

(2014) 12 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 7065 of 2011 (O and M)

Samata Motors Private Ltd.

APPELLANT

Vs

Savita Khanal and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 53

Citation : (2015) ACJ 2660 : (2015) 178 PLR 176

Hon'ble Judges : Navita Singh, J

Bench : Single Bench

Advocate : Deepak Singh, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Navita Singh, J.

1. The present appeal is filed against the order of the Commissioner under the Workmen's Compensation Act, Karnal, whereby compensation to the tune of Rs. 1,98,455/- was granted to the respondents. The employer came up in appeal seeking dismissal of the claim. Substantial question of law was involved as to whether the Commissioner had jurisdiction to entertain the claim petition in view of Section 53 of the Employees' State Insurance Act (hereinafter referred to as the Act). Learned counsel for the appellant argued that the clear embargo in Section 53 of the Act made the claim petition not sustainable under the Workmen's Compensation Act. He contended that the appellant was covered under the Act and insurance number was allotted to the deceased, from whose salary, contribution for ESI was taken and the employer had deposited its part of the contribution. In such event, the claim, if any, could have been filed only under the Act.

2. No counter arguments were offered as no one had appeared despite service.

3. Learned counsel for the appellant pointed out that it came in evidence that the appellant was covered under the Act and so were the employees. He referred to

letter of the Commissioner, Employees Compensation Act, Karnal written to the appellant, calling upon the company to deposit the amount of interest and acknowledged the receipt of the payment of Rs. 1,98,455/-. Also reference was made to the written statement filed by the appellant before the court below, pleading that the establishment fell within the implemented area of ESI bearing code No. 13/19127 and the deceased was also covered under ESI and was granted insurance No. 7327904. It was categorically pleaded that in view of the provisions of the Act, the claim could not be adjudicated upon under the Workmen's Compensation Act.

4. The impugned order shows that specific issue was framed whether the court had no jurisdiction, the matter being covered under the Act but the Commissioner made joint discussion for issues No. 1 to 5 and did not even touch the aspect of jurisdiction. Despite mentioning that discussion was being made for issues No. 1, 2, 3, 4 and 5 for giving the findings thereon, no discussion was made nor any finding was given regarding the specific objection taken by the appellant qua lack of jurisdiction with the said court. The only points delved upon were the employment of the deceased and that no report about the death of the deceased workman was submitted with the ESI by the employer. It was held that the accident took place during the course of employment and the claimants were legal heirs of the deceased and after holding that, the quantum was assessed. Section 53 of the Act was not touched anywhere. It rather appears that the Commissioner did not even bother to read the said provision of law and to reason out as to how section 53 of the Act was not applicable, before granting Compensation. Since specific issue was framed relating to jurisdiction, he was required to give a finding that the court under the Workmen's Compensation Act had the jurisdiction to entertain the petition and to pass the award. Remaining silent on legal issues, would not mean that the court could assume its jurisdiction or jurisdiction could be vested with it. Even if no objection had been raised by the other side, the legal aspect could/should have been taken into consideration by the Commissioner suo motu. No order can be passed in cases which are not maintainable or where the court has no jurisdiction or where the claim is barred by limitation.

5. Coming to Section 53 of the Act, it is clear that the bar would apply because the appellant is covered under the Act and its employees were also covered. Specific insurance number i.e. 7327904 was given to the deceased as per the card issued to him and his name was incorporated in the list of employees who were given different insurance numbers. Contribution was paid by the Company and some deductions were also made from the salary of the deceased. In the ESI C returns from October 2004 to March 2005, the name of the deceased appeared at Sr. No. 48. The provident fund of the deceased was deducted as was clear from the annual statement and from the letter referred above.

6. Since Section 53 of the Act says that the dependants of an insured person are debarred from receiving any compensation from the employer under the

Workmen's Compensation Act or for any other law for the time being in force, the petition could not have been filed under that Act and should have been filed under the ESI Act. Commissioner under the Workmen's Compensation Act, therefore, had no jurisdiction in the matter. The appeal is allowed. The findings in the impugned order are reversed and the claim petition stands dismissed.