
(2014) 09 AHC CK 0100

In the Allahabad High Court

Case No : First Appeal From Order Defective No. 155 of 2014

Vijendra

APPELLANT

Vs

G.M. (H.R.)

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 53, 61

Citation : (2015) 1 ACC 17 : (2014) 9 ADJ 473

Hon'ble Judges : Rakesh Tiwari, J; Ashok Pal Singh, J

Bench : Division Bench

Advocate : Bimal Prasad and Vijay Prakash Pandey, Advocate for the Appellant;
B.B. Jauhari, S.P. Srivastava and Vipul Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. The Stamp Reporter has reported the appeal to be beyond time by 441 days, but the parties have agreed to address the Court on merits as only a legal point of jurisdiction is invited. Hence we condone the delay and proceed to hear the case on merits.

3. This first appeal from order challenges the legality and correctness of impugned judgment and order dated 13.09.2012 passed in W.C.A. No. 103/2011 by the Court of Employees" Compensation Commissioner/Assistant Labour Commissioner, Shahjahanpur.

4. The facts in brief are that appellant Vijendra was working on contract basis in the establishment of General Manager (H.R.), United Spirits Limited on a salary of Rs. 3,949.92 per month out of which Rs. 794/- was being deducted towards Provident Fund and Rs. 70/- towards Employees State Insurance (E.S.I.) under the Employees State Insurance Act. He received employment injury on 02.02.2011 due to falling of a piece of wood causing 30% injury in his left eye. Workman preferred a claim petition before the Employees" Compensation

Commission, Shahjahanpur for payment of Rs. 12 lacs towards maintenance, Rs. 1.25 lacs towards medical treatment and Rs. 1 lac for loss of financial and physical activities and towards mental stress. It was registered as Case No. 103/W.C.A./2011.

5. The claim of the petitioner/appellant was opposed by the establishment inter-alia that claim of the petitioner/appellant under the Employees' Compensation Act is specifically barred by Section 53 and 61 of the Employees' State Insurance Act and as such the Employees' Compensation Commissioner/Assistant Labour Commissioner, Shahjahanpur had no jurisdiction in the matter.

6. The Court of Commissioner appointed under Employees' Compensation Act vide its order and judgment impugned dated 13.09.2012 held that it had no jurisdiction and accordingly rejected the claim of the petitioner. The order is short and is quoted below for ready reference:

7. The present first appeal from order has been preferred on the ground that judgment and order dated 13.09.2012 aforesaid passed by the Workmen's Compensation Commissioner/ Assistant Labour Commissioner, Shahjahanpur suffers from grave error of law apparent on face of record, for the reason that though part of claim of the appellant was only covered under ESI Scheme yet a major part of his claim was covered under Employees Compensation Act, 1923, therefore, the Workmen's Compensation Commissioner has illegally rejected the claim of the appellant holding that the claim is covered under the ESI Act, and has thus, committed a gross illegality in rejecting his claim.

8. The moot point for consideration for this Court is as to whether the claim of the petitioner was covered under the Employees' Compensation Act as claimed by the appellant's counsel or under the Employees' State Insurance Act as claimed by the respondent.

9. In order to decide this issue, provisions of Section 53 and 61 of Employees' State Insurance Act may be referred to :

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.

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.

10. From the aforesaid sections 53 and 61 of the ESI Act it is clear that Section 53 and 61 impose bar upon the Commissioner appointed under the Employees' Compensation Act as authority to decide the claims of an insured person covered

by ESI Act with regard to recovery of the premium, compensation of damages in respect of employment injury.

11. We are supported in our conclusion by a judgment rendered by the Apex Court in the case of A. Trehan Vs. M/s. Associated Electrical Agencies and another, wherein the Court in paragraph nos. 11 and 12 held thus:

"11. A comparison of the relevant provisions of the two Acts makes it clear that both the Acts provide for compensation to a workman/employee for personal injury caused to him by accident arising out of and in the course of his employment. The ESI is a later Act and has a wider coverage. It is more comprehensive. It also provides for more compensation than what a workman would get under the Workmen's Compensation Act. The benefits which an employee can get under the ESI Act are more substantial than the benefits which he can get under the Workmen's Compensation Act. The only disadvantage, if at all it can be called a disadvantage, is that he will get compensation under the ESI Act by way of periodical payments and not in a lump sum as under the Workmen's Compensation Act. If the legislature in its wisdom thought it better to provide for periodical payments rather than lump sum compensation its wisdom cannot be doubted. Even if it is assumed that the workman had a better right under the Workmen's Compensation Act in this behalf it was open to the legislature to take away or modify that right. While enacting the ESI Act the intention of the legislature could not have been to create another remedy and a forum for claiming compensation for an injury received by the employee by accident arising out of and in the course of his employment.

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 the Workmen's Compensation Act was not maintainable."

12. The scheme and object of both the case is different. Admittedly the appellant

was an insured person. It is also admitted fact by him that Rs. 70/- per month was being deducted from his wages towards premium of insurance. Apart from it the law on this point having been settled and does not remain res-integra.

13. Therefore, we have no hesitation to hold that there is not illegality or infirmity in the order passed by Workmen's Compensation Commissioner in Case No. 103/W.C.A./2011 impugned under the appeal holding that he has no jurisdiction in the matter.

14. For all the reasons stated above, this appeal finds no force, it is accordingly dismissed. However, there is no order as to costs.