

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1005 of 2020 (O&M)

Date of Decision: 26.07.2021

Employees State Insurance Corporation and Another

... Appellant(s)

Versus

Bhupinder Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. H.S.Bhatia, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Employees' State Insurance Corporation has filed this regular second appeal assailing the correctness of the concurrent finding of fact arrived at by the Courts below while allowing a petition filed by respondent No.1 under Section 74 and 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the 1948 Act").

2. The learned trial Court has awarded a sum of Rs.2,00,000/- to respondent-Bhupinder Singh, on account of injuries suffered in an accident on 09.07.2019 while coming back from his workplace. He received grievous injuries and remained admitted in the Government Medical College and Hospital, Sector 32, Chandigarh, for a period of one month. He suffered disability to the extent of 20%.

3. The learned counsel representing the appellant has contended that the petition was not filed before the competent Court. He further

submitted that the petition, as filed, was beyond the prescribed period and

therefore, both the Courts below have erred in decreeing the same.

4. Before proceeding to analyse the arguments of learned counsel for the appellant, it is important to note that Section 74 of the 1948 Act reads as under:-

“74. Constitution of Employees’ Insurance Court. — (1) The State Government shall, by notification in the Official Gazette, constitute an Employees’ Insurance Court for such local area as may be specified in the notification.

(2) The Court shall consist of such number of judges as the State Government may think fit.

(3) Any person who is or has been a judicial officer or is a legal practitioner of five years’ standing shall be qualified to be a Judge of the Employees’ Insurance Court.

(4) The State Government may appoint the same Court for two or more local areas or two or more Courts for the same local area.

(5) Where more than one Court has been appointed for the same local area, the State Government may by general or special order regulate the distribution of business between them”.

5. On a bare reading of the aforesaid provision, it is apparent that the State Government is required to notify, in the official gazette, the constitution of the Employees’ Insurance Court for such local area as may be specified in the notification. Any person, who is or has been a Judicial Officer or is a legal practitioner of five years’ standing, is qualified to be a

Judge of the Employees’ Insurance Court.

6. From a plain reading of the judgment under challenge, it is apparent that the learned Additional Civil Judge (Senior Division), while dealing with the aforesaid contention, has found that the Court of the concerned Presiding Officer is a notified Court as per Section 74 of the 1948 Act. Learned counsel representing the appellant has failed to draw the attention of the Court to the aforesaid notification of the State constituting the Employees' Insurance Court. In the absence thereof, the argument of learned counsel representing the appellant does not have any substance. Hence, the same is rejected.

7. The next argument of the learned counsel representing the appellant is that the petition was filed beyond the prescribed period. It would be noted here that Section 77(1)(a) of the 1948 Act prescribes that every such application shall be made within a period of three years from the date on which the cause of action arose. The accident in question took place on 09.07.2009. Thus, it is contended that the petition was filed beyond the prescribed time. It would be noted here that both the Courts below have examined the aforesaid issue and found that the employee, while calculating the limitation period, was entitled to exclude the period spent by him bonafidely before the District Consumer Redressal Forum and the State Consumer Disputes Redressal Commission. In the appeal, on 19.09.2013, the State Consumer Disputes Redressal Commission directed the petitioner to file the claim petition under Section 74 of the 1948 Act. After getting a certified copy of the order, the respondent filed the claim petition on 28.10.2013. Thus, both the Courts below, while giving the benefit of Section 14 of the Limitation Act, 1963 (hereinafter referred to as "the 1963 Act"),

held that the claim petition was filed within time. Learned counsel representing the appellant has failed to draw the attention of the Court to any provision which excludes the applicability of the 1963 Act. Rather, Section 82 of the 1948 Act itself provides that the provisions of Section 5 and 12 of the 1963 Act shall apply to the appeals under these Sections. Sub-Section 2 of Section 24 of the 1963 Act provides that unless expressly excluded by such special or local law, the Limitation Act, 1963 shall be applicable. In view thereof, this Bench expresses its inability to accept the argument of learned counsel representing the appellant.

8. It would be noted here that the learned counsel representing the appellant has not assailed the correctness of the finding of both the learned Courts below with regard to the assessment of the amount or correctness of the claim. The respondent was insured on 07.03.2009, whereas the accident took place on 09.07.2009.

9. Still further, Section 82 of 1948 Act provides that if an appeal involves a substantial question of law, only then it is maintainable before the High Court from an order of the Employees' Insurance Court. Learned counsel representing the appellant has failed to draw the attention of the Court to any substantial question of law. In para 7 of the regular second appeal, learned counsel representing the appellant has framed the following substantial questions of law:-

“1. Whether the matter of the suit is covered by Section 75 of the ESI Act?

2. Whether the Ld. Trial Court could assume the powers of the Employees Insurance Court as envisaged under

Section 74 of the ESI Act?

3. *Whether the Ld. Trial Court was barred from hearing the matter as per Section 75(3) of the ESI Act?*
4. *Whether the suit was liable to be dismissed for non-deposit of court fees even after the orders of the Ld. Trial Court?*
5. *Whether the suit was filed after expiry of limitation as per Section 77 of the ESI Act?''*

10. As regards question No.1, it is apparent that the respondent has pleaded and proved that on account of the accident, his left hand does not work properly. He has undergone a surgery of his left arm and his permanent disability has been assessed at 20%. As per Section 46(1)(c), an employee, suffering from disablement as a result of an employment injury, is entitled to periodical payments from the Corporation. Section 51 further enables the insured person to claim amount for temporary or permanent disablement.

11. Question No.2 stands answered while discussing the arguments of the learned counsel in para No.6.

12. As regards question No.3, it would be noted that the learned Court below has not passed the judgment as a Civil Court. A petition under Section 74 read with Section 75 of the 1948 Act was filed which has been decided. The Court has found that the Court was a notified Court under a special Act. Learned counsel representing the appellant has failed to draw the attention of the Court to any material to the contrary. Hence, question No.3 also stands answered.

13. As regards question No.4, it would be noted that learned

counsel representing the appellant has not addressed any argument. Hence, it needs no discussion.

14. As regards question No.5, it would be noted that in view of the discussion in para 7, it is apparent that the petition was filed within the prescribed time.

15 In view of the aforesaid discussion, this Bench finds no substance in the appeal and is left with no choice but for to dismiss the appeal. Hence, the appeal is dismissed.

16. The miscellaneous application(s) pending, if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

July 26, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No