

(2011) 09 SHI CK 0355
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 58 of 2009

Trisis Corporation

APPELLANT

Vs

Vipin Kumar and Another

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Employees State Insurance Act, 1948 — Section 53, 61

Citation : (2013) ACJ 863

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Rahul Mahajan, for the Appellant; Tarlok Chauhan and Mr. S.R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The short question involved in this appeal is whether the workman, who is entitled to benefits under the Employees' State Insurance Act, 1948 (for short, "the ESI Act"), is entitled to receive or recover compensation or damages from the employer under the provisions of Workmen's Compensation Act, 1923. Admittedly, the employee Vipin Kumar was employed in Trisis Corporation, i.e., the petitioner herein, as workman. He suffered injuries in an accident. It is not disputed that the employer and employee were governed under the provisions of the ESI Act and Vipin Kumar was granted Code/Insurance No. 863851. The petitioner took private treatment and thereafter was treated at Zonal Hospital, Hamirpur. He lost the thumb of his right leg and claimed compensation from the employer, which compensation was assessed at Rs. 1,01,340 and Rs. 51,875 was awarded as interest. Against this award, the employer has come up in appeal and the main question raised in this appeal was admitted on the following substantial questions of law:

(1) Whether the Workmen's Compensation Commissioner has erred in law in misinterpreting provision of section 53 of the Employees' State Insurance Act, 1948 and law laid down in A. Trehan Vs. M/s. Associated Electrical Agencies and

another, If so, its effect?

(2) Whether the Workmen's Compensation Commissioner has erred in law in not granting opportunity to appellant to lead evidence resulting in miscarriage of justice? If so, its effect?

2. 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 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 (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.

3. 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 employment.

4. The Supreme Court in *A. Trehan Vs. M/s. Associated Electrical Agencies and another*, dealt with this question whether proceedings under the Workmen's Compensation 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 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 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:

(13) In view of the aforesaid observations in *A. Trehan Vs. M/s. Associated Electrical Agencies and another*, , 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 tort 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 sustained by him is an employment injury.

5. 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 and Alloys Pvt. Ltd. Vs. Workmen's Compensation Commissioner and Others*, 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 dependants 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.

6. This view was also taken by this court in *Oriental Insurance Co. Ltd. v. Sumati Devi*, F.A.O. No. 64 of 1999; decided on 18.8.2005.

7. In view of the above settled position in law, it has to be held that the petition filed by the claimant under the Act was not maintainable and, therefore, the appeal filed by the insurance company has to be allowed. It is apparent that the claimant suffered injuries during the course of employment and was covered under the ESI Act. He shall be at liberty to approach ESI Corporation for release of the amount payable under the ESI Act. In view of the fact that the petitioner

was pursuing the remedy under the Workmen's Compensation Act, in case the petitioner files a claim petition within two months, the same shall be treated to be within time and the concerned authority under the ESI Act shall decide the same on merits on or before 31.3.2012. No costs.