

(2005) 08 SHI CK 0017
In the High Court Of Himachal Pradesh

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Sumati Devi and Others

RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:

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

Citation : (2006) 3 ACC 254 : (2006) 3 ShimLC 214

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereafter referred to as "the Act") by the Insurance Company is directed against the order of the Commissioner, Workmen's Compensation (SDM), Solan, in case No. 32/WC of 1996, decided on 13.10.1998.

2. The facts necessary for decision of this case are that, admittedly, deceased Mohinder Lal was employed as driver with M/s. Amar Flour Mills, Parwanoo. On 9.6.1996, he was deployed on duty with truck No. HP-15-1227. He was proceeding from Parwanoo to Solan with the said truck belonging to his employer. He took his meals at Sanwara and stayed for the night at Sanwara. At 4 a.m. when he started the truck for onward journey to Solan, a tanker bearing registration No. HPA-1470 came from the opposite side and hit the deceased who sustained multiple injuries and died on the spot.

3. The claimants filed a petition claiming compensation under the Workmen's Compensation Act. The respondent-employer admitted the employment of the deceased and also the fact that he had died during the course of the employment. The Insurance Company took up the plea that since M/s. Amar Flour Mills was covered under The Employees' State Insurance Act, 1948 (hereafter referred to as "the ESI Act"), therefore, no claim for compensation was maintainable under the Workmen's Compensation Act and the only remedy available to the claimants was to proceed under the ESI Act.

4. It stands proved on record that the deceased was an employee of M/s. Amar Flour Mills, Parwanoo and had died during the course of his employment. The only question is whether the claim was payable under the provisions of ESI Act or under the W.C. Act, 1923?

5. Section 53 of the ESI Act reads as follows:

53. Bar against receiving or recovery of compensation or damages under any other law.-An insured person or his dependents 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 the ESI Act reads thus-

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.

6. A perusal of these bare provisions clearly indicates that any person who is covered under the ESI Act cannot maintain a petition either under the Workmen's Compensation Act or any other law for compensation with regard to injuries sustained during the course of the employment. The employer has not only admitted that they were covered under the ESI Act but also produced documents Ex.RC and Ex.RD to show that claim in this behalf has been lodged with the ESI Corporation at Parwanoo and the same was pending in the year 1996. Unfortunately, there is nothing on record to show as to what has been the result of the claim lodged with the ESI Corporation.

7. The Apex Court in A. A. Trehan Vs. M/s. Associated Electrical Agencies and another, , dealt with this question whether proceedings under the Act are barred by Section 53 of the ESI Act. The relevant observations of the Apex Court are 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 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 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.

A similar view has been taken by the Apex Court in *Western India Plywood Limited Vs. P. Ashokan*, wherein it has been held as follows:

11. In view of the aforesaid observations in *Trehan* case 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 Workmen'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 a 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 sustainable by him is an employment injury.

8. A similar view has been taken by the Apex Court in *Bharagath Engineering Vs. R. Ranganayaki and Another*, . This Court has also followed the aforesaid judgments and has taken the same view in *Shivalik Steel & Alloys (Pvt.) Ltd. v. Workmen's Compensation Commissioner and Ors.* 2000 (3) TAC 775 (HP). Relevant portion of this judgment reads thus:

12...The substitution of such a provision by the new Section 53 by enacting a bar in absolute terms in respect of an insured person or his dependents 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 who is/was an employee under the Employees' State Insurance Act must be held to have been deliberate, specific and express, admitting of no room for any controversy or confusion as to the manner or extent of the bar, at any rate in respect of the claims made by such persons from the employer of the insured person, under the Workmen's Compensation Act, 1923.

9. In view of the above settled position in law, it has to be held that the petition filed by the heirs of the deceased under the Act was not maintainable and, therefore, the appeal filed by the Insurance Company has to be allowed.

10. Since I have held that the deceased died during the course of the

employment and was covered under the ESI Act, the claimants are at liberty to approach the ESI Corporation again for release of the amount payable under the ESI Act. Keeping in view the fact that the deceased had died in the year 1996 and the claim was lodged by the employer with the ESI Corporation immediately thereafter, the ESI Corporation is directed to immediately decide the matter and pay all the amounts due to the claimants as early as possible and, in any case, not later than 31st December, 2005.

11. The appeal of the Insurance Company is accordingly allowed and the order, dated 13.10.1998, of the Commissioner, Workmen's Compensation, Solan in case No. 32/WC of 1996, is set aside, with no orders as to costs.