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**(2013) 08 DEL CK 0158**  
**In the Delhi High Court**  
**Case No : MAC. APP. 189 of 2012**

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| Oriental Insurance Co. Ltd.   | Vs | APPELLANT  |
| Sanjay Kumar Singh and Others |    | RESPONDENT |

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**Date of Decision :** 01-08-2013

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 53  
Motor Vehicles Act, 1988 — Section 140, 166

**Citation :** (2013) 08 DEL CK 0158

**Hon'ble Judges :** Suresh Kait, J

**Bench :** Single Bench

**Advocate :** Tarkeshwar Nath, for the Appellant;

**Final Decision :** Disposed Off

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## Judgement

Suresh Kait, J.

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1. The present appeal has been preferred against the impugned award dated 20.12.2011, whereby the learned Tribunal has granted a compensation to the tune of Rs. 1,87,500/- in favour of the respondent/claimant. Vide the present appeal, the appellant/Insurance Company has raised only one ground that the learned Tribunal has failed to appreciate Section 53 of The Employees' State Insurance Act, 1948 (for short "ESI Act") bars receiving of compensation or damages under any other law including Motor Vehicles Act, 1988.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has argued that the respondent/claimant had already received a sum of Rs. 23,026/- from ESIC, therefore, Section 53 of ESI Act came into play and bars the compensation granted under any other law for the time being in force or otherwise in respect of an employment injury.

3. In support of his contention, learned counsel has relied upon a case of

National Insurance Co. Ltd. Vs. Hamida Khatoon and Others, before the learned Tribunal and before this Court as well. He submits that in view of Section 53 ESI Act, the respondent/claimant is not entitled to even a single penny as compensation under the Motor Vehicles Act, 1988 or any other Act, if he has taken any of the benefit under ESI.

4. Learned counsel further submitted that at the time of the accident, the injured was employed as a Machine Operator and was earning Rs. 3,500/- per month. He received injuries due to which he suffered permanent disability of 10% as has been proved by the disability certificate Ex. PW4/A. On the date of recording the testimony, i.e., 01.02.2011, he was doing a private service and was getting a salary of Rs. 5,850/- per month.

5. He also submitted that as per the testimony of the claimant and other witnesses, it is established that the claimant had got reimbursement of Rs. 5,612/- plus Rs. 9,000/- from his employer and a sum of Rs. 23,026/- from ESIC. In view of the above, the learned Tribunal has erred in granting compensation in favour of the respondent/claimant.

6. The claim petition was filed before Id. Tribunal under Sections 166 & 140 of the Motor Vehicles Act, 1988. As claimed by the respondent/claimant that on 06.12.2004, the claimant/injured was waiting with his friend at "T" point, Mayapuri Road on Pankha Road when the offending Bus No. DL-1PB-4647 being driven by its driver in a rash and negligent manner came at a high speed and after taking a sharp left turn, hit the respondent/claimant. As an impact thereof, he fell down and both his legs were crushed under the wheel of the bus. He was a young man of about 27 years and was working as a Machine Operator and earning Rs. 3,500/- per month. He remained hospitalized for about four months and had incurred/expenses of about Rs. 40,000/- towards his treatment.

7. In view of the discussion in Para above, it is clear that the present case comes under the Motor Vehicles Act, 1988. The respondent/injured had not received injuries on account of his employment. In other way, the injuries sustained by him cannot be termed as "employment injury". Bar of Section 53 ESI Act applies only in respect of employment injuries sustained by the insured person as an employee under the ESI Act.

8. For the convenience, Section 53 ESI Act 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 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.]

9. On perusal of the aforesaid Section, it is clear that the injuries are covered

under this Section only, if the same are sustained during the course of employment. Hence, the present case does not fall under that category as there is nothing on record, whatsoever, for reaching to the conclusion that the injuries suffered by the respondent/claimant were employment injuries.

10. On perusal of the judgment in case of Hamida Khatoon (Supra) relied upon by the learned counsel for the appellant/Insurance Company, nowhere it is observed that claim petition filed under the Motor Vehicles Act, 1988 will not be maintainable, if any of the benefit is taken under the ESI Act.

11. Above being the position, if the amount spent on medicines and treatment is reimbursed by the employer and that has been deducted from the compensation awarded under the Motor Vehicles Act, therefore, I do not find any discrepancy thereto.

12. In view of the aforesaid discussions, ESI Act is not applicable in the facts and circumstances of the present case as the amount received by the respondent/injured, i.e., Rs. 23,026/- got reimbursed from his employer has already been deducted by the learned Tribunal.

13. Therefore, I do not find any discrepancy in the impugned order dated 20.12.2011 passed by the learned Tribunal.

14. In view of the above, the appeal is dismissed.

15. Vide order dated 22.02.2012, this court stayed the impugned award dated 20.12.2011, subject to deposit of the award amount along with up-to-date interest with Registrar General of this Court. Since the appeal filed by the Insurance Company has been dismissed, therefore, Registrar General of this Court is directed to release the compensation amount in favour of the respondent/claimant on taking steps. Consequently, the statutory amount shall be released in favour of the appellant/Insurance Company.

CM No. 3244/2012

With the disposal of the appeal itself, this application has become infructuous. The same is disposed of accordingly.