(1969) 03 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No 70 of 1967

Bhajan Ram APPELLANT

Vs

Employees' State Insurance Corporation RESPONDENT

Date of Decision : 26-03-1969

Acts Referred:
Employees State Insurance Act, 1948 — Section 52

Citation : (1969) 03 P&H CK 0011

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : M.R. Bhatia, for the Appellant; K.L. Kapur, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Briefly the facts of this case are as follows:

Parma Nand Grover, deceased, was employed as a Line-man with the Punjab Electricity Board, Patiala, at Faridabad. He met with an accident when he was on duty on 11th May, 1964 and died as a result thereof. Bhajan Ram applicant who is his father, filed an application under sections 52 and 71 of the Employees'' State Insurance Act, 1948 (hereinafter referred to as the Act) against the respondent Corporation alleging that the deceased was insured with the Corporation and the applicant was entitled to Rs. 7000/- as compensation. The claim of the applicant was contested by the respondent on which the following issues were framed:

1. Whether the appellant is a legal heir of Parma Nand the deceased and he is entitled to receive the insured sum?

2. What amount the applicant is entitled to have from the respondent and at what rate?

The Subordinate Judge 1st Class Palwal, acting under the Act, on issue No. 1, held that the applicant was the lawful heir of the deceased and was entitled to recover the amount. Issue No. 2 was decided against the appellant and it was held that a dependant could either claim compensation under the Workmen''s Compensation Act (hereinafter referred to as Compensation Act) or under the provisions of the Act and the applicant having already received compensation under the Compensation Act, was not entitled to make the claim under the Act. In view of the finding on issue No. 2 the application was dismissed. Feeling aggrieved from the order of the learned Subordinate Judge, Bhajan Ram has filed the present appeal.

Mr. Kapur, learned counsel appearing on behalf of the respondent has raised a preliminary objection to the effect that the application filed by the appellant before the Employees Insurance Court was not made within 12 months after the claim had become due, and as such the application should be dismissed on that short ground alone. From the written statement filed by the respondent, it is clear that no such objection was taken before the trial Court. u/s 80 of the Act, it is provided that in case the Court is satisfied that there was reasonable excuse for not making a claim for the benefit within twelve months after it became due, it may direct the payment of the benefit as if the claim had been made in time. If the respondent had raised the question of limitation before the Court then the appellant (petitioner) would have led evidence to show that there was reasonable excuse for him not to have made the application within the prescribed period of limitation. The respondent having not raised this objection at the time of trial, the decision of which was dependant on evidence, cannot be permitted to raise it for the first time in this Court. Hence there is no force in the preliminary objection and is rejected.

2. On the admitted facts the short question that requires determination in this case is whether the appellant having received compensation under the Compensation Act is entitled to file this application under the Act and receive dependants'' benefit in addition to the compensation already received by him. To appreciate the respective contentions of the learned counsel for the parties it is necessary to deal with certain provisions of the Act. The Act introduces compulsory insurance scheme under which all persons in insurable employment and the employers of such persons pay contribution in consideration for which they or their dependants become entitled in certain specified events to certain benefits. The Act provides for the establishment of the Employees State Insurance fund which is to be held and administered by the Corporation established u/s 3 of the Act for the purpose of the Act. u/s 46, benefits are provided which are available to the insured persons or to their dependants as the case maybe. Where an insured person dies as a result of employment injury, then his dependants as defined in the Act, are entitled to receive dependants'' benefits as provided under sections 52 and 53 of the Act. Section 61 of the Act prevents a person entitled to any of the benefits under this Act from obtaining a similar benefit over again under any other enactment. u/s 66, a right is vested in the Corporation to recover damages from the employer under the circumstances mentioned therein. In the present case, the claim arises out of an accident which

resulted in death and the only relevant provisions are those which relate to dependants'' benefit. Under sub clause (iii) of section 53, it is provided that the dependants'' benefit shall be paid to the other dependants of the deceased (other than the one mentioned in sub-clause (ii)) at such rates as may be determined by the Employees Insurance Court having jurisdiction over the matter. Under sub-clause (v), it is provided that the obligations and liabilities imposed on the employer by the Compensation Act shall continue to apply to him save as modified by this Act. Under this Act when an insured persons dies, the dependants'' benefits are payable by the Corporation but there is no provision which bars the dependants from recovering anything from the employer or the third person. As referred to above, section 53(v) preserves the employers'' liabilities under the Compensation Act subject to the modification introduced by this Act. Great stress was laid by the learned counsel for the respondent on section 61 of the Act in support of the proposition that a person who receives some benefit under any other enactment, is not entitled to receive the same under this Act. I am unable to accept this contention of the learned counsel for the respondent. Section 61 prevents a dependant from receiving over again any benefit similar to ''dependants benefit'' which he is entitled to receive under any other enactment but does not provide for the situation as to what would happen where a person actually receives such benefit under any other enactment before he prefers a claim under the Act. If I accept the contention of the learned counsel for the respondent, then I shall be reading in section 61 something which does not exist. The Legislature, if it had so intended, would have made a provision debarring a person from claiming dependants'' benefit under the Act in case he has already received the same under any other enactment.

3. Reliance was also placed by the learned counsel for the respondent on section 66 of the Act, but it has no applicability to the facts of this case, as under this section a right is given to the Corporation to receive from an employer the actual present value of the periodical payment which it is liable to make under this Act to an insured person for employment injuries sustained by such person due to the negligence of the employer to observe the safety rules laid down by or under any enactment applicable to a factory or establishment, or by reason of any wrongful act of the employer or his agent notwithstanding that such employer had paid the weekly contribution due under the Act in respect of the injured person. The right of the dependent to claim benefit u/s 53 is independent and merely this fact that some amount of compensation has been paid to him under the compensation Act, would not disentitle him from realising the dependants'' benefits under this Act. In the written statement filed by the Manager, in reply to the application, it was never pleaded that the appellant was not entitled to any benefit under this Act as he had already received compensation under the Compensation Act. The plea taken in the written statement is in the following terms:

It is, therefore, prayed that the Hon''ble Court may decide the dependants and then determine the rate of dependants benefit as provided u/s 53 (iii) and (iv) of the E.S.I. Act. The permanent total disablement rate in this case is Rs. 2 and A. 1 Annas thirty three only, and according to the section 53(iv) the maximum dependants benefit available in that case should not exceed Re. 1 Anna half, i.e., half of the permanent disablement benefit rate.

If any such objection had been raised, the Court would have decided this point on merits. There is no evidence on the record to prove that the appellant had received similar benefits earlier to which he is entitled under this Act. Even no issue was claimed by the respondent. Viewed from any angle, I find that the appellant is entitled to receive dependants benefit under this Act and merely this fact that he has already, obtained compensation under the Compensation Act, does not disentitle him to receive dependants'' benefit under this Act. Accordingly the finding of the trial Judge is set aside.

4. It was also argued by Mr. Kapur, learned counsel for the respondent, that an appeal shall lie to this Court u/s 82 (2) of the Act if it involves a substantial question of law. In my opinion the question whether the appellant is entitled to dependants'' benefit under this Act when he has already received compensation under the Compensation Act, is a substantial question of law.

5. For the reasons recorded above, I allow this appeal, set aside the order of the trial Court and remand the case for decision on merits in accordance with law. The parties are directed through their counsel to appear before Subordinate Judge 1st Class, Palwal, on April, 21, 1969. In the circumstances of the case, there will be no order as to costs.