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Andhra Pradesh High Court

Case No: M.A.C.M.A. Nos. 1834 of 2012 and 2833 of 2013

G. Nagaraju	APPELLANT
Vs	
Laxman Rao The Oriental Insurance Company Ltd. Vs G. Nagaraju	RESPONDENT

Date of Decision: June 16, 2014

Acts Referred:

- Employees State Insurance Act, 1948 - Section 46(1)(c), 53, 61
- Motor Vehicles Act, 1988 - Section 166, 173
- Workmens Compensation Act, 1923 - Section 2(8)

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: E. Venugopal Reddy and N. Ashok Kumar, Advocate for the Appellant; N. Ashok Kumar and E. Venugopal Reddy, Advocate for the Respondent

Judgement

M.S. Ramachandra Rao, J.
Both these appeals have been filed u/s 173 of the Motor Vehicles Act, 1988 challenging the judgment and decree dt. 31-12-2011 in M.V.O.P. No. 418 of 2006 of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District, Hyderabad.

2. The said O.P. was filed by the claimant G. Nagaraju, (who is appellant in M.A.C.M.A. No. 2833 of 2013 and 1st respondent in M.A.C.M.A. No. 1834 of 2012) (for short ''the claimant''), on 02-05-2006 seeking compensation for the injuries suffered by him in a motor vehicle accident which took place on 23-12-2005. He initially claimed a sum of Rs. 5.00 lakhs but latter enhanced his claim to Rs. 9.00 lakhs.

3. He contended in the O.P. that on 23.12.2005 at about 7.30 p.m. he was proceeding on a motorcycle from his place of work i.e. Microsoft Office, Gachibowli towards Hitech City, and when he reached near Games village, a tractor bearing

Regn. No. AP 15W 3722 owned by one Ch. Lakshman Rao and insured by the Oriental Insurance Company Limited (for short ''the insurer'') (which is the appellant in M.A.C.M.A. No. 1834 of 2012), came in the opposite direction at a high speed; that it was being driven in a rash and negligent manner and hit the motorcycle which he was driving; that he fell down and suffered injuries including fracture injuries to right leg, compound fracture injuries to right knee, injury to chin (stitches 3/4th) apart from suffering several multiple injuries all over the body; he underwent treatment in a private hospital in Vikram Hospital, Madhapur as in-patient for four hours and later he was shifted to NIMS hospital, Panjagutta for further treatment from 24-12-2005 as in-patient for sometime; he was operated upon in the NIMS and the right leg was amputated from foot to the above knee level; and therefore he is entitled to be compensated by both the owner and insurer.

4. The owner of the tractor remained ex parte.

5. The Insurer denied the occurrence of the accident and the involvement of the claimant. It was alleged in the counter by insurer that there was contributory negligence on the part of the claimant and the claimant only was responsible for the occurrence of the accident. It did not admit the accident or the manner in which the claimant alleged that it took place. Alternatively, it also pleaded that the owner of the tractor alone is responsible since he has been impleaded.

6. Subsequently an additional counter was filed by the Insurer taking a further plea that in the investigation conducted by it, it was revealed that the claimant was covered as an "injured person" under Employee''s State Insurance Act, 1948 (for short ''ESI Act''); his disability was assessed at 60% by the Medical Board of the ESI Corporation; and the said Corporation was paying disablement benefit of Rs. 57.12 ps per day (amounting to Rs. 1,714/- per month) through out his life with effect from 06-01-2007 in addition to paying temporary disablement benefits Rs. 75,303/- from 24-12-2005 to 05-01-2007 @ Rs. 95-20 p.s. per day treating the injury of the claimant as an ''employment injury''. It was also pleaded that ESI Corporation has reimbursed Rs. 15,975/- to the NIMS, Hyderabad towards medical expenses for the treatment given to the claimant from 24-12-2005 to 13-01-2006 and this was confirmed by letters dt. 14-07-2006 and 10-12-2009 addressed by the Branch Manager, ESI Corporation, Patancheruvu to the Insurer. The Insurer therefore pleaded that u/s 53 of the ESI Act, the claimant is barred from claiming, receiving or recovering any compensation or damages from anybody including his employer for the employment injuries sustained by him under any other law and therefore the claim of the claimant is barred since he received the benefits from ESI Corporation for his temporary/permanent disablement/loss of earning and for treatment with NIMS, Hyderabad. It is also stated that the petitioner continued his employment with M/s. Avon Maintenance Services Private Limited, where he was previously employed, and is working in the Stores Department and as such question of loss of earnings also did not arise.

7. A re-joinder was filed by the claimant to the additional counter denying the contentions of the Insurer. He contended that ESI Act applies only when the injured person sustained injury during the course of his employment and because he sustained injury not during the course of his employment, he is entitled to seek compensation under the provisions of the Motor Vehicles Act. 1988.

8. The Tribunal framed the following issues:

"1. Whether the petitioner sustained injuries in a Motor Vehicle accident occurred on 23-12-2005 due to rash and negligent driving of Tractor bearing No. AP 15W 3772 by its driver?

2. Whether the petitioner is entitled to claim compensation and if so, how much amount and from which of the respondents?

3. To what relief?"

9. The claimant got himself examined as P.W. 1 and examined another witness as P.W. 2 and marked Exs. A-1 to A-9. The Insurer examined one witness as R.W. 1 and marked Exs. B-1 to B-3.

10. By judgment and decree dt. 31-12-2011, the Tribunal held that the injury received by the claimant in the accident did not come within the definition of ''employment injury'' under the ESI Act and as such O.P. filed under the Motor Vehicles Act, 1988 is maintainable. It also held that the petitioner was entitled to pay Rs. 10,000/- towards transport to the hospital; Rs. 5,000/- towards extra nourishment; Rs. 85,000/- towards medical treatment and for artificial limbs. Taking into account the age of the claimant as above 24 years, his income as per Ex. A-5 salary certificate as Rs. 3,350/- per month and assessing his disability at 60%, by applying multiplier of ''18'', the Tribunal awarded an amount of Rs. 4,34,160/- as compensation and Rs. 6,700/- as loss of income for a period of two months. It thus held that the petitioner is entitled to receive Rs. 5,45,860/- from the respondents. Since the ESI Corporation has paid Rs. 75,303/- towards temporary disablement benefit, and also a sum of Rs. 1,714/- per month with effect from 06-01-2007 for 59 months which works out to Rs. 1,01,126/-, it directed that the amount of Rs. 1,01,126/- + Rs. 75,303/- i.e. Rs. 1,76,429/- be deducted from the compensation amount awarded to the claimant and paid to the ESI Corporation directly. It directed that balance amount alone shall be paid to the claimant.

11. Challenging the same, the claimant filed M.A.C.M.A. No. 2833 of 2013 stating that he should get Rs. 9.00 lakhs as claimed by him and Tribunal should not have directed deduction of Rs. 1,01,126/- from the compensation amount awarded for payment to the ESI Corporation. He also contended that the assessment of disability at only 60% by the Tribunal is not correct and the Tribunal ought to have assessed his disability at 100% since the claimant''s leg was amputated above the knee and he is unable to work as before. He also sought payment of interest @ 9% instead of

7.5% awarded by the Tribunal. He contended that Tribunal ought to have allowed his claim based on medical bills submitted by him to the tune of Rs. 2,89,258/-.

12. M.A.C.M.A. No. 1834 of 2012 was filed by the Insurer contending that the Tribunal erred in making the Insurer liable to pay compensation when the claimant had already availed benefits under the ESI Act; that in view of Section 53 of the said Act, the Tribunal should have dismissed the O.P. filed under Motor Vehicles Act, 1988, as not maintainable. It is also contended that the claimant was getting daily disablement benefit under the provisions of ESI Act, that the claimant was continuing in his job and there was no loss of earning capacity at all. It therefore contended that the Tribunal erred in awarding compensation of Rs. 5,45,860/-.

13. Heard Sri N. Ashok Kumar, learned counsel for the claimant and Sri E. Venugopal Reddy, learned counsel for the respondent for the Insurer.

14. The points for consideration are:

(i) Whether the claimant''s injury is an "employment injury" as defined under the ESI Act, 1948 and whether the factum of the claimant obtaining compensation under the said Act bars him from filing the O.P. under the Motor Vehicles Act, 1988 and disentitles him from claiming higher compensation?

(ii) If the O.P. is maintainable, to what extent the claimant can get relief under the Motor Vehicles Act?

Point (i):

15. In the claim petition filed by the claimant, nowhere the claimant mentioned that compensation under the ESI Act was being paid to him by the ESI Corporation. Even in the affidavit filed in lieu of chief examination, this fact is not mentioned. Only in his cross examination, he admitted that he has got insurance coverage under the ESI Act; that his employer M/s. Avon Maintenance Services Private Limited used to deduct premium towards ESI Act benefits and such deduction was being reflected in the salary certificate. But he stated that he did not know whether the payment made towards medical expenditure incurred by him was paid by the ESI Corporation through his employer. He denied that the ESI Corporation paid Rs. 75,303/- as temporary disablement benefit on account of above accident. He further admitted that he was getting above Rs. 1,714/- per month only one year onwards after the occurrence of the accident. He also admitted that he is still working as a Stores In-charge with the same employer.

16. The Insurer on the other hand filed Ex. B-1, a letter dt. 14-07-2006 addressed by the Branch Manager of the ESI Corporation at Patancheruvu to its Senior Divisional Manager informing the Insurer that the case of the claimant who suffered injury in the above accident was treated as an ''employment injury'' under the ESI Act by its Regional Office and certain amounts were released towards temporary disablement benefit to the claimant.

17. R.W. 1 was examined to prove Ex. B-1 and he stated that the claimant is continuing his employment with his employer and is working in the stores department. It was admitted by R.W. 1 that the place of accident and the manner of the accident as stated by the claimant are true and correct and that the provisions of the ESI Act are applicable to the claimant. Thus, from the above facts, it is clear that the claimant has suppressed about the receipt of compensation received by him from the ESI Corporation for the injuries suffered by him in the accident.

18. Section 53 of the ESI Act 1948, states:

"Sec. 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."

19. Section 2(8) of the said Act defines ''employment injury''. It states:

"Employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;"

So the important thing is to see whether the accident was caused to the claimant in the course of his employment or it arose out of his employment?

20. According to the claimant, the accident occurred when he was proceeding on his motorcycle from the place of his work i.e. office of the Microsoft Corporation at Gachibowli, near Games village. The term "in the course of employment" which also occurred in the Workmen''s Compensation Act, 1923 was considered by the Supreme Court in Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, . The Supreme Court held that employment of a workman, as a rule, does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It however observed that this is subject to the theory of notional extension of the employer''s premises so as to include an area which the workman passes and re-passes in going to and in leaving the actual place of work and sometimes a reasonable extension in both time and place may be recorded in the course of his employment even though he had not reached or had left from the employer''s premises. In that case, a workman employed in a Salt Works while returning home after finishing his work had to go by a public path, then through a sandy area in the open public and finally across a creek through a ferry boat. The workman, while crossing the creek in a public ferry boat which capsized due to bad weather, was drowned. On a claim for compensation made by his legal

representatives, it was held that the accident could not be said to have arisen out of and in the course of the employment while crossing the creek inasmuch as the theory of notional extension could not extend to the point where the boat capsized. This decision applies on all fours to the present case.

21. This judgment was followed in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, . In the said case, an employee on his way to the work met with an accident at a place one kilometer away from it and sustained injuries. It was held that injuries were not caused by the accident arising out of and in the course of his employment.

22. In A. Trehan Vs. M/s. Associated Electrical Agencies and another, , the Supreme Court observed that the bar created by Section 53 is against receiving or recovering any compensation or damages under the Workman Compensation Act, 1923 or any other law for the time being in force or otherwise, in respect of an employment injury and the said bar is absolute. In that case, the appellant was employed by 1st respondent for carrying out repairs of television sets. On 17-07-1987 while he was repairing a television set, a component of it burst and that caused an injury to his face. As a result thereof he lost vision of his left eye. He approached the ESI Corporation for benefits u/s 46(1)(c) of the ESI Act and was granted benefits available under the said Act. Thereafter, when he made another claim under the Workmen''s Compensation Act, the employer raised an objection regarding maintainability of the application under the Workmen''s Compensation Act and contended that such application is not maintainable in view of the bar created by Section 53 of the ESI Act. The Commissioner under the Workmen''s Compensation Act did not accept the said objection. Employer approached Bombay High Court, which allowed the appeal and held that the employee is barred from making a claim under the Workmen''s Compensation Act, 1923. The Supreme Court upheld the said decision and held that the bar u/s 53 is absolute and the workman cannot bypass it.

23. The said decision was followed in Western India Plywood Limited Vs. P. Ashokan, . In that case also, an employee suffered an injury at the place of work and was paid disable benefit under the provisions of ESI Act. In addition, he also filed a suit seeking compensation as an action in tort. The trial Court upheld the said objection. But on appeal, it was set aside by the Kerala High Court. The Supreme Court restored review of the trial Court by following the decision in A. Trehan (supra).

24. In National Insurance Co. Ltd. Vs. Hamida Khatoon and Others, , the Supreme Court reiterated the principle laid down in A. Trehan (supra).

25. In Mobin Khan Vs. Neeraj Kumar and Others, , injury was suffered by the appellant therein, when he was proceeding from his residence to a religious place by a motorcycle along with pillion rider. He had received certain benefits under ESI Scheme under the ESI Act in relation to the injuries suffered by him. He also filed an O.P. under the provisions of the Motor Vehicles Act, 1988. The Insurance Company

opposed the claim stating that having availed the benefits under ESI Scheme, his claim under the Motor Vehicles Act, 1988 is not maintainable and barred u/s 53 of the ESI Act. The Tribunal rejected the said plea. The appellant filed an appeal seeking enhancement of compensation. The claim for enhancement was also resisted by the Insurance Company on the said basis. The Punjab and Haryana High Court held that the accident occurred neither in the place of employment nor when he was going towards the place of employment or was coming back home. On the other hand, the accident had taken place during a private visit to a religious place. Therefore, the claim under the Motor Vehicles Act would not be barred and Section 53 would not apply since it was not a case of an ''employment injury''. However, Punjab and Haryana High Court held that the appellant cannot have the benefit of duplicating by claiming amounts under the ESI Act as well as claiming benefits under the Motor Vehicles Act, 1988 and whatever amounts he had received towards reimbursement under ESI Act, he cannot make a claim for the same under the Motor Vehicles Act. It relied on Section 61 of the ESI Act, which stated:

"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."

26. Similarly in Venkataramanappa vs. S. Ananda LAWS (KAR)-2012-1-33 : 2012 KLT 106, a Division Bench of the Karnataka High Court also deducted the benefits received by an injured employee under the ESI Act from the amounts of compensation payable to him u/s 166 of the Motor Vehicles Act, 1988, observing that Section 53 would not bar the right to compensation against third parties.

27. In view of the above authoritative pronouncements, since the claimant herein had already left his place of employment and was on a public road in his own vehicle like any other member of the public, it cannot be said that the injuries caused to him in the accident were in the course of his employment. The claimant was not in the course of his employment, the moment he left his place of work. This is the legal position. So the injuries suffered by him cannot be said to be "employment injuries" covered under the ESI Act, 1948. Therefore he was not entitled to seek or get any benefits under the said Act.

28. I am of the opinion that the bar u/s 53 of the ESI Act would apply only if the claimant had received compensation in respect of an ''employment injury'' as defined under the ESI Act. Since on facts, the claimant had suffered the injury in an accident not arising out of and not in the course of his employment, Section 53 would not be a bar.

29. The ESI Corporation was probably misled into thinking that the injuries were suffered by the claimant were in the course of his employment and was persuaded to release the amounts mentioned supra. Therefore, the petitioner cannot be permitted to claim compensation both from the ESI Corporation and also from the

Insurer under the Motor Vehicles Act, 1988. If this allowed, it would amount to unjust enrichment. I am of the opinion that the decision in Mobin Khan (supra) and Venkataramanappa LAWS (supra) are liable to be followed and the claimant has to return/refund all the amounts he had received from the ESI Corporation till date and only then he can receive any amounts under the Motor Vehicle Act, 1988.

30. A Division Bench of Allahabad High Court in Union of India (UOI) and Another Vs. Smt. Chandrakali Chaturvedi and Others, also held that a claim under Motor Vehicles Act, 1988 is maintainable even if in respect of an employment injury compensation was received under the ESI Act. It rejected the plea that because the deceased was an employee and the accident occurred during the course of employment while he was traveling in the Telecom Department Jeep, he cannot make a claim under the Motor Vehicles Act and he only can claim under ESI Act. It observed that the Motor Vehicles Act specifically deals with death/injury cases due to vehicular accident and the ESI Act deals with health insurance of industrial workers and ESI Act does not cover accidental death while traveling in a vehicle on road. I am not able to agree with this view since the Court therein did not notice the decisions of the Supreme Court in A. Trehan (supra) and Western India Plywood Ltd. (supra).

31. So, I agree with the view of the Tribunal that the claimant cannot unjustly himself by seeking compensation from the Insurer under the Motor Vehicles Act, 1988 and also from the ESI Corporation under ESI Act and the Tribunal had rightly held that the amount of Rs. 1,76,429/- should be paid to the ESI Corporation from out of the compensation payable to the claimant.

32. So I hold that since the injuries suffered by the claimant were not in the ''course of employment'' they could not be treated as ''employment injuries'' as defined under the ESI Act and the claimant was not entitled to receive any compensation Under the Motor Vehicle Act, 1988 unless he refunds the entire amount received by him to the ESI Corporation. His O.P. under the Motor Vehicle Act, 1988 therefore is not barred under sec. 53 of the ESI Act, 1988 and he can get compensation under the Motor Vehicle Act, 1988 only subject to his refunding the amount received by him from ESI Corporation back to it. Point (1) is answered accordingly.

33. In this view of the matter, MACMA No. 1834 of 2012 filed by the Insurer is liable to be dismissed.

Point (ii):

34. Coming to the appeal filed by the claimant, one of the contentions raised by the claimant was that disability assessed by the Tribunal at 60% was not correct and that the Tribunal ought to have held that the disability of the claimant as 100% on account of amputation of his right leg above the knee.

35. In my opinion, it is not open to the claimant to raise this plea because he admitted in his evidence that he is still working under M/s. Avon Maintenance Services Limited and his employer, a service provider in M/s. Microsoft Limited has employed him as a Stores In-charge. It therefore cannot be said that his disability was 100% and is permanent. I agree with the Tribunal that the claimant can be held to have suffered permanent partial disability of 60%.

36. The counsel for the claimant contended that the Tribunal did not take into account future prospects of increase in income also as a basis for computing the compensation. He relied upon Santosh Devi Vs. National Insurance Company Ltd. and Others, and Syed Sadiq etc. Vs. Divisional Manager, United India Ins. Company, and contended that 50% increment in the future prospect of income has to be taken as was done in the said cases involving injuries to the claimants therein who were self-employed persons.

37. In Santosh Devi (supra), a case of fatal accident where a claim was made under the Motor Vehicle Act, 1988, the Supreme Court held:

"14. We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in Sarla Verma case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life.

15. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class TV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the

salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

18. Therefore, we do not think that while making the observations in the last three lines of para 24 of Sarla Verma judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also set 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

(emphasis supplied)

38. In Syed Sadiq (supra), the said principle was applied to the case of injuries to a claimant who was earning his livelihood by vending vegetables and whose leg was amputated, but 50% increment was taken and not 30%. No reasons were assigned as to why such a figure was taken.

39. In Rajesh and Others Vs. Rajbir Singh and Others, , the Supreme Court however explained this. It held:

"8. Since, the Court in Santosh Devi case actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

(emphasis supplied)

40. The counsel for the Insurance Company opposed the said plea contending that such benefit cannot be given to persons like the claimant who were regularly employed and not self-employed. I do not agree. Such a distinction between

self-employed persons and persons in regular employment on fixed wages was not made in cases of death involving a motor vehicle in Rajesh (supra) as can be seen from the above passage. Therefore, in my opinion, such a distinction ought not to be made even in cases of injuries caused in a motor vehicle accident particularly when Syed Sadiq (supra) applied the future increment principle in a case of injury to a self-employed person.

41. So, the concept of granting 50% increment in income in case of injuries to self-employed persons laid down in the above decisions, in my opinion, can be applied also to the claimant, who is in regular employment on fixed wages and who was aged 24 years (less than 40 years, as on the date of the accident).

42. Therefore, the computation of compensation to the claimant under the head of "Loss of future income" including the 50% increment in the future, works out to (Rs. 3,350/- + Rs. 1,675/-) x 60/100 x 18 x 12 = Rs. 6,51,240/-.

43. The claimant had also claimed a sum of Rs. 2,18,258/- towards medical bills. No material is placed in support of the said claim. So the claim under this head was rightly rejected by the tribunal. I am satisfied that the Tribunal has correctly appreciated the evidence on record and awarded a sum of Rs. 85,000/- towards medical treatment and for artificial limbs.

44. In para. 24 of the judgment of the Tribunal it had recorded that the claimant had received Rs. 1,714/- p.m. for 59 months from the E.S.I. Corporation and would continue to receive it throughout his life. It had directed refund of Rs. 1,01,126 (Rs. 1,714 x 59) and a sum of Rs. 75,303/- paid to the claimant by the said Corporation towards temporary disablement benefit, i.e., total Rs. 1,76,429/-. I agree with the said view of the Tribunal since the claimant is not entitled to claim any amount from the E.S.I. Corporation at all as held supra.

45. I further hold that the amounts paid by the E.S.I. Corporation from 31.12.2011, the date of judgment of the Tribunal till 30.06.2014 @ Rs. 1,714/- p.m. for 30 months = Rs. 51,420/- shall be deducted from the amount of Rs. 6,51,240/- now payable under this judgment (mentioned in para 42 supra) to the claimant and shall be refunded to the said Corporation. The balance i.e. Rs. 6,51,240 -- Rs. 1,76,429 - Rs. 51,420/- = Rs. 4,23,391/- shall be paid to the claimant with interest @ 9% p.a. from the date of the O.P. till realization.

46. I also hold the claimant shall not be entitled to receive any amounts from the E.S.I. Corporation in future. Copy of this Order be marked to the E.S.I. Corporation Branch, Patancheru, Hyderabad.

47. Point (ii) is therefore answered as above.

48. Therefore, M.A.C.M.A. No. 2833 of 2013 is allowed to the above extent and M.A.C.M.A. No. 1834 of 2012 is dismissed. No costs.