

(2010) 02 RAJ CK 0146

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 546 of 1998

Regional Director, Employees State Insurance Corpn.

APPELLANT

Vs

Bhopa Ram and others

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Employees State Insurance Act, 1948 — Section 53

Citation : (2010) 125 FLR 186

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : N.K. Chandak for Vijay Mehta, for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—This appeal is directed against the order dated 28.8.1998 passed by the ESI Court of Civil Judge (Sr. Div.)-cum-J.M., Jodhpur deciding case No. 3/96 (Bhopa Ram and others v. M/s. Bafna Plastic Industries Ltd. & ESI Corporation). The claim petition was filed by the respondent claimants on the ground that one Bhopa Ram suffered injuries on 1.12.1993 while he was working on machines in the factory of respondent No. 1 before the Court below and respondent No. 5 herein in present appeal. It may be stated that this appeal qua respondent No. 5 M/s. Bafna Plastic Industries Ltd. already stand dismissed on 24.2.2003 for want of service being effected.

Having heard the learned Counsel Mr. N.K. Chandak and on perusal of the memo of appeal, it appears that main ground raised by ESI Corporation against the impugned award is that while deciding the claim petition, the learned ESI Court could not have awarded compensation under the Workmen Compensation; Act, 1923 in view of bar contained in section 53 of the ESI Act, 1948. The said provision of ESI Act, 1948 reads as under:

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, 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.

2. From the perusal of the impugned award, it appears that the learned Court below has awarded a sum of Rs. 93,600/- in favour of the claimant Bhum Ram on account of his 40% disability under the provisions of Workmen Compensation Act, 1923. The said compensation awarded by the Learned ESI Court is ex facie hit by the provision of section 53 of the ESI Act, quoted above and in view of this to this extent present appeal of ESI deserves to be allowed.

3. Accordingly this appeal is allowed. The impugned order of the learned Court below to the extent it awarded compensation under the provisions of Workmen Compensation Act in favour of claimant is modified and said amount B deleted. Rest of the award is however, maintained. Copy of this order be sent to the appellant forthwith. No order as to costs.