2025:PHHC:061878

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

FAO No.1129 of 2025 (O&M)
Date of Decision: 18.02.2025

The Employees State Insurance Corporation through its Director General, ESIC and others …..Appellants

Versus

Chamkor Singh .....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Adarsh Malik, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 11.11.2024 passed by ESI Court, Ludhiana, allowing the application filed by the respondent/claimant granting him benefit under the Employees State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act').

2. Employee filed petition under Section 75 of the ESI Act, seeking lump sum compensation, disability pension and reimbursement of expenses incurred by him on his treatment, owing to disability suffered by him in an accident arising out of and during the course of employment.

3. As per the respondent/employee, he was working with Punjab Roadways, PUNBUS, Moga as driver. He was duly insured under the ESI

Act. His ESI number is 1209590058. He suffered brain stroke, which rendered him paralytic on 21.02.2017. He was taken to ESI Hospital, Ludhiana from where he was referred to Deepak Hospital, Ludhiana. He was admitted at Dayanand Medical College and Hospital, Ludhiana on 05.03.2017. He was discharged being rendered disabled on 10.03.2017. As per the disability certificate issued by Civil Surgeon, Moga, his disability was assessed to be 50%. The employee thus claimed lump sum compensation apart from the pension as per rules.

4. Claim of the employee was contested by ESI Authorities. It was claimed that there is no provision of pension in ESI after retirement of a person under ESIC. It was pleaded that the employee has already been granted sickness benefits from 31.03.2017 to 29.09.2017 on the basis of medical certificate issued by ESI Dispensary, Moga. He has been paid extended sickness benefit from 30.09.2017 to 15.08.2018 for 309 days. It was further pleaded that no accident report was received from the employer and thus it cannot be confirmed that the insured person suffered 'employment injury' as defined under Section 2(8) of ESI (Central) Rules, 1950 (hereinafter referred to as 'the 1950 Rules').

5. On the basis of the pleadings, ESI Court framed the following issues:

> *"1. Whether the petitioner is entitled for compensation as per provision of 75 of Employee State Insurance Act, 1949, as prayed for? OPP*
>
> *2. Whether the petition is not maintainable? OPR*

> 3. *Whether the petitioner has not come to the court with clean hands? OPR*
> 4. *Relief."*

6. After analyzing the evidence threadbare, ESI Court held that the purpose of enactment of ESI Act is to provide benefits to the employee(s) in case of sickness, employment injury. The same needs liberal construction. ESI Court further held that the employment of Chamkor Singh, the claimant, stands fully proved. It has also been proved that he suffered brain stroke on 21.02.2017 that led to paralysis. Disability suffered by the petitioner stands proved and held the employee entitled for benefits under the ESI Act.

7. Mr. Malik has assailed the findings recorded by the ESI Court. It is being claimed that in case of insured-employee, Act casts duty upon the employer to submit report under Section 68 of the 1950 Rules in the prescribed format. Employer was not impleaded as party. He thus submits that in the absence of report in the prescribed format, the claim of the employee is not maintainable.

8. I have heard counsel for the appellants and have carefully gone through records of the case.

9. So far as the employment of Chamkor Singh is concerned, the same is not disputed. His insurance with the corporation is also admitted. There is no dispute w.r.t. disability suffered by him. It is admitted case of the appellant that the employee was being paid sickness benefits from 31.03.2017 to 29.09.2017 for 91 days. Medical certificate has been issued

by ESI Dispensary itself. Medical Referee-cum-Civil Surgeon, Moga found that the employee has suffered disability. It has come on record that the claimant tendered his medical fitness before coming into service as the same is required under the Rules applicable. It is not disputed that the employee was serving as driver and at the time of grant of licence, he underwent medical tests. He was employed in January, 2007. He suffered stroke and was rendered paralytic on 21.02.2017 i.e. after 10 years. During the period he was in service, he was being treated with ESI Medical Authorities. At the time of suffering of brain stroke, he first went to ESI Hospital from where he was referred to DMC & Hospital, Ludhiana. In light of aforesaid facts, this Court finds that the ailment suffered by the petitioner, falls within the ambit of 'employment injury' as contemplated under Section 2(8) of the ESI Act. Further reference can be made to Section 51A of the ESI Act, which reads as under:

> "51A. Presumption as to accident arising in course of employment
> For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment."

10. In terms of Section 51A, there is statutory presumption in favour of employee, which was required to be rebutted by the party contesting his claim by leading cogent evidence. Corporation failed to lead any evidence to rebut the presumption.

11. The corporation has succeeded in dragging a paralytic employee to courts denying his legitimate claim for last more than 8 years. The corporation needs to be more sensitive and needs to be sensitized *qua* its objective. The objective of 'the Act of 1948' and the purpose for which the Corporation has been set up was explained by Hon'ble the Supreme Court in the case of '**Employees State Insurance Corporation** versus **Ameer Husan'**, **1980 Supp SCC 334**, observing as under:-

> *"5. An attempt was made to urge that there was some conflict of decisions in the view taken by the Calcutta High Court and the view taken by the Allahabad High Court. The judgment under appeal has considered the Calcutta judgment which is unfavourable to the workman. Such minor conflicts need not provide a fruitful ground to the Corporation to rush to this Court. One cannot appreciate this too legalistic approach in the name of some conflict in decisions to force a workman whose misfortune was that he was governed by the Act and a beneficiary of the beneficent provisions of the Act to be dragged to this Court to fight for a meagre compensation with his own funds against a powerful Corporation trying to thwart his claim with the funds obtained from the very workman. The glaring paradox is that the workman suffers deduction from his wages so that the Corporation can fight him with his own money. This has led to mounting disaffection amongst industrial workmen against the Corporation. What faith the workman will have in the Corporation set up to ameliorate his misery multiplying it by appeal to court after court compelling the workman to follow in the footsteps of the Corporation to save his meagre benefit? A time has come to cry a halt to this litigious mentality on the part of public corporations set up to achieve the goals enumerated in the Constitution. This approach is destructive of the purpose for which Corporation was set up. What then is the difference between a private employer who was liable for*

> *compensation under Workmen's Compensation Act and a public sector Corporation set up to replace the private employer for providing the much needed medical relief? In fact such an approach needs to be disapproved and that is why a speaking order."*

12. It will be apt here to remind the Corporation of the observations made by Hon'ble the Supreme Court in the case of '**Shiva Kant Jha** versus **Union of India', (2018) 16 SCC 187**, wherein Supreme Court while dealing with reimbursement of medical claim though that of Government employees laid down that the real test is the factum of treatment and the Government Authorities should be alive to that and must refrain from denying the claims on technical grounds. Even *qua* the claims filed under ESI Act of 1948, Hon'ble the Supreme Court in the case of '**Fertilizers& Chemicals Travancore Limited** versus **ESI Corporation', (2009)9 SCC 485**, reminded the Corporation that the Act has been enacted for the benefit of the workers to give them medical benefits as mentioned in Section 46 of 'the Act of 1948'. The beneficiary of the Act has to be the workmen and not ESI Corporation. ESI Corporation is only an agency to implement and carry out the object of the Act.

[11] In order to maintain appeal, Corporation is required to show that the appeal involves substantial question of law. Pure finding of fact is being challenged without showing any perversity or misleading of evidence. Section 82 of the Act deals with appeals. The same reads as under:-

> "**82. Appeal**. - (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.
>
> (2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.
>
> (3) The period of limitation for an appeal under this section shall be sixty days.
>
> (4) The provisions of sections 5 and 12 of the [Limitation Act, 1963 (36 of 1963)] shall apply to appeals under this section."

13. In view thereof, this Court finds that the ESI Court rightly held respondent/employee entitled for benefits under ESI Act being an insured employee, who suffered accident during the course of employment.

14. Resultantly, finding no merit in the present appeal, the same is ordered to be dismissed.

15. Pending application, if any, shall also stand disposed off.

February 18, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No