

(2015) 07 RAJ CK 0216
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 2035 of 2012

Jai Raj Tex

APPELLANT

Vs

Anasi

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Employees State Insurance Act, 1948 — Section 53, 61

Citation : (2015) 147 FLR 1104 : (2016) LLR 204

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Yashwant Mehta, for the Appellant; P.D. Bohra, for the Respondent

Final Decision : Allowed

Judgement

Pratap Krishna Lohra, J.—Appalled by the impugned judgment and order dated 3rd of August, 2012 passed by the Employee's Compensation Commissioner, Pali (for short, "learned Commissioner"), the appellant-employer has laid this appeal under section 30 of the Employee's Compensation Act, 1923 (for short, "Act of 1923"). The learned Commissioner, while adjudicating the claim laid on behalf of respondent under the Act of 1923, awarded her compensation to the tune of Rs. 4,48,000/- with penalty of Rs. 48,000/- and other expenses Rs. 2,500/-.

The aforesaid compensation with penalty and other expenses was granted to the respondent mother of the employee who died while in employment. The learned Commissioner has recorded a definite finding that death of son of respondent-claimant has occasioned by accident arising out of and in the course of his employment.

The learned Counsel for the appellant Mr. Yashwant Mehta has argued that factum of employment and occurrence of accident is not in dispute but the claim laid by the respondent was not tenable under the Act of 1923 because deceased employee Omprakash was an insured person within the four corners of the

Employees" State Insurance Act, 1948 (for short, "Act of 1948"). Learned Counsel has urged that the appellant establishment is covered under the provisions of the Act of 1948 having Code No. 15/14882/19, the claim laid by the respondent-claimant itself was barred by virtue of section 53 & 61 of the Act of 1948, and therefore, impugned judgment cannot be sustained. Learned Counsel would contend that the respondent-claimant is in receipt of the requisite benefits under the Act of 1948 and an order to this effect was passed by the Employees" State Insurance Corporation on 25th of April 2013 and as a consequence a cheque of Rs. 91,893 was also issued to her in May 2013 itself. With these submissions, learned Counsel has submitted that the impugned judgment is liable to be reversed and set aside.

2. Mr. P.D. Bohra, learned Counsel for the respondent-claimant has not disputed the factual position that respondent is in receipt of benefits under the Act of 1948. Learned Counsel for the respondent has also admitted this fact that she has received a cheque worth Rs. 91,893/- in May 2013.

3. Upon examining the matter in its entirety, it is abundantly clear that respondent has received requisite benefits due to accidental death of her son while in employment. It is trite that for any calamity, which has occasioned during the course of employment, the dependents of the employee cannot claim double benefits i.e. by invoking the provisions of the Act of 1948 as well as Act of 1923. Well it is true that both the Acts are welfare legislations and the object of both the enactments is to offer some succor to an injured employee or to the dependents in the event of death of the employee, but such benefit cannot be claimed under the provisions of both the Acts simultaneously.

4. Section 53 of the Act of 1948 envisage a clear bar against receiving or recovery of compensation or damages under any other law. Similarly, section 61 also contemplates bar of benefits under other enactments. The complete text of section 53 and 61 of the Act of 1948 is reproduced 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.

61. Bar of benefits under other enactments.--When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

5. Thus, in view of undisputed factual position and settled position of law, the learned Commissioner has acted de hors the law while passing the impugned judgment and consequently the same is not sustainable. Taking into account clear bar under section 53 of the Act of 1948, the claim of respondent was not at

all tenable under the Act of 1923 and consequently the impugned judgment is liable to be annulled.

6. The upshot of the above discussion is that the instant appeal is allowed, the impugned judgment and order dated 3rd of August, 2012 passed by the learned Commissioner is quashed and set aside and the claim petition laid by the respondent claimant is dismissed in toto. As the appeal preferred by the appellant is allowed and the impugned judgment is set aside, the appellant shall be at liberty to apply before the learned Commissioner for disbursement of the amount of compensation deposited by it pursuant to the order passed by this Court. The learned Commissioner is expected to pass appropriate order on the application of the appellant in this regard strictly in accordance with law. The parties shall bear their own costs.