

(2009) 04 DEL CK 0543

Delhi High Court

Case No: FAO No. 149 of 1991

DTC and Others

APPELLANT

Vs

Sarita Seth and Others

RESPONDENT

Date of Decision: April 27, 2009**Acts Referred:**

- Employees State Insurance Act, 1948 - Section 2(8), 53, 61
- Motor Vehicles Act, 1939 - Section 110A

Citation: (2009) 04 DEL CK 0543**Hon'ble Judges:** Kailash Gambhir, J**Bench:** Single Bench**Advocate:** J.N. Aggarwal, for the Appellant; None, for the Respondent**Final Decision:** Dismissed

Judgement

Kailash Gambhir, J.

The present appeal arises out of the award dated 14.3.1991 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 1,56,400/- along with interest @ 12% per annum to the claimants.

2. The brief conspectus of the facts is as follows:

3. On 16.6.1984 at about 10.00 AM, deceased Parveen Kumar Seth was riding his two wheeler scooter bearing registration No: DHV 8976 and was going to Modi Nagar. He was driving the scooter on his left side when he was hit by bus bearing registration No: DHP 2914 which came from the side of Khicharipur border on the national highway, as a result of which the deceased fell down on the road and was crushed under the front wheel of the bus. The deceased and his scooter were dragged upto a considerable distance as a consequence of which Parveen Kumar Seth died on the spot.

4. A claim petition was filed on 13.7.1984 and an award was passed on 14.3.1991. Aggrieved with the said award DTC has filed the present appeal.

5. Mr. J.N. Aggarwal, Counsel for the appellant DTC contended that no appeal was filed by the respondents for enhancement and the entire compensation amount has been withdrawn by the claimants. The Counsel urged that the respondent No. 1 is getting pension of Rs. 420/- from ESIC and as per Sections 53 and 61 of ESIC Act An insured person or his dependents are not entitled to any compensation under any other law in force when they are getting benefits under the ESIC Act.

6. Nobody appeared for the respondents.

7. I have heard Counsel for the appellant and perused the record.

8. Section 53 and 61 of the Employees' State Insurance Act, 1948, read as under:

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 employer 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.

Thus, it is obvious that for the application of Section 53, two conditions are necessary, viz., (i) that the person must have sustained employment injury and (ii) that he must have been insured under the Employees' State Insurance Act.

9. What is employment injury is defined u/s 2(8) of the Employees' State Insurance Act, 1948. It reads:

"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.

10. A motor accident, when the workman was going on a two wheeler scooter, cannot be considered as an employment injury. That being so, it is obvious that Sections 53 & 61 of the Employees' State Insurance Act, 1948, would not bar the remedy in this case u/s 110A of the Motor Vehicles Act, 1939.

11. In view of the foregoing discussion, the appeal is dismissed.