

A.Trehan

Vs

Associated Electrical Agencies and Another

Civil Appeal No. 1919 of 1996

(S. C. Agrawal, G. T. Nanavati JJ)

10.05.1996

JUDGEMENT

NANAVATI, J.:-

1. This appeal by special leave is against the judgment of the Bombay High Court in Appeal No. 676 of 1993 whereby the order passed by a learned Single Judge of the High Court in Writ Petition No. 1406 of 1993 and also the order dated April 29, 1993 passed by Commissioner for Workmen's Compensation, Bombay have been set aside and the application filed by the appellant for compensation has been dismissed.
2. The appellant was employed by respondent No. 1 for carrying out repairs of television sets. On July 17, 1987 while he was repairing a television set a component of it burst and that caused an injury to his face. As a result thereof he lost vision of his left eye.
3. The appellant being an employee and insured person under the employees' State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act') and as the injury sustained by him was an employment injury, became entitled to the benefit of Section 46 (c) of the ESI Act. Therefore, he approached the ESI Corporation and the Corporation granted the benefit available to him under ESI Act.
4. Thereafter in September 1991 he served a notice on respondent No. 1 demanding Rs. 7 lakhs as compensation. This was followed by Application No. 108/C-18 of 1992 before the Commissioner for Workmen's Compensation, Bombay under Section 22 (2) of the Workmen's Compensation Act, 1923 wherein he claimed compensation of Rs. 1,06,785 with penalty, penal interest and costs. In that proceeding respondent No. 1 raised an objection regarding maintainability of the application under the Workmen's Compensation Act by filing an application Exhibit C-5. The objection was that in view of the bar created by Section 53 of the ESI Act, it was not open to the appellant to recover any compensation or damages under the Workmen's Compensation Act for the said employment injury. It was overruled by the Commissioner, following the Full Bench decision of the Kerala High Court in P. Asokan v. Western Indian Plywoods Ltd., Cannanore AIR 1987 Kerala 103, on the ground that ESI Act being a welfare legislation, the Parliament could not have intended to create a bar against the workmen from claiming more advantageous benefits under the Workmen's Compensation Act. Respondent No. 1 thereupon approached the Bombay High Court by way of writ petition being Writ Petition No. 1406 of 1993. A learned Single Judge of that High Court dismissed it summarily on the ground that respondent No.1 had an alternative remedy by way of first appeal under Section 30 of the Workmen's Compensation Act.

5. Respondent No. 1 preferred an appeal to the same High Court. It was heard by a Division Bench along with other appeals wherein validity of Section 53 of the ESI Act was challenged on the ground that it was beyond the legislative competence of the Parliament and was also violative of Article 14 of the Constitution. The Division Bench did not find any substance in the said challenge and upheld the validity of Section 53. It further held that in view of the bar created by Section 53 the application filed by the appellant under the Workmen's Compensation Act was not maintainable. It, therefore, allowed the appeal.

6. The only contention raised by the learned counsel for the appellant before us was that as the claim for compensation made by the appellant under the Workmen's Compensation Act was dehors the contract of service and was based on the law of torts the bar created by Section 53 of the ESI Act was not at all applicable; and, therefore the High Court committed an error in dismissing the appellant's application on the ground that it was barred by Section 53 of the ESI Act. In support of this contention the learned counsel heavily relied upon the following observation made by K. Ramaswamy J. in *Regional Director, ESI Corporation v. Francis De Costa*, (1992) 3 SCR 23.

"The general law of tort or special law in Motor Vehicles Act or Workmen's Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee."

7. The decision in *Asokan's case* (AIR 1987) Kerala 103) (*supra*) has been relied upon.

8. The ESI Act was enacted with an object of introducing a scheme of health insurance for industrial workers. The Scheme envisaged by it is one of compulsory State Insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories. The ESI Act which has replaced the Workmen's Compensation Act, 1923 in the fields where it is made applicable is far more wider than the Workmen's Compensation Act and enlarges the scope of compensation. Section 38 provides that all employees in factories or, establishment to which the ESI Act applies shall be insured in the manner provided in it. Under Section 39 the employer is also made liable to pay contribution. Section 42 provides for circumstances under which the employee need not pay his contribution. Section 46 provides for the benefits which the insured persons, their dependents and the persons mentioned therein shall be entitled to get on happening of the events mentioned therein. Sections 51A to 51D create certain fictions in favour of the employee so as to have wider coverage for him. In case of an employment injury Section 46 provides periodical payments to him or to his dependents in case of his death. Employment injury is defined by Section 2 (8) to mean a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India. Section 2 (9) defines employee to mean any person employed for wages in or in connection with the work of a factory or establishment to which the ESI Act applies. It includes other persons but it is not necessary to refer to that part of the definition. Insured person is defined by Section 2 (14) to mean a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided by the ESI Act. The Second Schedule to the ESI Act specifies the injuries deemed to result in permanent total disablement or permanent partial disablement. Rule 54 of the Employees' State Instance (Central) Rules, 1950 provides the daily rate of benefit which the employee would get if an employment injury is suffered by him. Rule 57 provides for disablement benefits. Rule 58 provides for dependent's benefits in case the injured

person dies as a result of an employment injury. Rule 60 provides for the medical benefits to insured person who ceases to be in an insured employment on account of permanent disablement. Other benefits are also conferred by the ESI Act and the Rules but it is not necessary to refer to them for deciding the point which arises in this case. Two other provisions in the ESI Act to which it is necessary to refer are Sections 53 and 61. The present Section 53 was substituted by Act No. 44 of 1960 with effect from 28-1-1968. Section 61 has been there in the Act since it came into force. It provides that when a person is entitled to any of the benefits provided by the ESI Act he shall not be entitled to receive any similarly benefits admissible under the provisions of any other enactment. Thus, by enacting Section 61 the Legislature has created a bar against receiving similarly benefits under other enactments. Section 53 before its amendment read as under :

"53. Disablement and dependent's benefits"— When an insured person is or his dependents are 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, or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act, then the following provisions shall apply, namely. :-

(i) The insured person shall, in lieu of such compensation of damages, receive the disablement benefit provided by this Act, (but subject otherwise to the conditions specified in the Workmen's Compensation Act, 1923) from the Corporation and not from any employer or other person.

(ii) to (iv)... ..

(v) Save as modified by this Act the obligations and liabilities imposed on an employer by the Workmen's Compensation Act, 1923, shall continue to apply to him."

9. Experience of the administration of the ESI Act had disclosed certain difficulties in its working. It was, therefore, further amended in 1966. Along with other amendments made in the ESI Act the Legislature substituted present Section 53 which read as under :

"Section 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 employees under this Act."

10. The Workmen's Compensation Act was enacted by the Legislature in 1923 with a view to provide for the payment by certain classes of employers to their workmen compensation for injury by accident. Section 3 (1) of the Act provides that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions contained in that Act. Under Section 2 (1) (c) word compensation is defined to mean compensation as provided for by the Act. The definition of the workmen under the Act is an under :

"workman" means any person (other than a person whose employment is of a casual

nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i)... ..

(ii) employed in the any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Force of the Union; and any reference to a workman who has been injured shall, where the workman is dead includes a reference to his dependants or any of them."

11. A comparison of the relevant provisions of the two Acts makes it clear that both the Acts provide for compensation to a workman/employee for personal injury caused to him by accident arising out of and in the course of his employment. The ESI is a later Act and has a wider coverage. It is more comprehensive. It also provides for more compensation than what a workman would get under the Workmen's Compensation Act. The benefits which an employee can get under the ESI Act are more substantial than the benefits which he can get under the Workmen's Compensation Act. The only disadvantage, if at all it can be called a disadvantage, is that he will get compensation under the ESI Act by way of periodical payments and not in a lump sum as under the Workmen's Compensation Act. If the Legislature in its wisdom thought it better to provide for periodical payments rather than lump sum compensation its wisdom cannot be doubted. Even if it is assumed that the workman had a better right under the Workmen's Compensation Act in this behalf it was open to the Legislature to take away or modify that right. While enacting the ESI Act the intention of the Legislature could not have been to create another remedy and a forum for claiming compensation for an injury received by the employee by accident arising out of and in the course of his employment.

12. In this background and context we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is against receiving 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 of 1923), 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 the bar created by Section 53 the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable.

13. The observations made in Francis De Costa (1992 (3) SCR 23) (supra) by K. Ramaswamy, J. were made in a different context. In that case the question which had arisen for consideration was whether the injury caused by an accident on a public road while an employee was on his way to join duty can be held as arising out of or in the course of his employment within the meaning of Section

2 (8) of the ESI Act. Moreover, in that case the Court was not examining the bar created by Section 53 of the ESI Act.

14. In Asokan's case (AIR 1987 Kerala 103) (supra) the Full Bench of the Kerala High Court was called upon to consider whether an employee who had received benefit under the ESI Act and wanted to file a suit in a civil Court in forma pauperis could be permitted to file such a suit in view of the bar created by Section 53 of the ESI Act. The Kerala High Court after referring to the history and development of labour welfare legislation held that Section 53 and Section 61 of the ESI Act do not bar an action founded upon the law of torts. The reason given by the Kerala High Court for taking that view is that the dominant idea of the ESI Act was to confer benefits on the workmen and not reduce or restrict a preexisting liability of the employer and that if Section 53 is interpreted or construed as creating a bar from claiming compensation in respect of a tortuous act of the employer under other provisions of law then that would amount to depriving an employee the benefit of higher compensation only for the reason that he is an employee under the ESI Act. According to the Kerala High Court Parliament could not have intended "such an operation to operate on the employees. when it enacted the Employees' State Insurance Act." We cannot agree with some of the assumptions and observations made by the Kerala High Court. Moreover, the Kerala High Court has taken that view without referring to and considering the effect of the clear and express words used in that Section. Again, that was not a case where a question whether an employee and an insured person under the ESI Act can again claim the compensation under the Workmen's Compensation Act had arisen for consideration. We are, therefore, of the opinion that neither the observations made by K. Ramaswamy, J. in Francis De Costa (1992 (3) SCR 23) (supra) nor the decision in P. Asokan's case (AIR 1987 Kerala 103) (supra) can be of any help to the appellant.

15. The Madras High Court in Mangalamma v. Express Newspapers Ltd. AIR 1982 Madras 223, Karnataka High Court in K. S. Vasantha v. Karnataka State Road Transport Corporation, (1982) 60 FJR 118 and Smt. Annapurna v. General Manager, Karnataka State Transport Corporation, 1984 Lab IC 1335, have considered the effect of the bar created by Section 53 of the ESI Act with respect to the claim for compensation made under the Motor Vehicles Act for injuries received because of an accident arising out of and in the course of employment. In our opinion, the view taken by those High Courts with respect to the object of Section 53 of the ESI Act and the nature and the effect of the bar created by it appears to be correct.

16. In the result, this appeal fails and is dismissed. No order as to costs. Appeal dismissed.