filed by the appellants. In claim application, they have pleaded that on 28.02.2009 in Mahamaya Steel Industries, Sarora, Police Station Urla, Raipur, non-applicant No.1- driver of Crane drove his vehicle rashly and negligently and caused accident of Pawan Yadav, who came under the wheels of Crane and died on spot. In reply to claim application, non-applicant No.2 i.e. Mahamaya Steel Industries, Sarora- owner of the Crane taken a specific defence that accident took place within the premises of Mahamaya Steel Industries, Sarora, which is a private place and not a public place and being so, Claims Tribunal is not having any jurisdiction to entertain the claim application. It was further pleaded that claimants are getting monthly pension from the Employees' State Insurance Corporation, Raipur under the ESI Act as the deceased was insured under Employees' State Insurance Corporation, Regional Office, Raipur with Insurance No.59/165180.

- 13.** 'Public place' is defined under Section 2(34) of the M.V. Act, which is extracted below for ready reference :

“2. Definitions.—In this Act, unless the context otherwise requires,—

x

x

x

(34) “*public place*” means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;”

14. From bare perusal of definition of 'public place', it is apparent that where the public have a right of access and includes any place or stand at which passengers are picked up or set down by a stage carriage. In the case at hand, accident took place within the factory premises, therefore, it cannot be said to be a 'public place'.
15. It is also not in dispute that deceased was covered under the ESI Act and after the death of son of the claimants, they are getting pension in accordance with their entitlement under the ESI Act. Section 53 of the ESI Act creates 'bar for receiving or recovery of compensation or damages under any other law'. Section 53 of the ESI Act is reproduced below for ready reference :

“[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 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.]”

16. The language used in Section 53 of the ESI Act is unambiguous and clear wherein it is specifically mentioned that an insured person or 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 (henceforth 'Act of 1923'), or any other law for the time being in force or otherwise. The provision of Section 53 of the ESI Act is very extensive and talks about 'any other law for the time being in force, which in our considered opinion, includes M.V. Act also'. The language used under Section 53 of the ESI Act is plain and unambiguous.
17. Learned Claims Tribunal while passing the impugned award has taken note of the judgment passed by Hon'ble Supreme Court in case of **National Insurance Company Limited v. Hamida Khatoon and Others** reported in **(2009) 13 SCC 361** and further the judgment passed by this Court in **Ashok Yadav & Another v. Shakur Mohammed & Others** reported in **2012 (2) C.G.L.J. 413 (DB)**. In case of **Hamida Khatoon** (supra), Hon'ble Supreme Court was considering the appeal filed by the Insurance Company challenging the

award passed by learned Claims Tribunal overlooking the provisions of Section 53 of the ESI Act and order passed by the High Court wherein the appeal filed by the Insurance Company was dismissed on the ground that no such plea was taken specifically in the written statement.

18. The Hon'ble Supreme Court in aforementioned case law while considered its earlier judgment passed in **A. Trehan v. Associated Electrical Agencies and Another** reported in **(1996) 4 SCC 255** and **Regional Director, E.S.I. Corporation and Another v. Francis De Costa and Another** reported in **1993 Supp (4) SCC 100**, allowed the appeal filed by the Insurance Company. The Hon'ble Supreme Court has very specifically mentioned to work out the entitlement by taking note of Section 53 of the ESI Act.
19. In case of **A. Trehan** (supra) Hon'ble Supreme Court while considering the bar created under Section 53 of the ESI Act has held thus :-

“12. In this background and context we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is against receiving or recovering any compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise in respect of an employment injury. The bar is absolute as can be seen from the use of

the words 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" and "under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise". The words "employed by the legislature" are clear and unequivocal. When such a bar is created in clear and express terms it would neither be permissible nor proper to infer a different intention by referring to the previous history of the legislation. That would amount to bypassing the bar and defeating the object of the provision. In view of the clear language of the Section we find no justification in interpreting or construing it as not taking away the right of the workman who is an insured person and an employee under the ESI Act to claim compensation under the Workmen's Compensation Act. We are of the opinion that the High Court was right in holding that in view of the bar created by Section 53 the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable.

13. The observations made in *Francis De Costa* (supra) by K. Ramaswamy, J. were made in a different context. In that case the question which had arisen for consideration was whether the injury caused by an accident on a public road while an

employee was on his way to join duty can be held as arising out of or in the course of his employment within the meaning of Section 2(8) of the ESI Act. Moreover, in that case the Court was not examining the bar created by Section 53 of the ESI Act.

15. The Madras High Court in *Mangalamma v. Express Newspapers Ltd.* AIR 1982 Mad 223, the Karnataka High Court in *K.S. Vasantha v. Karnataka SRTC* (1982) 60 FJR 118 (Kant) and *Annapura v. G. M. Karnataka SRTC* 1984 Lab IC 1355 have considered the effect of the bar created by Section 53 of the ESI Act with respect to the claim for compensation made under the Motor Vehicles Act for injuries received because of an accident arising out of and in the course of employment. In our opinion, the view taken by those High Courts with respect to the object of Section 53 of the ESI Act and the nature and the effect of the bar created by it appears to be correct.”

20. Recently, in case of **Dhropadabai and Others v. Technocraft Toolings** reported in **(2015) 14 SCC 454**, Hon'ble Supreme Court has held thus :

“11. The aforesaid authorities make it eminently clear that once an employee is an "insured person" under Section 2(14) of the 1948 Act, neither he nor his dependents would be entitled to get any

compensation or damages from the employer under the 1923 Act. We are obliged to hold so as the plain language used in the Act clearly conveys so. Therefore, we do not find any flaw in the view expressed by the High Court.....”

21. In the light of aforementioned judgments passed by Hon'ble Supreme Court, if the facts of the present case are considered, the accident took place in the factory premises of non-applicant No.2, which does not come within the definition of 'public place' as defined under Section 2(34) of the M.V. Act., deceased was covered under the ESI Act and parents of the deceased are getting monthly pension from the Employees' State Insurance Corporation, Regional Office, Raipur, therefore, claim application filed under Section 166 of the M.V. Act itself is not maintainable in view of specific bar created under Section 53 of the ESI Act.
22. As the claim application filed under Section 166 of the M.V. Act itself is not maintainable, the appeal filed by the claimants under Section 173 of the M.V. Act before this Court is also not maintainable and it is liable to be and is hereby dismissed.
23. In the impugned award, learned Claims Tribunal awarded a sum of Rs.1,09,000/- as compensation, which is not put to challenge by Insurance Company instead it is brought to the

notice of this Court that the amount of compensation awarded by learned Claims Tribunal was deposited and learned counsel for the appellants submits that it has been withdrawn also. In the said circumstance, there shall be no recovery of the amount so deposited by Insurance Company and withdrawn by the appellants/claimants in pursuance to the impugned award passed by learned Claims Tribunal.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh