
(2018) 04 P&H CK 0441

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1071, 5437 Of 2015 (O&M)

New India Assurance Co. Ltd.

APPELLANT

Vs

Kuldeep Singh And Others

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Employees' State Insurance Act, 1948 — Section 53

Citation : (2018) 191 PunLR 488

Hon'ble Judges : Surinder Gupta, J

Bench : Single Bench

Advocate : D.K. Prajapati, J.J.S. Uppal, I.P.S. Issar

Final Decision : Dismissed

Judgement

1. The above captioned appeals have been taken up together as both arise out of award dated 10.11.2014 passed by Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali (later referred to as 'the Tribunal'), whereby claimants, Kuldeep Singh Grewal and others, were allowed compensation of Rs.12,60,000/- for death of Harinder Singh, husband of claimant-appellant no. 2- Baljinder Kaur, father of claimant-appellant no. 3-Manat Grewal and son of claimant-appellant no. 1- Kuldeep Singh Grewal, in a motor vehicle accident with Libra Bus Service Pvt. Ltd. bearing registration no. PB-013-T-3837.

2. Claimants have filed appeal (FAO No. 5437-2015) seeking enhancement of compensation while insurer of the offending vehicle i.e. New India Assurance Co. Ltd. has sought setting aside of award passed by the Tribunal.

BRIEF FACTS:-

3. Claimants have described the manner of accident in para 24 of the claim petition, which reads as follows:-

"On 16.07.2013, at about 7.10 a.m., the deceased was driving the school bus of Indus Public School Badala. He picked the children from village Mamupur and

was going towards the school. When the bus was stopped to approach the main road then a Libra Bus which was going from Kharar to Morinda, the driver of the bus hit the school bus in a rash and manner due to which the school bus turned/rolled out on the road. The Libra bus was being driven by its driver in a very rash and negligent manner at a very high speed. Resultantly the school children and the deceased driver of school bus received serious injuries and the passerby's dragged the injured persons from the bus. The deceased and many other children of the school bus died on the spot due to the grievous injuries sustained by them in the said accident. The said accident took place (sic due) to the negligent driving of the driver of Libra Bus No. PB-13-T-3837. After hitting the school bus, the Libra Bus also hit a Swift car due to which the occupants of the car also sustained injuries and after hitting both these vehicles due to rash and negligent driving by the driver, the driver fled away from the spot while leaving the bus at the spot and the bus was taken into custody by the police immediately and later on the driver was also taken into custody and a case was also registered with Police Station Kharar. The said accident took place due to the rash and negligent driving of the driver of offending vehicle, who was driving the vehicle at that time."

4. As per claimants, the deceased was 45 years of age and was earning Rs.7000/- per month as salary. On receipt of information regarding the accident, FIR No. 109 dated 16.07.2013 was registered at Police Station Kharar. The Tribunal held that accident was caused due to rash and negligent driving of the offending vehicle by its driver-Rashpal Singh (respondent no. 5 in FAO-1071-2015 and respondent no. 2 in FAO-5437-2015). Issue no. 2 "whether the claim petition is not maintainable?" was not pressed before the Tribunal and the finding on this issue was recorded against owner, driver and insurer of the offending vehicle.

5. In the appeal (FAO-1071-2015) filed by insurer of the offending vehicle award has been challenged in view of fact that claimants are receiving pension from E.S.I. Corporation and under Section 53 of the Employees' State Insurance Act, 1948 (later referred to as "the E.S.I Act"), claimants are barred from receiving or recovery of compensation under any other law. Appellant has alleged that Tribunal has gravely erred while ignoring receipt compensation of Rs.50,000/- from employer-School and pension of Rs.6500/- from E.S.I. Corporation by claimants. Death of Harinder Singh was caused during course of his employment and once family of the deceased has been granted compensation under E.S.I. Act, they are not entitled to any compensation under the Motor Vehicle Act.

6. I have heard learned counsel for parties and have perused the paper-book and record of the Tribunal with their assistance.

7. Insurer of the offending vehicle has come up with this appeal (FAO-1071-2015) raising the plea that claim petition is not maintainable as per provisions of Section 53 of the E.S.I. Act.

8. On perusal of written statement filed by appellant-Insurance Company before the Tribunal, I find that no such plea was raised in the reply. It was nowhere the case of appellant-Insurance Company in reply filed before the Tribunal that claimants have claimed any compensation for death of Harinder Singh under the E.S.I. Act, as such, claim petition is barred under Section 53 of E.S.I. Act.

9. Learned counsel for claimants-respondents no. 1 to 3 while referring to observations of Division Bench of Karnataka High Court in case of Shridevi vs. S. Sarojini, 2011 ACJ 161, has argued that prohibition applies when compensation is claimed against employer of the deceased and not when application is filed against insurer of the offending vehicle. He has also drawn my attention towards observations of coordinate Bench of this Court in case of Nanku Ram vs. Mohan Singh and others, 2014 (3) PLR 453, wherein also similar view has been taken.

10. Learned counsel for appellant-Insurance Company has relied upon observations of Hon'ble Apex Court in case of National Insurance Co. Ltd. vs. Hamida Khatoon and others, 2009 (13) SCC 361 in support of his contention that with regard to employment injuries, claim petition under provisions of Motor Vehicle Act is not maintainable.

11. As already discussed, appellant-Insurance Company has not taken any plea before the Tribunal that claim petition is barred under Section 53 of the E.S.I. Act, as such, it is barred from raising this plea for the first time in this appeal. Secondly, there is no evidence on record that claimants have got any benefit under the E.S.I. Act from the employer.

12. RW-1 Harinder Singh, accountant of Indus Public School has stated that the school gave assistance of Rs.50,000/- to family of the deceased, who was a temporary employee of the school. Amount of Rs.50,000/- given by the school to family of the deceased was not compensation but appears to be a humanitarian assistance. The grant of pension by E.S.I. Corporation to family of the deceased is also not compensation as the pension is granted to family of the deceased as per provisions of the E.S.I. Act.

13. In case of Hamida Khatoon (supra), it is not clear from the fact that as to whether defence was taken for the first time in appeal or the plea was also raised before the Tribunal that petition was barred under Section 53 of the E.S.I. Act. Hon'ble Apex Court in that case has held as follows:-

"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."

14. While disposing of appeal, Motor Accident Claims Tribunal was directed to work out entitlement of claimant by taking note of Section 53 of E.S.I. Act. The Division Bench of Hon'ble Karnataka High Court in case of Shridevi (supra) has observed in para 5 of the judgment as follows:-

"5. No doubt, the accident has occurred in the course and out of employment. The petitioners have not made any claim against the employer in the petition. The claim is against the offending lorry and the insurer of the lorry. The insurer of the lorry has issued policy under the terms of Motor Vehicles Act. The deceased would be a third party as against the insurer of the offending vehicle. The prohibition under Section 53 of the ESI Act would come into play only when compensation is claimed against the employer of the deceased.

6. In the instant case, the petitioners have filed the claim application against the insurer of the offending vehicle on the ground that the deceased is a third party. Therefore, the provisions of Section 53 of the ESI Act would not come in the way to grant compensation to the deceased....."

15. A coordinate Bench of this Court (K. Kannan, J.) in case of Nanku Ram (supra) has observed in para 2 of the judgment as follows:-

"2. I had the assistance of the counsel for the appellant and also Mr. Amit Rawal, Senior Advocate, as Amicus Curiae. Both the counsel have brought to my attention the decisions of the Supreme Court and other High Courts.

The Supreme Court in its decision in Western India Plywood Limited Versus P. Ashokan-1997 (7) SCC 638 held that the object of Section 53 of the Act was to save the employer from facing more than one claim in relation to the same accident. The Supreme Court left the question open of what would happen if the claim is not made against the employer but was made against the tort-feasor of a vehicle who had caused the accident that resulted in disability. In paragraph 14 of the judgment, the Supreme Court left the issue open since the Supreme Court was considering a claim where the claim was not against a third party but against the employer himself. That marked, according to the counsel for the appellant, the difference from this case and which has been considered in a Division Bench of the Karnataka High Court in Shridevi Versus S. Sarojini-2011 ACJ 161 and yet another Division Bench of the Kerala High Court in K.P.

Kuriakose Versus G. Santhosh Kumar and others-2010 ACJ 662. In both the decisions, the respective Benches have held that an injured receiving disablement benefits under the ESI Act would be barred from making a claim against his employer in respect of the same injury before the MV Act but a claim for compensation in tort against a stranger can co-exist with claims for benefits under the ESI Act. This court itself had taken a similar view but without reference to the said two decisions stated before me now in Mobin Khan Versus Neeraj Kumar-2013(2) PLR 56 that Section 53 stipulated a bar to an employee only in case of employment injury and the plea that the claim (sic claimant) would be barred from prosecuting a petition under the MV Act was rejected. I am in respectful agreement with the view taken by the Division Benches and hold that the petition was not barred."

16. In view of above settled proposition of law, I am of the considered opinion that in the absence of any pleading before the Tribunal that the claim petition is barred under Section 53 of the E.S.I. Act; absence of any evidence that any compensation has been claimed from E.S.I. Corporation for injuries and death of Harinder Singh and law settled above that the claim petition is not barred under the Motor Vehicle Act against the tort-feasor, the appeal (FAO-1071-2015) filed by Insurance Company has no merit on this issue.

17. The Tribunal awarded the compensation of Rs.12,60,000/- to claimants for death of Harinder Singh, which was computed as follows:-

(i)

Name of the deceased

Harinder Singh

(ii)

Age of the deceased

45 years

(iii)

Annual income of the deceased as assessed

(Rs.7100 X 12) =

by the Tribunal

Rs.85200 per annum

(iv)

Compensation calculated after applying the

(Rs.85200X14) =

multiplier of 14

Rs.1192800

(v)

30% of (iv) added towards future prospects

(Rs.1192800+357840) =

Rs.1550640

(vi)

1/3rd of (v) deducted towards personal

(Rs.1550640-516880)

expenses

=Rs.1033760

(vii)

Compensation for funeral expenses

Rs.25000

(viii)

Compensation for loss of love and affection

Rs.100000

(ix)

Compensation for loss of consortium

Rs.100000

Total

Rs.1258760 (rounded off

to Rs.1260000)

18. The deceased was between the age group of 41 to 45 years. The Tribunal while computing amount of compensation has awarded 30% addition in income of the deceased towards future prospects and compensation of Rs.2,25,000/- under the conventional heads, which as per law settled by Hon'ble Apex Court in case of National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, is to be restricted to 25% and Rs.70,000/- respectively.

19. Learned counsel for claimants-appellants in FAO No. 5437 of 2015 has fairly conceded the law as settled by Hon'ble Apex Court in case of Pranay Sethi (supra). The Tribunal has taken income of the deceased as proved by claimants, as such, there is no scope of enhancement of compensation on this score. 25% addition in income of the deceased is to be made towards future prospects and

the amount of compensation under the conventional heads i.e. for loss of consortium, loss of estate and funeral expenses is also to be restricted to Rs.70,000/-. The compensation to which claimants are entitled is reassessed as follows:-

(i)

Monthly income of the deceased

as

Rs.7100 per month

assessed by the Tribunal

(ii)

25% of (i) above added towards future

(Rs.7100+ Rs.1775)=

prospects

Rs.8875 per month

(iii)

1/3rd of (ii) above deducted towards

(Rs.8875- Rs.2958) =

personal expenses

Rs.5917 per month

(iv)

Compensation calculated after applying

(Rs.5917X12X14) =

the multiplier of 14 in view of age of the

Rs.994056

deceased

(v)

Compensation

towards

loss

of

Rs.40000

consortium

(vi)

Compensation towards loss of estate

Rs.15000

(vii)

Compensation towards funeral expenses

Rs.15000

Total

Rs.1064056

20. As a sequel of my above discussion, the appeal (FAO No. 1071 of 2015) filed by New India Assurance Co. Ltd. has merit and the same is accepted and award of the Tribunal is modified and the compensation allowed to claimants for death of Harinder Singh is reduced from Rs.12,60,000/- to Rs.10,64,056/-. Consequently, the appeal (FAO No. 5437 of 2015) filed by claimants seeking enhancement of compensation, has no merit and the same is dismissed.

21. New India Assurance Company being insurer of the offending vehicle will deposit the share of claimant-appellants no. 1 and 2 in their bank accounts or pay the same through demand draft. The share of claimant- appellant no. 3, who is minor, will be deposited in some nationalized bank as fixed deposit till the period she attains majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and they shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in her name after the date of her attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after minor claimant has attained age of majority. Claimant no. 2-Smt. Baljinder Kaur, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of her brought up.

22. In the event of demise of any of the claimants before or after passing of award, compensation of his/her share shall be paid to surviving claimants.