

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.414 of 2015**

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The Employees State Insurance Corporation, through the Regional Deputy Director, Plot No.47, Sector-34, Near Hero Honda Chowk, Gurgaon-122001 (Haryana).

... .. Appellant/s

Versus

1. Sri Niwas Singh, Son of Ramnath Singh.
2. Kumni Devi alias Khomni Devi wife of Sri Niwas Singh,  
Both residents of Village - Panapur, Post - Sijanpur, Police Station - Dhansoi, District - Buxar at present village - Badyoga, Police Station -Nokha, District - Rohtas.
3. M/s Richa and Company through the General Director Plot No. 192, Phase -1, Udyog Bihar, Gurgaon.

... .. Respondent/s

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*Employees' Compensation Act, 1923--- Section 4A, 30(1)(a)--- Employees' State Insurance Act, 1948 (ESI Act)---section 38, 53, 61---Jurisdiction of Commissioner under Employees' Compensation Act---appeal filed by Insurance Corporation against impugned order passed by the learned Deputy Labour Commissioner-cum-Commissioner Workmen's Compensation, by which he passed the order against the Insurance Corporation/appellant to deposit Rs.6,45,840/- as death compensation.*

*Findings: To apply the bar created in Section 53 of the ESI Act, the person must be workman, insured under the ESI Act and should have sustained injury, contacted occupational disease or lost his life due to such injury or disease and they must have arose out of and in the course of his employment--- Section 61 of the ESI Act bars claiming of compensation for employment under the provisions of any other enactment other than ESI Act--- law is well settled that in view of bar created by Section 53 of ESI Act the application for compensation filed by the claimant under the Workmen's Compensation Act is not*

*maintainable--- The ESI Act which has replaced the Workmen's Compensation Act, 1923 in the fields where it is made applicable is far more wider than the Workmen's Compensation Act and enlarges the scope of compensation--- when the employer of deceased workman had taken a specific stand that the deceased was covered by ESI Act, it is not clear as to how the learned Commissioner clutches on a jurisdiction which he does not have under the Workmen's Compensation Act--- learned Commissioner had not considered the provisions under Section 53 & 61 of the ESI Act and accordingly, the claimants are not entitled to claim the compensation under Employee's Compensation Act---impugned order set aside---appeal allowed. (Para- 17-21)*

1996(4) SCC 255

.....**Relied Upon.**

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**Appearance :**

For the Appellant/s	:	Mr. Sudhir Kumar Bijpuria, Advocate.
	:	Mr. Anil Kumar Gupta, Advocate.
For the Respondent/s	:	Mr. Rakesh Kumar Srivastava, Advocate.

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**C.A.V. JUDGMENT**

**Date : 29-10-2024**

**In Re :- I. A. No.8790 of 2015**

Having heard learned counsel for the parties and having considered the averments made in the application, the I.A. No.8790 of 2015 (Limitation Petition) is allowed and delay in filing the present Miscellaneous Appeal is condoned.

**Re :- Miscellaneous Appeal No.414 of 2015**

**2.** Heard learned counsel for the appellant and the learned counsel for the respondent nos.1 & 2.

**3.** This Miscellaneous Appeal has been filed by The Employees State Insurance Corporation Through The Regional



Deputy Director (hereinafter referred as 'Insurance Corporation') under Section 30(1) (a) of the Employees' Compensation Act, 1923, (hereinafter referred as the "Act") being aggrieved by the order dated 11.03.2015 passed by the learned Deputy Labour Commissioner-cum-Commissioner Workmen's Compensation, Magadh Division, Gaya, (hereinafter referred to as 'the Commissioner') in CWC Case No. 30 of 2006 by which he passed the order against the Insurance Corporation/appellant to deposit Rs.6,45,840/-. The Insurance Corporation/appellant has been directed to deposit the said amount within 30 days from the date of order and in case the said amount of compensation if not deposited within the stipulated period, then The Insurance Corporation/appellant under Section 4A of the Workmen's Compensation Act, 1923 shall be liable to pay an interest @ 12% *per annum* from due date till its realization.

4. The case of the claimants (respondent nos.1 & 2) in brief is that Late Sunil Kumar was working as a line supervisor of M/s. Richa & Company (respondent no.3), during his employment tenure he fell ill and was admitted to Ishan Hospital, Dundahera, Gurgaon. From where he was referred to Sadar Hospital for better treatment where he died during treatment on same day. The date of birth of the deceased was 12.03.1979 i.e., 26 years when he died due to illness during



work therefore, he is entitled to get compensation.

5. Defendant No. 1/respondent No.3, M/s Richa and Company filed its written statement/reply on behalf of the Management M/s Richa & Company and raised the preliminary objections that deceased workman Shri Sunil Kumar was covered under the ESI Act and is only entitled to benefits from ESI Corporation (appellant) and not from the Management of Company, respondent no.3 and claim filed under the provisions of Workmen's Compensation Act, 1923 is wholly untenable and is not maintainable. The Commissioner has no territorial jurisdiction to entertain the claim application.

6. It was further stated therein that the deceased workman Shri Sunil Kumar was engaged in the probationary employment of the replying Management of Company w.e.f. 01.02.2005 and worked till 10.05.2005 and thereafter left the employment w.e.f. 11.05.2005 unauthorized and abandoned his job of his own and never informed about his illness. The Management of Company came to know about death of Late Sunil Kumar on receiving demand notice of applicants/claimants dated 01.08.2005 wherein it was requested for payment of earned wages, provident fund, bonus etc. As full and final settlement, the Management paid the dues amount totaling



Rs.2,891/-.

7. The Insurance Corporation/ appellant not appeared before the Commissioner, accordingly *ex-parte* hearing against Insurance Corporation was proceeded in this case.

8. In support of claim petition claimants have examined Shri Nivas Singh and Mahendra Singh, and in their evidence they have fully supported the claim. The documentary evidence was also produced during the hearing of the claim case i.e., Identity card of M/s Richa & Company, the identity card issued by the Insurance Corporation and the Salary Slip.

9. From perusal of record, it appears that the learned Commissioner *vide* order dated 01.03.2011 on considering the claim petition and evidence of witnesses and documents on record held that deceased Sunil Kumar @ Sunil was an employee of respondent M/s. Richa and Company, Gurgaon whose ESI, Gurgaon card was made. Accordingly, he is covered under ESI, Gurgaon hence, the claimants were directed to claim their compensation before ESI Corporation, Gurgaon. *Vide* letter dated 07.04.2011, the said order was also sent to M/s. Richa and Company to co-operate and provide the correct address of appellant. It also appears from the record that *vide* letter dated 13.10.2011 the claimants informed the correct address of ESI Corporation (appellant) to Commissioner with



request to send the true copy of the said order dated 01.03.2011 through registered post.

**10.** The appellant in response, informed to the learned Commissioner and also to the claimants vide letter dated 03.07.2012 that Sunil Kumar was died on 01.06.2005 in General Hospital, Gurgaon due to T.B. The benefit to the dependents has to be given to those whose accident caused during or arising out of employment which is not applicable in this case and the claimants are not entitled to any ESI benefit.

**11.** Despite the aforesaid facts, surprisingly, the claimants filed a petition on 19.11.2014 before the Commissioner with prayer to hear the matter again misrepresenting that no order was passed in the case. On the said petition, mechanically without perusal of record the case was fixed for argument and without considering previous order dated 01.03.2011 and other materials on record including the letter No.401 dated 02.07.2013 addressed to appellant for payment of compensation to the claimants with respect to deceased issued by Commissioner, fresh order dated 11.03.2015 (impugned order) has been passed.

**12.** The learned Commissioner *vide* impugned order



dated 11.03.2015 held that the deceased fell ill during working under M/s Richa and Company and died while treatment was going on. Deceased was insured with the Employees State Insurance Corporation, Gurgaon (appellant) at the time of his death, whose identity card number was 11024794, employee code was 13-31669, and Employees State Insurance Number was 11099250. Therefore, the claimants were entitled for a compensation of Rs.6,45,840/- (Rs.3,000 x 215.28) as the age of the deceased was 26 and was earning Rs.6,000 per month after applying multiplicand of 215.28. The responsibility for paying the compensation amount lies with the Employees State Insurance Corporation, Gurgaon within 30 days from the date of the order, through account payee cheque/demand draft payable in the name of Deputy Labour Commissioner-cum-Commissioner, Workmen's Compensation, Magadh Division, Gaya. If the compensation amount ordered is not deposited within the stipulated period, then 12% annual interest will be payable on the total compensation amount from the due date to the date of payment under section 4 A of the Workmen's Compensation Act, 1923.

**13.** Learned counsel for the appellant/Insurance Corporation has submitted that the learned Commissioner had





not consider his earlier order dated 01.03.2011 wherein, claimants were directed to place their claim petition for compensation of deceased before ESI Corporation, Gurgaon and also without going into the facts disclosed by the appellant before learned Commissioner vide letter dated 03.07.2012 thus the impugned order is based on surmises and conjectures. Further, it is submitted that the learned Commissioner had not considered Section 53 and 61 of the ESI Act as the insured person under the ESI shall not be entitled to claim any compensation or damages under the Act or under any other law and there is bar to claim any benefit under other enactment. He further relied on judgment of Hon'ble Supreme Court in case of **A.Trehan v. Associated Electrical Agencies & Anr.** reported in **(1996) 4 SCC 255**. Moreover, it is submitted that the learned Commissioner had erred in awarding the compensation amount and had exceed his jurisdiction while passing the impugned order.

**14.** On the other hand learned counsel for the respondent has submitted that claimants are parents of the deceased who was employee of M/s Richa and Company and was insured with the appellant/Insurance Corporation thus, claimants are entitled for the compensation amount. It is further submitted that the learned Commissioner considering the facts



and circumstances of the case passed the order which requires no interference by this court. It is submitted that the Act is social welfare legislation and, therefore, it must be given a beneficial construction of its provisions so as to not deprive the employees of the benefit of legislation. Under the scheme of the Act, the Workmen's Compensation Commissioner is the last authority on facts and the scope of appeal is limited. It is submitted that there is no merit in the present appeal and is liable to be dismissed.

**15.** The substantial question of law to be decided in this appeal is *“whether the learned Commissioner had failed to consider the preliminary objection with respect to his jurisdiction in the light of the provision under Section 53 & 61 of the ESI Act and whether the claimants are entitled to claim the compensation under Employee's Compensation Act?”*

**16.** Having heard the learned counsel, considering the rival submissions made by them and on perusal of the record it appears that the learned Commissioner had on the basis of material on record, passed the order dated 01.03.2011 and held therein that deceased Sunil Kumar was an employee of respondent no.3 and his ESI card was made, hence the claimants were directed to claim compensation from appellant under ESI Act. It is clear that in view of the Commissioner which reflects from the said order dated 01.03.2011, the claimants were not



entitled to get compensation under Workmen's Compensation Act but they can claim the benefit under ESI Act. On enquiry, the appellant found that this was not the case of any employment injury. The claimant had the knowledge of the order dated 01.03.2011 and the decision of the appellant but he misrepresented before the Commissioner that no order has been passed due to which the said impugned order had been passed by the learned Commissioner ignoring the previous order dated 01.03.2011. The learned Commissioner passed the impugned order in a routine and casual manner ignoring the previous final order and the finding of impugned order is perverse. The learned Commissioner also ignored the provisions of Section 53 & 61 of the ESI Act which bars claiming of compensation for employment injury under Workmen's Compensation Act, 1923.

**17.** To apply the bar created in Section 53 of the ESI Act, the person must be workman, insured under the ESI Act. He should have sustained injury, contacted occupational disease or lost his life due to such injury or disease and they must have arose out of and in the course of his employment. Such injury is statutorily known as employment injury. Section 61 of the ESI Act bars claiming of compensation for employment under the provisions of any other enactment other than ESI Act. Section 61 of the ESI Act mentioned enacted laws, while Section 53 of



the ESI Act speaks about a particular enacted laws, namely, Workmen's Compensation Act, 1923 and also other laws, namely, Uncodified Laws/Common Law. Reading Section 53 and 61 of ESI Act together, it appears that they bar claiming of compensation for employment injury not only under enacted laws but also under unenacted, uncodified laws.

**18.** The law is well settled that in view of bar created by Section 53 of ESI Act the application for compensation filed by the claimant under the Workmen's Compensation Act is not maintainable. The Hon'ble Supreme Court in the case of **A. Trehan v. Associated Electrical Agencies** reported in **1996(4) SCC 255** it was observed that The ESI Act was enacted with an object of introducing a scheme of health insurance for industrial workers. The scheme envisaged by it is one of compulsory State insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories. The ESI Act which has replaced the Workmen's Compensation Act, 1923 in the fields where it is made applicable is far more wider than the Workmen's Compensation Act and enlarges the scope of compensation. Section 38 provides that all employees in factories or establishments to



which the ESI Act applies shall be insured in the manner provided in it.

In paragraph nos.11 & 12, the Hon'ble Supreme Court further observed as under:-

*“ 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.”*

**(Emphasis supplied)**

**19.** It is surprising that the learned Commissioner proceeded to adjudicate the matter especially when there was a legal bar to do so in context of Section 53 & 61 of the ESI Act. When the employer of deceased workman had taken a specific stand that the deceased was covered by ESI Act, it is not clear as to how the learned Commissioner clutches on a jurisdiction which he does not have under the Workmen’s Compensation Act.

**20.** In the light of the clear legal position and in view



of the facts and circumstances of the case, it is held that the learned Commissioner had not considered the provisions under Section 53 & 61 of the ESI Act and accordingly, the claimants are not entitled to claim the compensation under Employee's Compensation Act.

**21.** Accordingly, the impugned order deserves to be set aside. Hence, the impugned order dated 11.03.2015 passed by the learned Commissioner in CWC Case No.30 of 2006 stands set aside.

**22.** The present Miscellaneous Appeal is allowed.

**23.** There shall be no order as to costs.

**24.** Pending application(s), if any, shall stand disposed of.

**25.** Let the Court Record of CWC Case No.30 of 2006 be return back forthwith to the concerned Court/Authority.

**(Sunil Dutta Mishra, J)**

Ritik/-

AFR/NAFR	AFR
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Transmission Date	NA

