

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

129

FAO-4564-2022 (O&M)
Date of decision: 05.12.2022

United India Insurance Company LimitedAppellant

Versus

Jaswinder Kaur and othersRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harinder Kumar, Advocate
for the appellant.

MANJARI NEHRU KAUL, J. (ORAL)

The instant appeal has been preferred by the Insurance Company to impugn the award dated 14.07.2022 passed by the learned Motor Accidents Claims Tribunal, Patiala (for short, 'the Tribunal') wherein the following compensation was awarded to the respondents-claimants on account of death of Bhagwan Dass (hereinafter referred to as 'the deceased') in a motor vehicular accident which took place on 02.01.2021:-

Sr. No.	Head	Amount
1.	Annual income	Rs.3,72,000/-
2.	Income after adding future prospects	Rs.4,27,800/-
3.	Less deduction 1/4 th	Rs.1,06,950/-
4.	Dependency	Rs.3,20,850/-
5.	Multiplier	11
6.	Loss of dependence	Rs.35,29,350/-
7.	Loss of consortium	Rs.44,000x4 = Rs.1,76,000/-
8.	Loss of estate	Rs.16,500/-
9.	Funeral expenses	Rs.16,500/-
	Total compensation	Rs.37,38,350/-

Learned counsel appearing for the appellant-insurance company has challenged the impugned award primarily on the ground that since the claimants had been granted family pension under the Employees State Insurance Act, 1948 (for short, 'ESI Act'), they would be barred from claiming compensation under the Motor Vehicles Act, 1988 (for short, 'MV Act'). Learned counsel for the insurance company has vehemently argued that the Tribunal, while awarding the impugned compensation to the claimants, failed to appreciate that RW-1 Hare Ram Parjapati, while stepping into the witness box, had categorically deposed that the deceased was insured with the “Employees State Insurance Corporation” and Group Insurance Policy No.1205672955 dated 30.04.2010 and family pension also stood sanctioned by the EPF Office. He submits that in the circumstances, the claimants were not entitled to any compensation under the provisions of the Act as it was barred under Section 53 read with Section 61 of the Employees State Insurance Act, 1948. It has been submitted that the impugned award deserves to be set aside on this ground itself. To fortify his submissions, learned counsel has relied upon ***National Insurance Co. Ltd. Vs. Hamida Khatoon and others : 2009(13) SCC 361.***

I have heard learned counsel and perused the relevant material on record.

Before proceeding further, it would be apposite to reproduce Section 53 read with Section 61 of the ESI Act and discuss the statutory bar created therein, since the learned counsel for the insurance company has placed a great deal of reliance on the provisions under the aforementioned Sections. Section 53 and Section 61 of the

ESI Act read as under:-

“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 Workmens 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.

61. Bar of benefits under other enactments.-When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.”

A reading of Section 53 read with Section 61 of the ESI Act makes it abundantly clear that the ESI Act disentitles the insured employee or his dependents from claiming compensation under any other law in force for the time being only in respect of an injury sustained by the insured employee during the course of his employment.

The moot question which thus arises for consideration of this Court is as to whether the accident in question would fall within the ambit of 'work place injury' or not?

Adverting to the case in hand, the deceased was working as Senior Operator at Indian Acrylics Limited, Bhawanigarh as well as running a cloth shop. When the accident in question occurred the deceased was returning to his village after making some purchases for his cloth shop. Hence, it is evident that the accident in question did not take place during the course of the employment of the deceased much less at his work place, therefore, it would not fall within the ambit of 'employment injury' and hence would not attract the bar of Section 53 of the ESI Act. Still further, a Co-ordinate Bench of this Court, in

‘Nanku Ram Vs. Mohan Singh & others’ 2014 (3) PLR 453, has held

as under:-

"2. I had the assistance of the counsel for the appellant and also Mr. Amit Rawal, Senior Advocate, as Amicus Curiae. Both the counsel have brought to my attention the decisions of the Supreme Court and other High Courts.

The Supreme Court in its decision in Western India Plywood Limited v. P. Ashokan-1997 (7) SCC 638 held that the object of Section 53 of the Act was to save the employer from facing more than one claim in relation to the same accident. The Supreme Court left the question open of what would happen if the claim is not made against the employer but was made against the tortfeasor of a vehicle who had caused the accident that resulted in disability. In paragraph 14 of the judgment, the Supreme Court left the issue open since the Supreme Court was considering a claim where the claim was not against a third party but against the employer himself. That marked, according to the counsel for the appellant, the difference from this case and which has been considered in a Division Bench of the Karnataka High Court in Shridevi v. S. Sarojini-2011 ACJ 161 and yet another Division Bench of the Kerala High Court in K.P. Kuriakose v. G. Santhosh Kumar and others 2010 ACJ 662. In both the decisions, the respective Benches have held that an injured receiving disablement benefits under the ESI Act would be barred from making a claim against his employer in respect of the same injury before the MV Act but a claim for compensation in tort against a stranger can coexist with claims for benefits under the ESI Act. This court itself had taken a similar view but without reference to the said two decisions stated before me now in Mobin Khan v. Neeraj Kumar-2013(2) PLR 56 that Section 53 stipulated a bar to an employee only in case of employment injury and the plea that the claim (sic claimant) would be barred from prosecuting a petition under the MV Act was rejected. I am in respectful agreement with the view taken by the Division Benches and hold that the petition was not barred."

In the circumstances, the case law relied upon by the learned counsel would not come to his rescue as the accident in the present case cannot be by any stretch be termed as an 'employment injury'.

As an upshot to the above discussion, this Court does not

find any merit in the instant appeal and the same is accordingly dismissed.

05.12.2022

(MANJARI NEHRU KAUL)

Vinay

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No