

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
A.S. BOPANNA; J., SUDHANSHU DHULIA; J.
CIVIL APPEAL NO. 4941/2022; JANUARY 19, 2023

RAJKUMAR AGRAWAL

versus

VEHICLE TATA VENTURE NO. UP 70 BM-1600 COMMERCIAL AUTO SALES PRIVATE LIMITED THR. ITS DIRECTOR SANSKAR GUPTA & ORS.

Employees' State Insurance Act, 1948; Sections 53, 61 - Motor Vehicle Act, 1988; Section 163A, 167 - Can an employee insured under the Employees' State Insurance Act, 1948, claim compensation under the Motor Vehicles Act - Whether the insurance amount paid under the ESI Act is a "similar benefit" as the compensation which is claimed in a case where there is a Motor Vehicle accident and claim subsists so as to bar the same - Referred to larger bench.

For Appellant(s) Mr. Rajiv Tyagi, AOR Mr. Rohit Gupta, Adv.

For Respondent(s) Mr. Avijit Dikshit, Adv. Mr. Rameshwar Prasad Goyal, AOR Mr. Ranjan Kumar Pandey, AOR Mr. K.K. Bhat, Adv. Mr. Divyam Garg, Adv.

ORDER

In the instant case, the Appellant is assailing the judgment dated 28th January, 2021 passed by the High Court of Judicature at Allahabad in the first appeal No.552 of 2019. The appeal therein arose from a judgment and order dated 22nd December 2018 passed by the Motor Accident Claims Tribunal (for short "MACT"). Though the Tribunal at the first instance had accepted the claim put forth by the Appellant and had awarded the compensation, the employer/owner of the vehicle in which the Appellant was travelling at the time of the accident had assailed the said judgment contending that the claim would not be maintainable in view of a bar contemplated under Section 53 of the Employees' State Insurance (ESI) Act, 1948.

The High Court having referred to the said provision has reversed the judgment of the Tribunal and dismissed the claim of the Appellant herein.

During the course of the arguments put forth before us, the learned counsel for the Appellant in addition to Section 53, has also referred to Section 61 of the ESI Act to contend that Section 53 cannot be considered as a bar when a claim by an insured employee is made either under Section 163(A) or 166 of the Motor Vehicles Act.

It is contended by him that if the true purport of Sections 53 and 61 of ESI Act is taken note cumulatively, the bar is only if a similar benefit is taken by the workman. In the instant facts it cannot be said a similar benefit as is being claimed has been given to the workman. The appellant has undergone amputation of the lower limb and the benefit paid to him is in terms of Section 46 of ESI Act, which is periodical payment from insurance amount which also contains his contribution and not by way of compensation.

The learned counsel for the Respondents would however, refer to the judgment passed by this Court in ***Western India Plywood Ltd. vs. P. Ashokan (1997) 7 SCC 638*** to contend that a two Judge Bench of this Court has taken note of the provisions in Section 53, 61 and 2(8) of ESI Act and has held that the bar would apply. The Learned Counsel has also referred to the decision in the case of ***National Insurance***

Company Ltd. v. Hamida Khatoon and Ors. (2009) 13 SCC 361 to which the High Court has referred during the course of its order.

The learned counsel for the appellant has on the other hand referred to another decision of this Court by a Bench of two Hon'ble Judges in the case of **Regional Director E.S.I Corporation & Anr. Vs. Francis DE Costa & Anr. (1993) Supp. (4) SCC 100**, wherein it is observed as hereunder:

"44. The next contention that the Motor Vehicles Act provides the remedy for damages for an accident resulting in death of an injured person and that, therefore, the remedy under the Act cannot be availed of lacks force or substance. The general law of tort or special law in Motor Vehicles Act or workmen's Compensation Act may provide a remedy for damages. The coverage of insurance under the Act in an insured employment is in addition to but not in substitution of the above remedies and cannot on that account be denied to the employee. In *K. Bharathi Devi vs. G.I.C.I.* the contention that the deceased contracted life insurance and due to death in air accident the appellant received compensation and the same would be set off and no double advantage of damages under carriage by Air Act be given was negated."

In that light having heard the learned counsel for both the sides and having noted the decisions referred to by the learned counsel for the parties, we note that though in the decisions, the Hon'ble two Judge Bench of this Court has considered the aspect and even in the case of **Western India Plywood Ltd.** (supra), the provision in Section 61 has been extracted, there is no authoritative pronouncement on the same as to whether the insurance amount paid under the ESI Act is a "similar benefit" as the compensation which is claimed in a case where there is a Motor Vehicle accident and claim subsists so as to bar the same.

Further, learned counsel for the appellant also contends since the Motor Vehicle Act, 1988 being a subsequent Act and the provisions in Section 163(A) and 167 begin with a *non obstante* clause, the bar should not operate against the insured employee under the ESI Act to claim compensation under the Motor Vehicles Act.

These contentions require an authoritative pronouncement by a larger Bench since this Bench being of a similar strength to the Bench which decided the case in **Western India Plywood Ltd.** (supra) and **National Insurance Company vs. Hamida Khatoon** (supra) and the cases referred supra cannot enter into that aspect of the matter.

Hence, the Registry to place the matter before Hon'ble the Chief Justice of India to refer the matter to a Bench of an appropriate strength for authoritative pronouncement on this aspect.
