

Dalbir Kaur and others

....Appellants

versus

Balbir Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Deepak Arora, Advocate for the appellants.

Mr. Vineet Chaudhary, Advocate for respondent No.1.

None for respondent No.2.

Mr. Dinesh Kumar Prajapati, Advocate
for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Aggrieved with Award dated 27.01.2014 rendered by Motor Accidents Claims Tribunal, Ambala (for brevity, Tribunal), appellant/ claimants are before this Court by way of an appeal seeking setting aside of aforesaid Award whereby their claim petition was dismissed.

2. Succinct facts as noted by the Tribunal are as below:

"2. Briefly stated, the claim petition has been filed on the averments that on 12.02.2013 at about 8.00 AM, the deceased Ajaib Singh was traveling on his motorcycle bearing registrationNo.PB-12-H-4616 from his village to Naraingarh on his left correct side of the road in a normal speed and by observing the traffic rules and when he reached near village Munna Majra, in the meanwhile a school bus bearing registrationNo.HR-37B-8503, which was being driven in zig-zag manner byrespondentNo.1 rashly and negligently came from opposite direction and hit against the motor cycle of deceased by coming on the wrong side, due to which deceased fell down on the road and sustained multiple, grievous and serious injuries including fractures on ribs, chest and head etc. The motorcycle was badly damaged. The alleged accident was witnessed by one Bir Singh, Sarpanch, village Nagawan. On the basis of statement of Bir Singh, FIRNo.36 dated 12.02.2013 under Sections 279 and 304-A of the Indian Penal Code, 1860 was registered in Police Station Naraingarh against the respondent no. 1. The deceased was taken to General

Hospital, Naraingarh but seeing his condition, he was referred to PGI, Chandigarh after providing first-aid. The doctors of PGI started giving treatment to the deceased but he succumbed to the injuries on the same day at about 5.00 PM. The deceased aged about 40 years. He was earning Rs.20,000/- per month by selling milk and also getting Rs.7000/- per month being employed in a Factory known as Jasmer Pack, Kala-Amb. The claimants were dependent on the deceased and due to his death have lost their source of income. Respondent No.1 being the driver, respondent No.2 being the owner and the respondent No.3 being the insurer of the bus in question at the time of the accident are jointly and severally liable to pay the compensation. Therefore, compensation of Rs.20,00,000/- alongwith costs and interest at the rate of 12% per annum may be awarded to the claimants.”

3. Upon notice, respondents No.1&2-Driver & Owner, respectively filed written statement raising preliminary objections as to the claim petition being not maintainable; no accident having taken place with the vehicle in question; false and frivolous claim petition having been filed; the claimants having been concealed the true facts and petition being bad for non-joinder and mis-joinder of necessary parties etc.

3.1. On merits, respondents No.1 and 2 denied the material averments made in the petition and pleaded that no accident took place with the bus in question. Claimants in connivance with the police got registered a false case. If this Tribunal comes to the conclusion that the accident took place involving the bus in question then insurance company is liable to pay the compensation to the claimants. The amount claimed is highly excessive. With these submissions, respondents No.1 & 2 prayed for the dismissal of the claim petition.

4. In its separate written statement, respondent No.3-Insurance Company took preliminary objections as to cause of action having arisen; claim petition being not maintainable; bad for non-joinder and mis-joinder of parties; the claim petition being filed in collusion with respondents No.1 & 2; respondent No.1 not having valid and effective driving licence and the vehicle in question was being driven in violation of the terms and conditions of the insurance policy and

entitlement of respondent No.3 to take all defences available under Sections 148, 167, 169 and 170 of the Motor Vehicles Act, 1988.

4.1. On merits, respondent No.3 denied material averments made in the petition and pleaded that no accident took place with the bus in question as alleged and false FIR was got registered by manipulating the wrong facts in order to get exaggerated compensation. The bus in question was wrongly introduced and a false FIR has been got registered against respondent No.1 in connivance with the local police. Respondent No.3 is not liable to pay any compensation. With these submissions, respondent No.3 also prayed for the dismissal of the claim petition.

5. Claimants-appellants did not file any replication.

6. Learned Tribunal framed the following issues:

- “1) *Whether Ajaib Singh died due to injuries in the accident caused on 12.02.2013 by rash and negligent driving of Bus make Swaraj Mazda bearing registration No. HR-37B-8503 by the respondent No.1 Balbir Singh, as alleged? OPP.*
- 2) *If issue no.1 is proved, whether the claimants are entitled to compensation, if so how much and from whom? OPP.*
- 3) *Whether the respondent No.1 was not having valid and effective driving licence on the date of accident, if so to what effect? OPR3.*
- 4) *Whether respondent No.2 has violated the terms and conditions of the insurance policy and the respondent is not liable to indemnify the respondent no.2? OPR3.*
- 5) *Relief.”*

7. On appraisal of record/ evidence, learned Tribunal decided issue No.1 in favour of claimants and against the respondents. Issue No.2 was decided in favour of the respondents and against the claimants. Issues No.3 & 4 were rendered redundant since claimants were not held entitled to any compensation. Consequently, the claim petition was dismissed with costs vide the impugned Award.

8. It has been contended by the learned counsel for the appellant/claimants that learned Tribunal erred in dismissing the claim petition being barred under the provisions of Section 53 of the Employees' State Insurance Act, 1948 (for short 'ESI Act') when said provisions were neither applicable to the facts of the present case nor was claim petition barred under the provisions of Section 53 *ibid*.

9. I have heard learned counsel for the parties and perused the record.

10. Having heard the rival contentions, I am of the opinion that learned Tribunal below fell in grave error of law in rejecting the claim petition at the threshold on the ground that there is bar under Section 53 of the ESI Act to invoke the provisions of Motor Vehicles Act, 1988 (for short 'Act'). In fact, from a closer scrutiny of Section 53 of the Act, it is borne out that bar envisaged thereunder operates within the limited parameters as prescribed therein. For ready reference, Section 53 of ESI Act is reproduced as below:-

“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.”

11. In fact, without laboring much on the controversy in hand, since same is no longer *res integra*, reference may be had to a Single Bench judgment of this Court rendered by K. Kannan, J. (as he then was in this Court), in similar circumstances in case **United India Insurance Company Limited versus Som Wati and others**, reported in **2012 (1) R.C.R. (Civil) 938**, wherein it was held as under:

“1. The appeal by the Insurance Company is on the ground that the claimants had already availed a benefit under ESI Act, the deceased being a person, who was covered by the ESI scheme. The Tribunal, while considering the objection of the insurer regarding

non-maintainability of the petition in terms of Section 53 of the ESI Act, held that the bar will operate for securing award only under the Workmen's Compensation Act and not when the provisions of the MV Act are invoked. Section 53 of the ESI Act reads thus,

“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.”(underlining mine)

2. *The object of the section is that the employer is not foisted with more than one claim for the same accident and once the claim has had the benefit under the ESI Act, a separate claim under the MV Act shall not be permitted. There has been a preponderance of case law from literally from High Courts of India to the same effect. (Kindly see, Mangalamma Versus Express Newspapers Limited-AIR 1982 Mad223; Ganpat Pratap Bhogle Versus H.L- Roche-1994 AccCI 1101 (Bom); United India Insurance Company Limited Versus K.N,Thipperudraiah-1997 (1) AccCC 627 (Kar); United India Insurance Company Limited Versus Vijaya R.Baait-2007 ACJ 463 (Bom); Oriental Insurance Company Limited Versus Mohan Kumar-2007ACI 420 (Rai); Pauline Decrive Versus M.E. Yata Singh-2005 ACJ 1427 (AP). In this case, admittedly the accident taken place in the course of his employment.*

3. *The pursuit under MV Act is barred by virtue of provision of Section 53 and the claimants could not have been duplicated the claim before the Tribunal also, without forsaking the benefit under the ESI Act. This issue is now squarely answered by the Hon'ble Supreme Court in National Insurance Company Limited Versus Hamida Khatoon-(2009)13 SCC 361. The Hon'ble Supreme Court has ruled:*

“In this background and context we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is again streceiving 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 of1923), 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."

The only difference appears to be that in the case before the Hon'ble Supreme Court, the claimant obtained compensation under the MV Act and in the appeal under Section 173 of the MV Act, it was contended that the claim was not maintainable in view of Section 53 of the ESI Act. It is not clear from the facts whether such a defence was taken for the first time in appeal or the bar under Section 53 was taken even before the Tribunal. The High Court held that there was no bar but the appeal preferred by the insurer was allowed, setting aside the order of the High Court. The parting words in the judgment were: "Above being the position of law, the appeal deserves to be allowed. The entitlement shall be worked out by MACT concerned by taking note of Section 53 of the Act." When the appeal was allowed, the last sentence that talks about 'entitlement' in the context of Section 53 of the Act, I would understand as creating a situation of non-entitlement.

4. The award of the Tribunal is set aside and the appeal is allowed. There is an appeal filed by the claimants in FAO No.132 of 2004 seeking for enhancement. In the light of the view that I have held in the connected appeal, FAO No. 132 of 2004 is dismissed."

12. The aforesaid Single Bench view is in tune with the view taken by the Supreme Court in **National Insurance Co. Ltd. Versus Hamida Khatoon and others**, reported as **2009 (13) SCC 361**, which has been referred to in the Single Bench judgment itself. Having gone through what has been enunciated in the **Hamida Khatoon's case (supra)** by the Apex Court read with Single Bench judgment in **Som Wati's case (supra)**, I see no reason why benefit of the same be not accorded to the appellants herein.

13. Accordingly, the appeal is allowed and the impugned Award is set aside. Matter is remanded back to the concerned Motor Accidents Claims Tribunal. It is made clear that learned Tribunal shall proceed on the merits of the case and entitlement of the appellant/ claimants shall be worked out by taking note of the parameters laid down in Section 53 *ibid* inasmuch as if any monetary benefit

thereunder has been given to the claimants arising out of the accident, the same shall be factored while making the computations of compensation under Motor Vehicles Act.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 19, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No