
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-74-2023 (O&M)
Date of decision : 17.01.2023

The Oriental Insurance Company Ltd. ... Appellant

Versus

Kisan Dev Kumar @ Kishan Dev and others .. Respondents

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. D.P. Gupta, Advocate and
Mr. Shubham Gupta, Advocate
for the appellant/Insurance Company.

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Anupinder Singh Grewal, J. (Oral)

The appellant/Insurance Company has challenged the award dated 02.09.2022 passed by the Motor Accidents Claims Tribunal, Chandigarh (for short, 'the Tribunal') in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the MV Act').

Learned counsel for the appellant submits that as the injuries had been sustained by the claimant/respondent No.1 in the course of employment, the petition under the MV Act would not be maintainable as the Employees State Insurance Act, 1948 (for short, 'the ESI Act') provides for compensation in such cases. He has relied upon the judgment of the Supreme Court in the case of **A. Trehan versus M/s Associated Electrical Agencies, 1996(4) SCC 255** and the judgment of the Karnataka High Court in the case of **K.S. Vasantha and others versus Karnataka State Road Transport Corporation, (1982) ACJ 259**. He further submits that the Tribunal could not have granted the penal interest as it is not in consonance with the judgment of the Supreme Court in the case of **National Insurance Co. Ltd. versus Keshav**

Bahadur and others, 2004(2) SCC 370. He, however, does not dispute the quantum of compensation as assessed under various heads.

Heard.

The claimant, who was a pillion rider on the motorcycle, had sustained injuries in a road accident which took place with a truck (trolla) on 13.03.2021. At the time of the accident, the claimant was 21 years old and had obtained permanent physical disability. The contention of the counsel that as the accident had taken place while the claimant was returning home from his work place, the compensation would be payable under the ESI Act cannot be accepted for the reason that the claimant/injured had received several injuries including disability.

This Court in the case of **United India Insurance Company Ltd. versus Vaneeta and others** along with another appeal titled as **Vaneeta versus Irshad Shaha and others, 2020(2) RCR (Civil) 241** had held that even if an accident had taken place in the factory premises, the claimants could not be denied their right to claim under the Motor Vehicles Act despite the bar under Section 53 of the ESI Act. In that case, the truck had entered into the premises of the factory and the accident had taken place on account of the negligence of the driver of the truck which led to the death of an employee within the factory premises. The relevant extract is reproduced hereunder:-

> "Admittedly, the injury as a result of the accident on account of the truck bearing No.UA-08E-9577 which occurred on account of the negligence of the driver of the said truck who hit into the deceased while reversing it. The negligence of the driver has been upheld beyond doubt. The duty of the respondent was not on the truck or with the truck. He had nothing to do with the truck in question. The only thing was that he was on duty at the work place when the

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incident occurred. Hence, it cannot be said to be an employment injury although the liability of ESI too cannot be diluted just because it is not an outcome of employment injury as long as it was in the work place where the injured was present in his capacity as an employee.

(C) The fact that the claim under the Motor Vehicles Act would amount to claim against the third party and, therefore, maintainable inspite of the bar under Section 53 of the ESI Act stands answered by the Division Bench of Kerala High Court in the judgment rendered in the case of **K.P.Kuriakose Vs**. **G.Santhosh Kumar & others**, *2010 ACJ 662* by following the judgment rendered in the case of **Regional Director ESI Corporation Vs**. **Francis De Costa** as under:-

"We are persuaded to agree that the decision in Regl. Director, E.S.I.C., v. Francis De. Costa (supra) covers the specific issue raised in this case. Claim is raised against a stranger to the contract of employment for compensation on the basis of negligence for causing the accident. The claim is not for compensation for employment injury and in these circumstances the observations in para 44 of Regl. Director E.S.I.C. V. Francis De Costa must be preferred. Following the dictum therein we accept that a claim for compensation in tort against a stranger can coexist with a claim for benefits under the E.S.I. Act. The use of the words "any person" in Section 53 of the E.S.I. Act which we extract below cannot take within its sweep the claim in tort against the stranger/tort fearer under Section 166 of the M.V. Act for compensation for the loss suffered in a motor accident caused by negligence.

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Section 53 does not bar the claim in tort under Section 166 of the M.V. Act against the stranger tort fearer. But bars the claim against the employer under any other law. As held by Supreme Court in **Francis De Costa** the insurance coverage under the Act is in addition to and not in substitution of the other remedies against a stranger."

The object of Section 53 as held in the case of Mangalamma (supra) was not to burden the Employer twice, whereas, the Motor Vehicles

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> Act is totally separate from ESI and independent, a stranger. Thus, the above mentioned conditions being satisfied in the case in hand, Section 53 of ESI Act would not come in his way to claim the compensation under the Motor Vehicles Act in the facts of the present case."

It has also been held by this Court in the case of **National Insurance Company Ltd. versus Saroj and others,** 2019(4) RCR (Civil) 303 that as the death had occurred due to an accident which had taken place outside the factory premises, the compensation under the Motor Vehicles Act would be payable. The relevant extract is reproduced hereunder:-

> "When the facts and circumstances of the present case are examined in the light of judgment **Tilak Raj and others' case (supra)** as well as provisions of Section 51E of the ESI Act, I find it difficult to accept contention of the insurance company that injury sustained by the victim was an employment injury, therefore, the provisions of the ESI Act can be invoked to create bar under Section 53 of the ESI Act. That being so, the question with regard to maintainability of claim against a third party for tortious liability but in regard to employment injury would be examined in detail, in an appropriate case. In this view of the matter, the principal contention raise by the insurance company is not tenable and accordingly rejected.
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> If the claimants have received any benefit under the ESI Act on a wrongful assumption and they are otherwise not entitle to said benefit, the claimants may refund the amount to the ESI Corporation or the Corporation may initiate proceedings for recovery, if so permitted in law."

In view of the above especially when the claimant had received injuries in a motor vehicle accident, the claim petition under the Motor

Vehicles Act would be maintainable.

The judgments relied upon by the counsel for the appellant/Insurance Company are distinguishable on facts and not applicable to the instant case.

In the case of **A. Trehan versus M/s Associated Electrical Agencies(supra),** the accident had taken place when the appellant was repairing a television set during the course of his employment. In the instant case, the death had taken place beyond the factory limits and after working hours when the deceased was on his way back home.

In the case of **K.S. Vasantha and others versus Karnataka State Road Transport Corporation (supra)**, the injured persons and the deceased sustained injuries while they were travelling in a bus run by the respondent in pursuance to a contract entered between the NGEF and KSRTC and therefore, the injuries sustained are nothing but employment injury and the claimants had to approach the Corporation and not the Tribunal for the compensation or damages.

Insofar as the contention of the counsel for the appellant that the penal interest could not have been awarded, the same deserves to be rejected for the reason that the Tribunal had directed to pay compensation to the claimants along with interest @ 6% p.a. within a period of two months and thereafter, an interest @ 7% p.a. had been imposed which is quite reasonable.

The judgment in the case of **National Insurance Co. Ltd. versus Keshav Bahadur and others(supra)** is distinguishable on facts inasmuch as in that case the Tribunal had awarded compensation along with interest @ 12% p.a. which was to be paid within 60 days and it was directed that in case of failure to pay compensation within the stipulated period, the rate of interest would be 18% p.a. while the Supreme Court had directed to pay interest @ 9% p.a.

In the instant case, the interest which had been awarded by the Tribunal on the failure to pay compensation within two months is only 7 % p.a. and cannot be regarded as excessive.

Learned counsel for the appellant-Insurance Company has not been able to point out any illegality in the Award with respect to the quantum of compensation which has been determined in terms of the judgment of the Supreme Court in the case of **National Insurance Company Limited vs. Pranay Sethi and others, AIR 2017 SC 5157.**

Consequently, I do not find any merit in this appeal which stands dismissed. However, the amount deposited by the appellant/Insurance Company would be transferred to the Tribunal.

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

(ANUPINDER SINGH GREWAL)
JUDGE

January 17, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No