

**SUPREME COURT OF INDIA**

National Insurance Co. Ltd.

Vs.

Hamida Khatoon

C.A.No.3324 of 2009

(Dr. Arijit Pasayat J.)

06.05.2009

**JUDGEMENT**

**Dr. Arijit Pasayat, J.**

1. Leave granted.
2. Challenge in this appeal is to the judgment of the Division Bench of the Allahabad High Court dismissing the appeal filed by the present appellant (hereinafter referred to as the 'insurer').
3. Factual position which is almost undisputed is essentially as follows:

“An appeal was filed questioning the correctness of the Award made by the Motor Accident Claims Tribunal, Saharanpur (hereinafter referred to as the 'MACT') wherein a sum of Rs.1,20,000/- was awarded as compensation.

The claim petition was filed on the basis that on 1.5.1991 while Abdul Hamid (hereinafter referred to as the 'deceased') was traveling by Matador No. URF-9761 from Saharanpur to Sarsawa, a truck bearing registration No.PIJ-5166 belonging to Border Security Force (in short the 'BSF') dashed against the said vehicle resulting in serious injuries on the body of the deceased. He succumbed to the injuries at the SDB Hospital Saharanpur.

The appellant-insurer contested the claim petition inter alia taking the stand that the compensation as claimed was high and exorbitant. The MACT held that the accident occurred due to rash and negligent driving of the driver of the truck and awarded Rs.1,20,000/- as compensation.

In appeal the stand of the appellant was that the application filed by the claimant-respondent under Section 173 of the *Motor Vehicles Act, 1988* (in short the 'Act') was not maintainable in view of Section 53 of the *Employees State Insurance Act, 1948*

(in short the 'ESI Act'). The High Court did not accept the stand primarily on the ground that no such plea was taken specifically in the written statement. It was also held that as regards applicability of Section 53 of the Act certain factual aspects were to be considered. The appeal was accordingly dismissed.

4. Learned counsel for the appellant submitted that true scope and ambit of Section 53 of the ESI Act has not been kept in view.

5. Learned counsel for the respondent on the other hand supported the judgment.

6. It is to be noticed that in *Regional Director, ESI Corporation & Anr. v. Francis De Costa and Anr.*<sup>1</sup> at para 44 it was observed as follows:

44. The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. 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.

In *K. Bharathi Dev v. G.I.C.*<sup>2</sup> the contention that the deceased contracted life insurance and due to death in air accident the appellant received compensation and the same would be set off and no double advantage of damages under carriage by Air Act be given was negated.

7. In *A Trehan v. Associated Electrical Agencies*<sup>3</sup> it was observed as follows:

"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 establishments 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 dependants and the persons mentioned therein shall be entitled to get on happening of the events mentioned therein. Sections 51-A to 51-D 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 dependants 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 Insurance (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 dependant's benefits in case the injured person dies as a result of an employment injury. Rule 60 provides for the medical benefits to an 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 1966 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 similar benefits admissible under the provisions of any other enactment. Thus, by enacting Section 61 the legislature has created a bar against receiving similar benefits under other enactments. Section 53 before its amendment read as under:

"53. Disablement and dependant's benefits.--When an insured person is or his dependants 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 or 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)-(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:

"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."

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) the word compensation is defined to mean compensation as provided for by the Act. The definition of the workman under the Act is as under:

"2. (1)(n) '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 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 Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead include 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 of 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<sup>2</sup> 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."

8. In *Bharagath Engg. v. R. Rangamayaki*<sup>4</sup> it was held as follows:

8. Section 2(14) of the Act, which is the pivotal provision, reads as follows:

"'Insured person' means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act."

9. It is to be noted that the crucial expression in Section 2(14) of the Act is "are or were payable". It is the obligation of the employer to pay the contribution from the date the Act applies to the factory or the establishment. In *ESI Corpn. v. Harrison Malayalam (P) Ltd.*<sup>5</sup> the stand of the employer that employees are not traceable or that there is dispute about their whereabouts does not do away with the employer's obligation to pay the contribution. In *ESI Corpn. v. Hotel Kalpaka International*<sup>6</sup> it was held that the employer cannot be heard to contend that since he had not deducted the employee's contribution on the wages of the employees or that the business had been closed, he could not be made liable. The said view was reiterated in *ESI Corpn. v. Harrisons Malayalam Ltd.*<sup>7</sup> That being the position, the date of payment of contribution is really not very material. In fact, Section 38 of the Act casts a statutory obligation on the employer to insure its employees. That being a statutory obligation,

the date of commencement has to be from the date of employment of the employee concerned.

10. The scheme of the Act, the Rules and the Regulations clearly spell out that the insurance covered under the Act is distinct and different from the contract of insurance in general.

“Under the Act, the contributions go into a fund under Section 26 for disbursement of benefits in case of accident, disablement, sickness, maternity etc. The contribution required to be made is not paid back even if an employee does not avail any benefit. It is to be noted that under Regulation 17-A, if medical care is needed before the issuance of temporary identification certificate, the employer is required to issue a certificate of employment so that the employee can avail the facilities available. "Wage period", "benefit period" and "contribution period" are defined in Section 2(23) of the Act, Rule 2(1-C) and Rule 2(2-A) of the Rules. Rule 58(2)(b) is a very significant provision. For a person who becomes an employee for the first time within the meaning of the Act, the contribution period under Regulation 4 commences from the date of such employment from the contribution period current on that day and the corresponding benefit period shall commence on the expiry of the period of nine months from the date of such employment. In cases where employment injuries result in death before the commencement of the first benefit period, Rule 58(2)(b)(ii) provides the method of computation of dependant's benefits. It provides for computation of dependant's benefits in the case of an employee dying as a result of employment injuries sustained before the first benefit period and before the expiry of the first wage period.”

11. Rule 58(2)(b)(ii), insofar as it is relevant, reads as follows:

"58. Dependant's benefits.-- (1) \* \* \* 2(b) Where an employment injury occurs before the commencement of the first benefit period in respect of a person, the daily rate of dependant's benefit shall be-- (i) \* \* \* (ii) where a person sustains employment injury before the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate, rounded to the next higher multiple of five paise corresponding to the group in which wages actually earned or which would have been earned had he worked for a full day on the date of accident fall."

12. When considered in the background of statutory provisions, noted above, the payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an "insured person", as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise. We find that the Corporation has

filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons."

9. Above being the position in law, the appeal deserves to be allowed. The entitlement shall be worked out by the concerned MACT by taking note of Section 53 of the Act.

<sup>1</sup>1993 Suppl.4 SCC 100

<sup>2</sup>AIR 1988 AP 361

<sup>3</sup>1996(4) SCC 255

<sup>4</sup>2003(2) SCC 138

<sup>5</sup>1993(4) SCC 361

<sup>6</sup>1993 (2) SCC 9

<sup>7</sup>1998(9) SCC 74