

(2006) 10 PAT CK 0040
In the Patna High Court
Case No : Civil Revision No. 794 of 2004

Bharat Wagon and Engineering Company Ltd. and Others	APPELLANT
Vs	
Md. Yunus and Others	RESPONDENT

Date of Decision : 31-10-2006

Acts Referred:

Citation : (2006) 10 PAT CK 0040

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—Petitioners have filed the civil revision application against the order dated 24.4.2004 passed by Sub-Judge, IVth, Muzaffarpur in Title Suit No. 154 of 1998 by which he has rejected the application under Order 14 Rule (2) of the CPC after considering the preliminary Issues No. VIII and IX regarding the maintainability of the suit.

2. The said issues respectively were whether the civil court has no jurisdiction to entertain the suit and grant the relief ask for and whether the suit is barred under provisions of Employees State Insurance Act, 1948.

3. Plaintiff-opposite party No. 1 had filed the said suit for the award of compensation, tort and damages amounting to Rs. 2,48,786.68 and other consequential relief against the defendant M/s.Bharat Wagon and Engineering Company Ltd. and Employees State Insurance Corporation. The case of the plaintiff is that on 10.12.1988 while working for the said company as an employee (worker) he got injury on his head due to slip of the Jaw key handle while he started his work and as a result his right side was much affected. It is stated thereafter he was treated by Medical Officer of the Company and also doctors in E.S.I. Hospital and subsequently at Sadar Hospital, Muzaffarpur and others places. It is alleged by the petitioner that as a result of the said injury even after treatment his right ear had become completely defunct and left ear which was a little affected also become defunct gradually and even for hearing little he relied upon a machine which it is admitted has been supplied by the company. It is claimed by the plaintiff-opposite party No. 1 that despite the fact

that he approached E.S.I. officials several times for payment of claim through the defendant company, payment of compensation has not been made saying that the documents for claim were not sent in time to the office of the E.S.I. by the defendant company. Thus, he had demanded compensation several times and he had been running from pillar to post but he could get nothing except false assurance and he had become completely disabled and he has also suffered mental torture at the hands of the petitioners for which the defendants-petitioners are liable for compensation and damages along with pendentelite and future interest @ 12% or more as well as penalty for not paying compensation in time and harassing. It is stated in the plaint that the cause of action arose to the plaintiff on 10.12.1988 when the accident took place and demand for compensation was made and lastly on 6th June when the demand for compensation was made and refused by the defendant petitioners.

4. Defendants appeared in the said suit and filed the written statement and subsequently filed an application under Order 14 Rule 2 of the C.P.C. for deciding the two aforesaid issues as preliminary issues.

5. After hearing the parties, by the impugned order dated 24.4.2004 the learned Sub-Judge held that this suit cannot be disposed of only on the said two issues because at this stage prima facie it appears that civil court has got jurisdiction to try the suit and the suit is not barred under E.S.I. Act and final decision on above two issues is only possible at the stage of final hearing of the suit and, therefore, all the issues shall be decided at on time. Aggrieved by the said order the present civil revision application has been filed by the Company.

6. Learned Counsel for the petitioners submits that the suit in question is barred by Sections 53 and 75(3) of the Employees State Insurance Act, 1948. According to the learned Counsel Section 75(3) bars the jurisdiction of the Civil Court to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under the said Act is to be decided by Medical Board or Medical Appeal Tribunal or the Employees' Insurance Court. It is further submitted that u/s 53 of the Act an Insured person or his dependents shall not be entitled to recover from Employer or from any other person any compensation or damages under workmen's Compensation Act or any other law for the time being in force in respect of any employment injury sustained by injured person as an employee under the Act. Learned Counsel for the Petitioners further submits that the basis for the compensation is the accident allegedly suffered by the plaintiff opposite party on 10.12.1988 and the claim of compensation for the employment injury which allegedly arose out of the same can only be adjudicated upon under the provisions of E.S.I. Act, even if the said damages, are claimed by applying the general law of Tort as admitted in the plaint. It is submitted by the learned Counsel that the court below has wrongly held that the present matter being one under general court Law it can be considered only by the civil court which it competent to adjudicate upon the same. It is further submitted by the learned Counsel that in view of the provisions contained in

Sections 54(A), 76, 75(2)(A) and 77(1) and (1A) of the Act it is not open to the plaintiff to take the plea that he has taken that it is only on account of failure of the officials of the company that the plaintiffs claim has not been considered and allowed by the E.S.I. authorities, because under the provisions of the Act it is at all times open to the petitioner to make a claim before the competent authority on his own end as a matter of fact it is required by Section 77 of the Act that in a proceeding before an Employees' Insurance Court application must be made within a period of three years from the date on which the cause of action arose.

7. In support of his aforesaid contention learned Counsel for the petitioners relief upon a decision of the Supreme Court in the case of Western India Plywood Limited Vs. P. Ashokan, in paragraph 11 of which it has been laid down :

In view of the aforesaid observations in Trehan's case AIR 1996 SCW 2375, with which we respectfully agree, it is clear that the respondent could not make a claim for damages. Section 53 disentitles an employee who has suffered an employment injury from receiving or recovering compensation or damages under the workman's Compensation Act or any other law for the time being in force or otherwise. The use of the expression "or otherwise" would clearly indicate that this section is not limited to ousting the relief claimed only under any statute but the wordings of the section are such that an insured person would not be entitled to make a claim in Torts which has the force of law under the ESI Act. Even though the ESI Act is beneficial legislation the Legislature had thought it fit to prohibit an insured person from receiving or recovering compensation or damages under any other law, including Torts, in cases where the injury had been sustained by him is an employment injury.

8. Learned Counsel also relies upon another decision of the Supreme Court in a case of B.S. Bharti Vs. I.B.P. Company Ltd., in which it has been laid down, in the context of the Industrial Disputes Act which has a similar provision barring jurisdiction of the civil court, that workman concerned must seek his remedy under the said Act and he cannot be permitted to resort to remedy by way of a civil suit which is otherwise not maintainable in law.

9. On a consideration of the submissions of the learned Counsel for the petitioners and in view of the law laid down in Western India Plywood's Case it is evident that any claim for compensation which arises out of an employment injury sustained by a workman can only be adjudicated upon in terms of the provisions of the ESI Act and not otherwise. It has been clearly held by the Apex Court that the provisions of Section 53 and 61 of the Act bar the workman/employee who is covered by the E.S.I. Act from approaching any other forum for redressal of his grievance, including a claim, in tort, in a case where the injury sustained by him is an employment injury.

10. On a consideration of the impugned order of the court below I find that the learned court below had been misled by the manner in which the plaint had been drafted to hold that the evidence would be required on the various points and

that the suit was not barred under the provisions of the E.S.I. Act. Even according to the plaint the cause of action for the suit arose with the alleged employment injury received by the plaintiff opposite party on 10.12.1988 and, thus, the bar of the E.S.I. Act, 1948 would clearly apply to the maintainability of a suit in a Civil Court and a mere inclusion of various other facts regarding negligence or otherwise of various officials cannot take the case outside the purview of the Act. In any case it is apparent from the facts and circumstances of the case that it was open to the petitioner to have taken recourse under the E.S.I. Act by filing an application for the said purpose.

11. In the aforesaid view of the matter the impugned order dated 24.4.2004 is set aside and it is held that the suit is not maintainable in view of the bar contained under the provisions of the E.S.I. Act.

12. The application is accordingly allowed.