

---

**(1996) 09 P&H CK 0041**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 779 of 1996**

Manpreet Kaur and Others

APPELLANT

Vs

Assistant Labour Commissioner for Workmen's Compensation  
and Others

RESPONDENT

---

**Date of Decision :** 10-09-1996

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 53

**Citation :** (1997) ACJ 164 : (1996) 114 PLR 564

**Hon'ble Judges :** Sarojnei Saksena, J

**Bench :** Single Bench

**Advocate :** K.S. Chahal, for the Appellant; R.S. Ahluwalia, for the Respondent  
Nos. 2 and 3, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Sarojnei Saksena, J.—Petitioners have assailed the order of the Assistant Labour Commissioner and Commissioner for Workmen's Compensation, Rajpura District Patiala dated 6.9.1995 whereby petitioner's petition filed u/s 140 of the Motor Vehicles Act, is disallowed.

2. Brief facts of the cases are that the petitioners are daughter, son and widow of Gurdev Singh, who was an employee/driver of respondent No. 2 on Car No. PUC/193. On 30.9.1983 when on his official duty, he was returning from Chandigarh to Patiala, this car fell in Bakhra Canal, resultantly, Gurdev Singh died in the accident/ Petitioner-defendants of Gurdev Singh filed the petition before respondent No. 1 claiming compensation on account of death of Gurdev Singh. This petition was filed in the month of March, 1993 under the Workmen's Compensation Act. During the pendency of this petition on 26.4.1995 petitioners filed petition u/s 140 of the Motor Vehicles Act and claimed Rs. 50,000/- as compensation on account of "no fault liability."

3. Respondent Nos. 2 and 3 denied the allegations made in the petition.

4. By the impugned order, learned Assistant Labour Commissioner-respondent No. 1 dismissed their petition on the grounds that the claimants have already availed the benefits under the Employees' Insurance Act and issue regarding maintainability of the main application for compensation is pending orders on its merits hence, the petition was dismissed.

5. Petitioners' learned counsel contended that a bare perusal of Section 143 of the Motor Vehicle Act, 1988 makes it clear that the provisions of Section 140 are applicable in the cases which are filed under the Workmen's Compensation Act, 1923. Thus, according to him, learned respondent No. 1 fell into an error in dismissing the claimants' petition filed u/s 140 of the Motor Vehicles Act.

6. Respondents' learned counsel contended that by filing the aforementioned petition, petitioners have claimed Rs. 50,000/- as compensation on account of "no fault liability". Gurdev Singh died in accident on 30.9.1983, of course in the course of his employment. Section 140 of the Motor Vehicles Act, 1988 is amended in September, 1994 providing grant of compensation to a sum of Rs. 50,000/- on account of "no fault liability". Earlier Rs. 25,000/- were awardable under this Head. Thus, according to him, since on the date of accident, i.e. 30.9.1983, this amendment was not made in Section 140 of the Motor Vehicles Act, therefore, the claimants are not entitled to claim Rs. 50,000/- though not admitting their entitlement to claim compensation under "no fault liability". Under the Head of "no fault liability" he contends that if at all they are entitled to claim any amount on this basis, they can claim only Rs. 25,000/-. To support this contention, he has relied on Surinder Kaur Vs. Lakhbir Singh and Others, .

7. So far as maintainability of Such a claim petition is concerned, he submitted that the claimant No. 3 has already been appointed as a Peon by Respondent No. 2 on 2.12.1986. All these claimants are getting pension and other benefits under the provisions of Employees' State Insurance Act, 1948. He vehemently argued that under Sections 53 and 61 of the Employees' State Insurance Act (Amendment Act) 1989, claimants are not entitled to claim compensation or damages under the Workmen's Compensation Act, 1923 or under 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. Section 61 of the Employees' State Insurance (Amendment) Act, 1989 provides that "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." Thus, according to him, claimants are not entitled to claim any compensation either under the Workmen's Compensation Act or under the provisions of the Motor Vehicles Act from respondents 2 and 3. To strengthen his argument has relied on A. Trehan Vs. M/s. Associated Electrical Agencies and another, Admittedly, in this case the claimants-petitioners are dependants of deceased Gurdev Singh, who was an employee/driver of respondents 2 and 3. During the course of his employment, Gurdev Singh died on 30.9.1983. These facts are not disputed before me. In March, 1993 claimants have filed this

petition under the provisions of Workmen's Compensation Act claiming compensation from respondents 2 and 3 on account of death of Gurdev Singh during the course of his employment. Delay in filing the petition was condoned by the impugned order. Claimants also claimed Rs. 50,000/- on account of "no fault liability" u/s 140 read with Section 143 of the Motor Vehicles Act. Section 53 E.S.I. Act as amended w.e.f. 28th January, 1968 by the Act No. 44 of 1966 reads as under :-

"... 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."

Section 61 of this Act runs as under :-

"... 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."

Thus, it is obvious that once the claimants have received benefits under the Employees' State Insurance Act, 1948 which is not disputed before me, they are not entitled to claim any compensation either under the Workmen's Compensation Act or under any of the provisions of the Motor Vehicles Act.

8. In Mr. A. Trehan's case (supra) the Apex Court has considered the provisions of both these Sections of the Employees' State Insurance Act, 1948, and has held :-

"... 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 E.S.I. 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 Workman's Compensation Act in this behalf it was open to the Legislature to take away or modify that right. While enacting the E.S.I. 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."

Their Lordships further observed that :-

"... In this background and context we have to consider the effect of the bar created by Section 53 of the E.S.I. 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 or proper to infer a different intention by referring to the previous history of the legislation. That would amount to by-passing 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 as employee under the E.S.I. 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."

Thus, it is obvious that the said legal provision is not res-integra now. Resultantly, I find that respondent No. 1 has rightly passed the impugned order.

Consequently, this petition filed u/s 227 of the Constitution for quashing the said order is hereby dismissed.