

2024:PHHC:089917



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

**FAO No.871 of 2001
Date of Decision: 18.07.2024**

M/s Jain Die Casters Pvt. Limited

.....Appellant.

Versus

Ram Kumar Dubey

.....Respondent.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. A.P. Bhandari, Advocate
for the appellant.

Mr. Hitesh Pandit, Advocate, appearing for
Mr. Sandeep Chhabra, Advocate for the respondent.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the Award passed by the Commissioner (for short 'the Competent Authority') under the Workmen's Compensation Act, 1923 (for short 'the WC Act') on 16.08.2000, whereby the respondent-claimant had been awarded the compensation to the tune of Rs.2,30,568/-, along-with interest thereon @ 12% per annum from the date of accident till its realization, the appellant-employer (here-in-after to be referred as 'the employer') has preferred the instant appeal to lay challenge to the same.

2. Bereft of unnecessary details, the facts, as emanating from the perusal of the file and culminating in the filing of the present appeal, are that the claimant had filed a Claim Application against the employer for seeking



compensation of Rs.05 (five) lac and the interest and penalty as well, while averring that he had been working with the employer as an Accountant since 16.04.1996. On 05.07.1996, the employer had directed him to visit the office of the Sales-Tax Department at Delhi, for submitting some documents and when he was returning from the afore-said office, he sustained an injury in his right eye and ultimately, the injured eye had to be removed and had been replaced with artificial eye and he had, thereby, been rendered permanently disabled to the extent of 50% and the employer, instead of paying the compensation to him, had terminated his services and had also withheld his salary for the month of May, 1997.

3. The employer filed its written-statement, contesting the claim of the claimant therein on various grounds. The claimant filed his re-joinder and then, the parties were put to the trial by framing the issues and after appreciating and evaluating the evidence as led on the record and hearing their counsel, the Competent Authority allowed the above-mentioned Claim Application vide the impugned Award and awarded compensation to the claimant, as already discussed in the opening para of this judgment.

4. I have heard learned counsel for the appellant-employer as well as learned counsel appearing for the respondent-claimant in the instant appeal and have also gone through the file carefully.

5. Learned counsel for the employer has contended that the claimant was insured under the Employees' State Insurance Scheme (for short 'the ESI Scheme') in January, 1997 and the treatment for his injured eye was continuing at that time and had lasted thereafter and even otherwise,



he was to be taken to have been covered under the afore-said Scheme since the day of his employment and hence, the above-referred Claim Application, under the WC Act, was not maintainable in view of the provisions contained in Section 53 of the Employees' State Insurance Act, 1948 (for short 'the ESI Act') and in these circumstances, it becomes explicit that the impugned Award is not legally sustainable and is liable to be set-aside. To buttress his contentions, he has relied upon the observations made by the Apex Court in *M/s Bharagath Engineering Vs R. Ranganayaki and anr, 2003(2) SCC 138* to the effect that "*a workman becomes entitled to the benefit of the ESI Act from the date of his employment and the payment or non-payment of the employer's contribution to the Corporation is immaterial*".

6. Per contra, learned counsel for the claimant has argued that the claimant had been covered under the ESI Scheme in January, 1997 but the incident, resulting into the injury in his eye, had taken place prior thereto, i.e on 05.07.1996 and therefore, he, being an employee of the employer, was well within his rights to seek compensation by invoking the provisions of the WC Act and hence, the afore-said Claim Application was maintainable and the impugned Award passed by the Competent Authority, is perfectly legal.

7. Before adverting to the discussion on the merits of the present appeal, it would be expedient to refer to Section 53 of the ESI Act which reads as under:-

“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."

8. Now coming to the merits of the instant appeal, though the employer has asserted that the claimant was covered under the ESI Scheme in January, 1997 and the treatment for his eye-injury was going on at that time and even otherwise, the ESI Scheme became applicable to him from the date of his employment and therefore, the Claim Application, as filed by him under the WC Act, was not maintainable in view of Section 53 of the ESI Act but it is worth-while to point it out here that in para No.9 in the impugned Award, it has categorically been mentioned that the employer had not produced any evidence on the record. Thus, it (employer) has failed to come forward with a fair and candid version regarding the date, month and year when its establishment had fallen under the definition of 'Factory' in terms of Section 2(12) of the ESI Act, so as to further ascertain the day of the provisions of this Act becoming applicable thereto.

9. The above-cited observations made by Hon'ble Supreme Court in *M/s Bharagath Engineering (supra)*, are of no avail to the employer because in para No.9 in the same judgment, it has also specifically been held that "*it is the obligation of the employer to pay the contribution from the date the Act applies to the Factory or establishment*" and in the light of the



afore-quoted observations, it becomes crystal clear that when an employer's Factory/establishment is covered under the ESI Act, it (employer) becomes liable to pay the ESI contributions from that very day and an employee of such employer becomes entitled to the benefits of the ESI Act from the date of his employment, irrespective of the factum of payment or non-payment of the ESI contributions qua him but in the present case, as discussed earlier, the employer has not adduced even an iota of evidence on the file to disclose as to from which date the provisions of the ESI Act had become applicable to its Factory, so as to determine the date of its liability to pay the ESI contributions for its employees, including the claimant and it being so, it is held that the employer has not been able to prove its stance that the Claim Application, filed by the claimant under the WC Act, is not maintainable in view of the bar as envisaged under Section 53 of the ESI Act.

10. As a sequel to the fore-going discussion, it follows that the impugned Award does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the same is, hereby, upheld and the appeal in hand, being *sans* any merit, stands dismissed.

July 18, 2024
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes