



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 15 May 2024**
Judgment pronounced on : 03 July 2024

+ **MAC. APP. 197/2022**

KAMAL SINGH ALIAS KAMAL SINGH RAWAT

..... Appellant

Through: **Mr. S. N. Parashar, Advocate**

versus

JAI KUMAR SHARMA & ANR.

..... Respondents

Through: **Mr. Sunil Kumar and Mr. Vikas Sharma, Advocates for R-1.**

Mr. Virender Prabhakar and Mr. Shekhar Kumar, Advocates for Ms. Suman Bagga, Advocate for Insurance Company.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present appeal filed by the appellant/claimant/injured under Section 173 of the Motor Vehicles Act, 1988¹ assailing the Impugned Judgment dated 13.04.2022 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Tis Hazari Courts, Delhi², whereby the claim petition of the appellant was dismissed on the ground that the appellant/claimant is getting pension of Rs. 315/- per day due to employment injury under Employees State

¹ M. V. Act

² Tribunal



Insurance Act, 1948³ and in view of the bar created by Sections 53 and 61 of the ESI Act, the learned Tribunal has no jurisdiction to entertain such a claim petition and the appellant/claimant is not entitled to get compensation under M.V. Act.

FACTUAL BACKGROUND:

2. Briefly stated, the case of the appellant/claimant is that on 23.04.2015, at approximately 10 a.m., the appellant/claimant was standing beside his vehicle bearing registration No. DL-4CNE-4993, which was parked on the extreme left side of the road near the agricultural land of Sh. Richchpal Singh at Kohla Village, P.S.⁴ Bahsuma, District Meerut, Uttar Pradesh. At that time, the offending vehicle bearing registration No. DL-8CY-1682, came from behind and collided with the appellant/claimant's vehicle with great force. As a result, the appellant/claimant was flung far away and sustained multiple grievous injuries. He was initially taken to Anand Hospital, Meerut, but due to his critical condition, he was transferred to the Indian Spinal Injuries Centre, Delhi, where he was admitted until 29.06.2016. Due to the injuries sustained in the accident, the appellant/claimant was rendered 100% disabled, as certified by his disability certificate. The appellant/claimant is a paraplegic and requires an attendant for the entirety of his life for his daily routine work.

³ ESI Act

⁴ Police Station



3. A criminal case under Sections 279, 337, 338, and 427 of IPC⁵ was lodged against respondent No. 1, *vide* FIR⁶ No. 46/15 at P.S. Bahsuma, Meerut, Uttar Pradesh. The appellant/injured, who was 48 years old at the time of the accident, was employed as a driver with M/s Dhanuka Agritech Ltd., located at 14th Floor, building 5A, Cyber City, DLF Phase-III, Gurugram, earning a salary of Rs. 16,000/- per month. However, following the accident and the resulting 100% disability, he was terminated from his job and currently has no source of income, rendering him completely dependent on his family.

PROCEEDINGS BEFORE THE TRIBUNAL AND THE IMPUGNED JUDGEMENT:

4. Based on the pleadings of the parties, the learned Tribunal on 15.02.2017 framed the following issues: -

“1. Whether the petitioner Sh. Kamal Singh @ Kamal Singh Rawat suffered injuries in an accident that took place on 23/04/2015 at about 10.00 A.M. involving Car bearing registration No. DL-8CY-1682 driven by the Respondent No. 1 rashly and negligently, owned by the Respondent no. 2 and insured with the Respondent No. 3? OPP. [Note : There is an error in the framing of this issue as there are only 02 respondents. R-1 is the driver-cum-owner and R-2 is the insurer of the offending vehicle. No person has been arrayed as R-3. The issue may be read and considered accordingly.]

2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?

3. Relief.”

5. The learned Tribunal ruled in favour of the appellant/claimant on Issue No. 1, determining that the accident resulted from the negligent driving of the Respondent No. 1, causing grievous injuries to the appellant/claimant.

⁵ Indian Penal Code, 1860



6. As regards decision on the Issue No. 2 is concerned, the learned Tribunal was of the view that the appellant/claimant sustained the injuries in the course of his employment and the appellant/claimant obtained the statutory benefits available to him under the ESI Act. It was further observed that the injuries sustained by the appellant/claimant fall in the definition of “employment injury” defined under Section 2(8) of the ESI Act and as per the bar created by Section 53 of the ESI Act, the appellant/claimant is disentitled from seeking any compensation under the M.V. Act. It was held by the learned Tribunal that no compensation could be granted to the appellant/claimant under Section 166 of the M. V. Act. The relevant portion of the judgement is reproduced below: -

“17. In this regard, both the respondents have raised a question as to the admissibility of any compensation to the petitioner in view of the bar created by Sections 53 and 61 of The Employees' State Insurance Act, 1948. It was submitted on behalf of respondents that there is no dispute about the fact that injuries were sustained by the petitioner (in the accident in question) in the course of his employment and that the petitioner has already obtained the statutory benefits available to him under The Employees' State Insurance Act, 1948. Accordingly, it was argued that the bar created by Sections 53 & 61 of The Employees' State Insurance Act, 1948 become operative and disentitles the petitioner from seeking any compensation under the provisions of Motor Vehicles Act, 1988. The above argument has been vehemently contested on behalf of the petitioner. Respondents have relied upon the observations made by Hon'ble Supreme Court in **Dhropadabai & Ors. Vs. Technocraft Toolings, (2015) 14 Supreme Court Cases 454, Civil Appeal No. 8155/2014, decided on 19.03.2015 & National Insurance Co. Ltd. Vs. Hamida Khatoon & Ors., (2009) 13 Supreme Court Cases 361, Civil Appeal No.332412009, decided on 06.05.2009**. Petitioner relies upon the observations made by Hon'ble Delhi High Court in **Oriental Insurance Co. Ltd. Vs. Sanjay Kumar Singh & Ors. MAC.**

⁶ First Information Report



APP. No. 189/2012, Date of decision: 01.08.2013 & Kumar Steel Inc. Vs. IFFCO Tokio Gen. Ins. Co. Ltd., MAC APP. No. 73/2009, date of decision: 03.08.2017.

18. This Tribunal has considered the rival submissions and has gone through the judgments relied upon by either of the parties. perusal of the record reveals that the petitioner has not clearly stated the reason of his availability at the spot of the accident at the relevant time either in the petition or in his evidence by way of affidavit Ex. PW 1/A. However, the relevant FIR as well as the document Ex. PW 1/5 (as mentioned in affidavit Ex. PW1/A), which is a copy of the application moved by, the petitioner before the medical officer ESIC Dispensary, Azadpur seeking reimbursement of medical expenses, reflect that the petitioner took vehicle bearing registration no. DL-4CNE-4993 to the spot of accident in his capacity as a driver employed by Dhanuka Agritech Ltd. in the course of his employment and sustained injuries in the accident in question. Consequently, this Tribunal is constrained to hold that the injuries sustained by petitioner fall in the definition of "employment injury" defined U/s 2(8) of The Employees' State Insurance Act, 1948. As a result, the bar created u/s 53 of The Employees' State Insurance Act, 1948 becomes operative and disentitles the petitioner from seeking any compensation under Motor vehicles Act, 1988. The observations made by Hon'ble Supreme Court in **Mr. A. Trehan vs. M/s Associated Electrical Agencies, 1996 SCC (4) 255; Dhropadabai & Ors. vs. Technocraft Toolings, (2015) 14 Supreme court cases 454, Civil Appeal No. 8155/2014, decided on 19.03.2015 & National Insurance Co. Ltd. vs. Hamida Khatoon & Ors., (2009) 13 Supreme Court Cases 361, Civil Appeal No. 3324/2009, decided on 06.05.2009** are squarely applicable to the present facts and circumstances. Accordingly, it is held that no compensation could be granted to the petitioner U/s 166 of Motor Vehicles Act, 1988. This issue is accordingly decided in favour of the respondents and against the petitioner."

GROUND OF THE APPEAL:

7. The appellant/claimant has assailed the impugned judgment, asserting that the learned Tribunal has wrongly dismissed the claim petition of the appellant/claimant on the ground that the appellant/claimant is getting a pension of Rs. 315/- per day due to the employment injury under the ESI Act and in view of the bar created



by Sections 53 and 61 of the ESI Act. The appellant/claimant contends that in order to prove his case beyond doubt, eight witnesses were summoned, whereas, on the other hand, the respondents did not lead any witness in their defence and that the respondents could not prove that the injuries sustained by the appellant/claimant were during his employment or “employment injury” as per the ESI Act. Reliance has been placed **United India Ins. Co. Ltd. v. Vipin Kumar & Ors.**⁷

ANALYSIS & DECISION

8. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this court finds that the impugned order dated 13.04.2022 passed by the learned Tribunal is flawed and cannot be sustained in law.

9. The Employees’ Compensation Act, 1923⁸, as amended, is an act to provide for the payment by certain claims from employers to their employees of compensation for injury by accident. The E.C. Act is a piece of social security and welfare legislation. The dominant purpose is to protect the workman and the provisions of the E.C. Act have to be given an exhaustive meaning, so as to conform to the legislative intent to make an employer and insurer of the workman responsible against the loss caused by injuries or death *during the course of employment*.

10. The provision of E.C. Act is to be construed in conjunction and harmoniously with the provisions of the ESI Act, which is again a

⁷ MAC. APP. 207/2015 decided on 31.07.2019

⁸ E.C. Act



beneficial enactment providing protection and benefits to the employees' *inter-alia* in case of employment injury. At this juncture, it would be expedient to reproduce section 53 and 61 of the ESI Act, which provides as under:

“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.

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.”

11. A careful perusal of Section 53 of the ESI Act brings out that an insured person or his dependents i.e., workman or his dependents are not entitled to recover any compensation from any other person i.e. except the employer under the E.C. Act or any other lawful timing in force in respect of “employment injuries”. The expression “employment injury” is defined by Section 2(8) as under:-

“employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of the employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

12. A bare perusal of Section 2(8) of the ESI Act would show that the injury sustained by the employee has to be such which has been caused to an employee due to an accident arising *out of or in the course of employment*. The nature injury or harm suffered by the employee have to be such, which are intricately connected or



intertwined with the discharge or performance of work or task assigned to him by the employer. In other words, if the harm or injury is suffered on account of intervention by a third person not connected with the employer though arising or occurring during the course of employment, the bar of Section 53 of the ESI Act would not come into play.

13. The aforesaid view is fortified by the decision of the Punjab & Haryana High Court in the aforementioned case of ***TATA AIG General Insurance Company Ltd. v. Ram Avtar & Ors.***⁹, wherein it was found that the appellant/injured is entitled to get compensation under the M.V. Act *de hors* the provisions of the ESI Act, and the relevant observations in the judgement are as under: -

“17. Having heard learned counsel for the parties, this Court is of the considered opinion that the argument of learned counsel for the appellant that the claim petition is not maintainable in view of Section 53 of the ESI Act is liable to be rejected. First of all, Section 53 of the ESI Act is part of the ESI Act. Therefore, it shall apply only to the persons or entities regarding whom this Act has been extended or made applicable by the application Section and Definition Section of this Act. The Section I of this Act prescribes that it shall apply to factories. Still further Proviso to Section 1 clarifies that this Act shall not apply to any other factory or establishment whose employees are otherwise in receipt of similar or superior benefits as compared to this Act. Still further Section 2A of this Act prescribes that factories to which this Act applies shall be compulsorily registered under this Act. Still further Section 2 of this Act defines the employee and employer *qua* which this Act applies. Hence a bare perusal of these provisions shows that the application of this Act, including Section 53 of this Act, is circumscribed by so many conditions. **So this Act, including its Section 53 does not have any application where**

⁹ 2017 SCC OnLine P&H 6262



the recipient of benefits is not covered by definition of employee, the person liable to make the payment is not covered by definition of employer and the factory as given by this Act and the benefit is claimed and is required to be paid to him as an employee under this Act. Not only this, the Act itself declares that this Act shall not be applicable even to the employees if the employee is entitled to some better benefits under some other Act and the factory is the government factory or a government controlled factory. Hence the essential feature for application of this Act, including its Section 53, is that on the one side it should be an employee as defined under this Act and on the other side, it should be the employer or the factory as defined under this Act, and further the benefit claimed must be in the capacity of the person as employee under this Act. **If either the capacity of the person raising a claim is outside the scope of the applicability of this Act or the person liable to make the payment is outside the scope of the applicability of this Act, then this Act, including Section 53 of this Act, has no application at all.** Such a claim shall be totally outside the scope of applicability of this Act, including Section 53 of it. Hence the claim petition filed by a person under Section 166 of the Motor Vehicles Act shall be barred by Section 53 of this Act only if the person raising a claim is himself an employee of the Insurance Company liable to satisfy the Award of the Motor Vehicles Act. **If the relation between the claimant and the Insurance Company is of a stranger then the claim petition by such a person against such a Insurance Company shall not be barred by Section 53 of ESI Act.** The word "Any Person" in Section 53 has to be read as a **person/entity to whom this Act applies.** Giving any other interpretation would mean giving this Act an over-riding effect over all the other Act. However, notably this Section does start with any 'Non-obstante' clause nor does this Act has any other Section giving over-riding effect to the Act over and above other Acts. **Section 61 of this Act also bars only 'similar benefits' admissible to an employee under some other Act if such employee is entitled to such benefits under this Act.** Hence this Section also prohibits only receiving twice the 'similar benefits' by an employee with respect to his employment injuries, nothing beyond that. So merely because the injured or the dependents of



the deceased are getting some benefits under ESI Act is no ground to deny him/them any other benefit available to him/them under any other enactment if the benefits available to him/them under such other enactment are not similar to the one available under ESI Act. Giving any other interpretation to Section 53 of this Act would render Section 61 of this Act as nugatory. This position would be better explained by the following paragraphs.

26. Otherwise also, the word 'as an employee' under this Act; as mentioned in the last line of Section 53 of the Act is also not without any significance. These words would make it clear that the bar against claiming 18 of 26 compensation from anywhere else is contemplated only if the injured/deceased sustained the injuries as an employee under this Act. This would show that the bar created by Section 53 of the Act would be only regarding any other any other subsequent compensation, if claimed, by the injured or the dependents; in the capacity of injured/deceased being an employee under the ESI Act. **This would mean that it is not the claim of compensation under Motor Vehicles Act which would be excluded by Section 53 of the Act, rather, it would be any other compensation, if claimed, under any other Act having provisions for similar compensation for the employees as defined under the ESI Act.** This means that Section 53 of the Act only bars receipt of compensation from the employer or any other person under any other labour law which might be providing compensations for the employees/workmen. This is also clarified by the provision of Section 61 of the Act; which specifically says that once a person is provided benefit under the ESI Act, he shall not be entitled to receipt any 'similar benefits' admissible under the provisions of any other enactment. Giving any other unrestricted interpretation to the provisions of Section 53 of the Act would render the Section 61 of the Act as superfluous. And it is well settled that the legislature cannot be deemed to have wasted words in any Section of a statute, much less to speak of wasting of a full Section of statute, like Section 61 of the ESI Act. Hence read with Section 61 of the Act, the Section 53 can be interpreted to prohibit only a second claim of similar compensation in his capacity as employee from the employer or from any person required to compensate such an injured person /dependent in his capacity as an employee under the ESI Act. Since there is no commonality



between the benefits available under Motor Vehicles Act 19 of 26 and under the provisions of ESI Act, therefore, the provisions of two Acts can not be mixed up to deny compensation to a person under Motor Vehicle Act. In a given case, even the monthly interest earned on the amount awarded under Motor Vehicles Act can be many fold higher than the total amount of benefits available under the provisions of ESI Act. Hence the benefits available under these two enactments are altogether different and separate.

27. While considering this aspect, this Court in FAO No. 881 of 2013 titled as **Paramjit Kaur and others vs. Sanjeev Pathak** and others decided on 23.08.2017 **has held that the benefits available to the dependents under ESI Act are limited in their scope, quantum, consistency, persistence and even qua entitlement and availability.** Therefore, merely because an employee has been granted benefit under ESI Act would not mean that he cannot claim compensation under Motor Vehicles Act. It would be appropriate to reproduce the relevant part of the judgment:-

"10. Another reason why two provisions cannot be mixed up to disentitle the claimants to receive the compensation is; the nature of the benefits/compensation paid/permissible under these two provisions. Under the Employees State Insurance Act, the insured or his dependents are entitled only to the compensation or benefits as specified by the provisions of the Act or the rules or the scheme framed thereunder. On the other hand, the claimants under Motor Vehicles Act are entitled to compensation of the total loss actually caused or proved by them to have been caused on account of death of 20 of 26 the deceased. **Hence, the nature and the degree of the benefits under the Employees State Insurance Act and the Motor Vehicles Act are altogether different.** There are certain benefits available, by way of judicial interpretations, under the Motor Vehicles Act, which are not even conceived or contemplated by the Employees State Insurance Act. The loss on account of love and affection and compensation on account of loss of consortium are not even contemplated by the Employees State Insurance Act. Still further under the provisions of the Employees State Insurance Act, the benefits given to



the dependents do not attained finality and continue to remain subject to review/change under the provisions of Employees State insurance Act. Section 55(a) of the Act provides for review of benefits to the dependents. As per this Section, the benefits are subject to review as per the satisfaction of the Corporation even, in case of any death or birth or marriage or remarriage or cessation of infirmity or attainment of the age of 18 years by a claimant or anyone of them.

Hence, the benefits available under Employees State Insurance Act are in the nature of contingent benefits subject to change at any time by the authorities as per their satisfaction; regarding the fulfillment of certain conditions mentioned in the provisions of the Act. On the other hand, the compensation/benefits available to the 21 of 26 dependents of a deceased who dies in a motor vehicle accident are absolute and onetime payment. Any entitlement to absolute and full scale compensation cannot be excluded by grant of any restricted benefits; which are otherwise also subject to change from time to time.

Hence, an attempt to mix and mingle the provisions of Employees State Insurance Act and the provisions of the Motor Vehicles Act qua the entitlement of the benefits of the dependent of the deceased; is totally misconceived and is without any legally sustainable basis.

11. Otherwise also, the Employees State Insurance Act is a social beneficial legislation. Therefore, the provisions of this Act cannot be interpreted in a manner as to restrict the other benefits available to the insured or his dependents on account of injury or death occurring outside employment of the insured. At the best, Section 53 of the Employees State Insurance Act can be interpreted to restrict the other 'statutory compensation' available to the employee in his capacity as an employee or his dependents under any other statutory labour law which, may have some common cover, regarding the injuries sustained by the insured or regarding the entitlement of the dependents on account of death of the insured." **{bold portions emphasized}**



14. This Court cannot agree more with the aforesaid reasons. In fact, this Court in an earlier case **United India Insurance Company Ltd. v. Vipin Kumar**¹⁰ also took a similar view, wherein the issue raised was whether the learned Motor Accident Tribunal had jurisdiction to entertain a claim petition under Section 166 of the M.V. Act, in view of bar under Section 53 of the ESI Act, which was answered in the negative. The issue in a different context also arose in the case of **Kumar Steel Inc. v. IFCO Tokio General Insurance Company Ltd.**¹¹ wherein the plea by the Insurance Company as regards the claim being barred under Section 53 of the ESI Act was rejected. It was observed that the benefits received under the ESI Scheme are fruits of the contribution that would have been made by the employee to the Employees' State Insurance Corporation and the same cannot be used as pecuniary advantage of which the tortfeasors and the insurer of the offending vehicle can claim benefit in the claim proceedings under Section 163-A of the M.V. Act.

15. This Court on perusal of the judgment in case of **National Insurance Co. Ltd. v. Hamida Khatoon & Ors.**¹² relied upon by the learned counsel for the Insurance Company finds that nowhere it was observed that claim petition filed under the Motor Vehicles Act, 1988 would not be maintainable for the bar created by Section 53 of the ESI Act. In the cited case, an Award had been passed by the Motor Accident Claims Tribunal and an appeal was filed by the insurer assailing the award on the ground that the claim petition was not

¹⁰ 2019 SCC OnLine Del 9802

¹¹ 2017 SCC OnLine Del 9740



maintainable under Section 173 of the M.V. Act in view of bar under Section 53 of the ESI Act, the High Court dismissed the appeal on the ground that no such plea had been taken before the learned Tribunal. The Supreme Court set aside the decision by the High Court and the case was remanded back to the Tribunal for working out the entitlement of the claimant by taking note of Section 53 of the ESI Act.

16. In the instant matter, claimant certainly sustained injuries in the course of his employment but at the hands of a stranger i.e. respondent No.1 driver of the offending vehicle and not on account of any act or omission attributable to the employer. The findings on issue No.1 by the learned Tribunal are not assailed in any manner holding respondent No.1 responsible for causing the accident and inflicting and causing injuries upon the appellant/claimant. In a case like the instant one, the claim petition for compensation under the provisions of M.V. Act was certainly maintainable and claimant would be entitled to such benefits, which otherwise cannot be granted under the ESI Act.

17. The sum and substance of the aforesaid discussion is that there is no duplication of the same compensation or relief. The compensation granted under the ESI Act and the compensation sought under M.V. Act operate in two different spheres of tort law and the only safeguard that needs to be provided is that the claimant would not be entitled to double benefit but relief in the nature of compensation under the two Acts, which complement each other.

¹² 2009(13) SCC 361



18. In the aforesaid view of the matter, the impugned order dated 13.04.2022 is hereby set aside. The matter is remanded back to the learned Tribunal with direction to assess the quantum of compensation taking note of the compensation already granted under the ESI Act and pass appropriate judgment-cum-award in accordance with law within three months of receiving this order.

19. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

20. The present appeal stands disposed of.

21. The parties shall appear before the learned Tribunal for addressing arguments on the quantum of compensation to be awarded to the petitioner on 15.07.2024.

DHARMESH SHARMA, J.

JULY 03, 2024

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