

(2014) 03 P&H CK 0244

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 717 of 1997 (O and M)

Nanku Ram

APPELLANT

Vs

Mohan Singh

RESPONDENT

Date of Decision: March 14, 2014

Acts Referred:

- Employees State Insurance Act, 1948 - Section 53

Citation: (2015) 3 ACC 361 : (2015) ACJ 1026 : (2014) 175 PLR 453

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Salil Bali, Advocate for the Appellant; Amit Rawal, Senior Advocate and Sahil Khunger, Amicus Curiae, Advocate for the Respondent

Final Decision: Allowed

Judgement

K. Kannan, J.

The appeal is against the award dismissing the petition. In this case, the representatives have secured the benefit under Employees State Insurance Act (for short, the Act) and the question was whether Section 53 of the Act barred the claim for compensation as a third party against the tort-feasors in a claim before the Motor Vehicles Act. The Tribunal held that Section 53 of Act constitute a bar and dismiss the petition. I had the assistance of the counsel for the appellant and also Mr. Amit Rawal, Senior Advocate, as Amicus Curiae. Both the counsel have brought to my attention the decisions of the Supreme Court and other High Courts. The Supreme Court in its decision in Western India Plywood Limited Vs. P. Ashokan, held that the object of Section 53 of the Act was to save the employer from facing more than one claim in relation to the same accident. The Supreme Court left the question open of what would happen if the claim is not made against the employer but was made against the tort-feasor of a vehicle who had caused the accident that resulted in disability. In paragraph 14 of the judgment, the Supreme Court left the issue open since the Supreme Court was considering a claim where the claim was not against a

third party but against the employer himself. That marked, according to the counsel for the appellant, the difference from this case and which has been considered in a Division Bench of the Karnataka High Court in Smt Shridevi Mulugundmat, Kum. Kiran Mulugundmat rep. by their Natural Guardian Mother Shridevi and Kum. Ravi Mulugundmat rep. by their Natural Guardian Mother Shridevi Vs. Smt S. Sarojini and National Insurance Co. Ltd., and yet another Division Bench of the Kerala High Court in K.P. Kuriakose Vs. G. Santhosh Kumar and Others. In both the decisions, the respective Benches have held that an injured receiving disablement benefits under the ESI Act would be barred from making a claim against his employer in respect of the same injury before the MV Act but a claim for compensation in tort against a stranger can co-exist with claims for benefits under the ESI Act. This court itself had taken a similar view but without reference to the said two decisions stated before me now in Mobin Khan Vs. Neeraj Kumar and Others, that Section 53 stipulated a bar to an employee only in case of employment injury and the plea that the claim would be barred from prosecuting a petition under the MV Act was rejected. I am in respectful agreement with the view taken by the Division Benches and hold that the petition was not barred.

2. The claimant had suffered a 80% disability with amputation of the leg above knee. The disability had been assessed at 80%. It is a schedule injury under the WC Act and it must be taken as resulting in 80% loss of earning capacity as well. His income is assessed as Rs. 1,003/- . He was aged about 34 years and by applying a 50% increase as prospect of increase in salary in future and taking 80% of the same at Rs. 1203.60 as the resultant loss of earning capacity per month, considering the age as 34 years, I will apply a multiplier of 16 and take the loss of earning at Rs. 2,31,091.20. I will make a provision for Rs. 1 lakh as loss of amenities and Rs. 1 lakh as loss due to pain and suffering. Medical expenses must have been taken care of under the ESI Act. The total amount of compensation will, therefore, be Rs. 4,31,091.20 rounded off to Rs. 4,32,000/- . The right of enforcement for the claimant shall be available against the insurer.

3. I place on record my appreciation to the senior counsel who had assisted me in this case as Amicus Curiae. The appeal is allowed on the above terms.