Before Nirmaljit Kaur, J.

UNITED INDIA INSURANCE COMPANY LTD.—*Appellant*

versus

VANEETA AND OTHERS—*Respondents*

FAO No.8307 of 2014

October 23, 2019

Motor Vehicles Act, 1988—Employees' State Insurance Act, 1948—S.53—Motor accident—Truck while reversing in factory premises struck the deceased—Insurer denies liability—Whether the claimants who have already received benefits under ESI Act, are entitled to compensation under any other law in view of bar under S.53—Held, compensation can be claimed despite bar under S.53 if; (a) The accident occurs at a public place, (b) Injury is not employment injury, (c) Is against a third party—On facts, held, compensation rightly claimed, since (i) the factory premises where accident took place was a public place, as members of public were allowed to use it with permission—Truck had a right to access—(ii) It cannot be termed an employment injury—Caused solely due to truck driver's negligence—Deceased had nothing to do with the truck—He was only on duty at the work place—Also, liability under ESI cannot be diluted by it not being an employment injury so long as the deceased was present at work place as an employee— (iii) Claim under the Act of 1988 amounts to claim against a third party—Therefore, insurer is liable to pay the compensation awarded.

Held that, it is, therefore, gathered from the above discussions that the claim can be initiated inspite of the bar under Section 53 of the ESI Act only in case:-

A: The accident occur in a public place;

B: The injury is not an employment injury, although it is in work place; and

C: Is against the third party.

(Para 12)

Further held that, what this Court therefore, needs to see is whether the conditions are satisfied in the present case.

(A) The first question would be as to whether the factory which was a work place can be considered to be a private place or a public place.

(Para 13)

Further held that, it was a factory but the factory was being allowed to be used by members of the public by permission. There is no denying that the truck had permission to enter the said premises and had right to access. Thus, this Court has no hesitation in holding that the factory was a public place.

(Para 17)

Further held that, (B) The second issue is as to whether it was an employment injury.

(Para 17)

Further held that, admittedly, the injury as a result of the accident on account of the truck bearing No.UA-08E-9577 which occurred on account of the negligence of the driver of the said truck who hit into the deceased while reversing it. The negligence of the driver has been upheld beyond doubt. The duty of the respondent was not on the truck or with the truck. He had nothing to do with the truck in question. The only thing was that he was on duty at the work place when the incident occurred. Hence, it cannot be said to be an employment injury although the liability of ESI too cannot be diluted just because it is not an outcome of employment injury as long as it was in the work place where the injured was present in his capacity as an employee.

(Para 18)

Further held that, (C) The fact that the claim under the Motor Vehicles Act would amount to claim against the third party and, therefore, maintainable inspite of the bar under Section 53 of the ESI Act stands answered by the Division Bench of Kerala High Court in the judgment rendered in the case of K.P.Kuriakose Vs. G.Santhosh Kumar & others.

(Para 18)

R.K.Bashamboo, Advocate
for the appellant in FAO-8307-2014 and
for respondent No.3 in FAO-794-2016.

Rabinder Singh, Advocate
for the appellant in FAO-794-2016 and

for respondent No.1 in FAO-8307-2014.

Satbir Rathore, Advocate
for respondents No.4 and 5 in both cases.

Ashwani Arora, Advocate
for the driver and the owner.

NIRMALJIT KAUR, J.

(1) Both the above mentioned appeals shall stand disposed of by this common order as the same arise out of the same accident and award.

FAO-8307-2014

(2) The appeal is filed by the Insurance Company against the award dated 31.3.2014 vide which Rs.28,56,152/- was awarded in pursuance to a accident that took place on 27.7.2011 in the factory premises where a truck bearing No.UA08-E-9577 being reversed by the driver of the said vehicle in a rash and negligent manner struck against Kulnaresh Singh since deceased, who died on account of the injuries suffered by him.

(3) While praying for setting aside the said award, learned counsel for the appellant-Insurance Company came forward with the arguments that the deceased was working as Quality Control Engineer. The accident took place in the factory where the deceased was present at the gate of the Amber Enterprises (I) Private Limited and the truck in question while revering hit into the deceased. Thus, the place of occurrence is the work place. He has already received benefit under the ESI Act and having received the same, the claimant was not entitled to compensation under any other law for the time being enforced in view of the bar under Section 53 of the ESI Act. Reliance was placed on the judgment rendered by the Hon'ble Apex Court in the case of ***Mangalamma and others*** versus ***Express Newspapers Ltd. and another***[1] to support the contention that the factory was a private place and, therefore, the accident had taken place at a private place, the liability cannot be fastened upon the insurer.

(4) In order to substantiate the argument that the compensation under any other Act was barred by Section 53 of the ESI Act once the compensation has been received, reliance was placed on the judgment

[1] 1982 AIR (Madras) 223

rendered by the Hon'ble Apex Court in the case of ***A. Trehan*** versus ***M/s Associated Electrical Agencies***[2]

(5) Before proceeding with the matter, this Court may note that no such plea or objection was raised by the appellant-Insurance Company in the reply filed in the claim-petition. Accordingly, no issue was framed to the said effect as to whether the accident was in a public place or whether the deceased had received any amount under the ESI Act and if received, whether the claimant was at all entitled under the Motor Accident Claims Tribunal and whether the bar under Section 53 of the ESI Act was applicable in the claim under the Motor Accident Claims Tribunal.

(6) In fact, there is not even an iota of mention in the claim-petition before the Tribunal. However, taking into account the legal issue, this Court proceeds to decide the same. For proper adjudication it would be appropriate to reproduce Section 53 of the ESI Act. The same reads as under:-

> "Section 53: Bar against receiving or recovery of compensation of 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 of from any other person, any compensation or damages under the Workmen's Compensation Act, 923(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."

(7) No doubt, the judgment rendered by the Division Bench of the Madras High Court in the case of Mangalamma (supra), went on to hold that no claim for compensation under Section 110A of the Motor Vehicles Act could be maintained in case the claimant get the benefit under the ESI Act but the same judgment also held that the object of said Section 53 of the ESI Act was to see that the Employer is not faced with more than one claim in relation to the same accident. Though the observation that there was complete bar was upheld by the Hon'ble Apex Court in the case of A.Trehan (supra) but A Trehan (supra) did not deal with the claim under MACT but under ESI and Workmen's Compensation Act which was between same employer. Para 10 of the judgment reads as under:-

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[2] 1996(2) Mh.LJ 555

> "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 an 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 by-passing 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."

(8) In the judgment rendered in the case of Mangalamma (supra) as stated above, the Division Bench of Madras High Court held in no uncertain terms that "the object of the said Act was to see that the employer was not faced with more than one claim in relation to the same accident", whereas, there is no dispute that the claim herein is against the Insurance Company with whom the said vehicle was insured and, therefore, it is not a case where the employer was being burdened twice.Moreover, the Motor Vehicles Act originates from substantive law i.e. law of torts which provides for adjudication upon claim of compensation in respect of accident involving the death or injury to persons on account of the negligence of the driver of the motor vehicle. As stated above, in the judgment rendered in the case of A.Trehan (supra) the dispute was of receiving the compensation under the Workmen's Compensation Act when the compensation had already been received under the ESI Act wherein the employee is common. Both these judgments were discussed by the Hon'ble Apex Court in the

case of ***Western India Plywood Ltd.*** versus ***P.Ashokan***[3] The Hon'ble Apex Court although agreed with the decision in the case of A. Trehan, the quantum of claim against a third party as raised was left open as is evident from paras 13 and 14:

> "13. During the course of hearing, it had been argued that Section 53 should not be construed in such a way that an insured person cannot raise a claim against a third party in the event of his suffering an employment injury. It was submitted that though qua the employer only one remedy may be available, namely, under the ESI Act but as far as third persons are concerned Section 53 cannot be taken up as a defence to an action in tort in a claim being made for damages because the ESI Act creates certain rights as a result of the employment qua the employer and has no application as far as third parties are concerned. In this connection it was submitted that the use of the words 'employment injury' in Section 53 relates to a claim which is relatable to the employment of the insured person with his employer.
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> 14. In our opinion, though there is considerable force in the said submission but it is not necessary for the decision of the present case to decide this issue finally because in the instant case the claim which was sought to be made was not against the third party but against the employer itself. Perhaps this question may require consideration in an appropriate case."

(9) At the same time, in Western India Plywood Ltd. (supra) warned that even though the ESI was a beneficial legislation, the Legislature had thought it fit to prohibit an insured person from receivingor recovering the compensation or damages under any other law including torts in cases where the injury had been sustained by him was an employment injury. Thus, in case, it was employment injury, no claim could be laid even under the law of torts which was under MACT.

(10) The learned Single Bench of this Court Court in the case of ***TATA AIG General Insurance Company Ltd.*** versus ***Ram Avtar and others***[4] while considering the judgment rendered in the case of

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[3] 1997(2) CLR 1064

[4] 2018(2) R.C.R. (Civil) 701

Regional Director ESI Corporation versus ***Francis De Costa***[5] held that the claim of compensation under MACT is excluded from the bar of Section 53 of the Act and a perusal of the above judgment shows that the distinction is in case the injury is a employment injury. The same reads in paras No.25 and 28 as under:-

> "Hence from the perusal of the above said judgment of the Hon'ble Supreme Court it is quite clear that the injury in question should have been caused during the performance of the job requirements in the premises of the employment or if the same are caused any where outside the premises of the employment, the same should have been caused in an accident which has a reasonable and incidental connection to the employment, only then; the injury sustained by the injured/deceased could be treated as an *employment injury*.
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> Otherwise also, the word *'**as an employee**'* under this Act; as mentioned in the last line of Section 53 of the Act is also not without any significance. These words would make it clear that the bar against claiming compensation from anywhere else is contemplated only if the injured/deceased sustained the injuries as an employee under this Act. This would show that the bar created by Section 53 of the Act would be only regarding any other any other subsequent compensation, if claimed, by the injured or the dependents; in the capacity of injured/deceased being an employee under the ESI Act. This would mean that it is not the claim of compensation under Motor Vehicles Act which would be excluded by Section 53 of the Act, rather, it would be any other compensation, if claimed, under any other Act having provisions for similar compensation for the employees as defined under the ESI Act. This means that Section 53 of the Act only bars receipt of compensation from the employer or any other person under any other labour law which might be providing compensations for the employees/workmen. This is also clarified by the provision of Section 61 of the Act; which specifically says that once a person is provided benefit under the ESI Act, he shall not be entitled to receipt any *'similar benefits'* admissible under the provisions of any other enactment. Giving any other unrestricted interpretation to the provisions of Section 53 of

[5] 1997(1) SCT 41

> the Act would render the Section 61 of the Act as superfluous. And it is well settled that the legislature can not be deemed to have wasted words in any Section of a statute, much less to speak of wasting of a full Section of statute, like Section 61 of the ESI Act. Hence read with Section 61 of the Act, the Section 53 can be interpreted to prohibit only a second claim of similar compensation in his capacity as employee from the employer or from any person required to compensate such an injured person/dependent in his capacity as an employee under the ESI Act. Since there is no commonality between the benefits available under
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> Motor Vehicles Act and under the provisions of ESI Act, therefor, the provisions of two Acts can not be mixed up to deny compensation to a person under Motor Vehicle Act. In a given case, even the monthly interest earned on the amount awarded under Motor Vehicles Act can be many fold higher than the total amount of benefits available under the provisions of ESI Act. Hence the benefits available under these two enactments are altogether different and separate."

(11) In the present case, the claimant got the compensation under ESI in view of the fact that he was present at the work place when the incident occurred but the injury was not incidental to employment injury. Hence, he cannot be denied his right to claim under the Motor Vehicles Act as the same was taken place due to the negligence of the driver of the offending vehicle. Hence, the benefits and his claim under the two enactments is totally different and separate.

(12) It is, therefore, gathered from the above discussions that the claim can be initiated inspite of the bar under Section 53 of the ESI Act only in case:-

A. The accident occur in a public place;

B. The injury is not an employment injury, although it is in work place; and

C. Is against the third party.

(13) What this Court therefore, needs to see is whether the conditions are satisfied in the present case.

A. The first question would be as to whether the factory which was a work place can be considered to be a private place or a public place.

(14) The learned Single Bench of the Delhi High Court in the case of ***Ramesh Kumar Maini*** versus ***United Insurance Co. Ltd & Ors***[6] after taking note of large number of judgments observed that public place will include private places which can be accessed by public and held in paras No.13 and 14 as under:-

> "The Judgment of the Andhra Pradesh High Court in the case of Chinna Gangappa Vs. B. Sanjeeva Reddy, 1999 ACJ 719 specifically relates to the auto garage where a tractor was sent for repairs and was being reversed towards its trailer when a labourer was injured. The insurance company raised the defence that the garage was not a public place. Following, 1984 ACJ 198 (A.P.) and 1988 ACJ 674 (Bombay), the Andhra Pradesh High Court held the auto garage to be a public place and Insurance Company was held to be liable.
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> I agree with the view taken by the Full Bench of Bombay High Court in the case of Pandurang Chimaji Agale Vs. New India Life Insurance Co. Ltd., Pune, 1988 ACJ 674 and followed by Patna High Court, Madras High Court, Gujarat High Court, Andhra Pradesh High Court and Orissa High Court that for the purposes of Chapter VIII of the Motor Vehicles Act, the expression "public place" will cover all places including those of private ownership where public has access, whether free or controlled in any manner whatsoever. The finding of the learned Tribunal in this regards is, therefore, erroneous."

(15) Similarly, the judgment rendered by the Full Bench of the Madras High Court in ***United India Insurance Co. Ltd***. versus ***Parvathi Devi and others***[7] held that the private place shall amount to be a public place in case it is allowed to be used by people with permission or without permission. The relevant observations of paras No.16 and 17 are as under:

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[6] 2009(6) ILR (Delhi) 761

[7] 1999 ACJ 1520

> "The definition of 'public place' is very wide. A perusal of the same reveals that the public at large has a right to access though that right is regulated or restricted. It is also seen that this Act is beneficial legislation, so also the law of interpretation has to be construed in the benefit of public. In the overall legal position and the fact that if the language is simple and unambiguous, it has to be construed in the benefit of the public, we are of the view that the word 'public 'place', wherever used as a right or controlled in any manner whatsoever, would attract Section 2 (24) of the Act. In view of this, as stated, the private place used with permission or without permission would amount to be a 'public place'.
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> In view of what we have discussed above, we hold that the expression 'public place' for the purpose of Chapter VIII of the Motor Vehicles Act, 1939 will cover all places including those of private ownership where members of the public have an access whether free or controlled in any manner whatsoever."

(16) While relying upon the ***Pandurang Chimaji Agale*** versus ***New India Life Insurance Co. Ltd., Pune***[8], the Full Bench of the Madras High Court went on to observe in para No.15 as under:-

> "On a perusal of the above judgment, it is seen that while considering whether a place is a public place or a private place, the Full Bench of the Bombay High Court pointed out that,
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> "What is necessary is that the place must be accessible to the members of public and be available for their use, enjoyment, avocation or other purposes."
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> In that decision, an accident occurred on a private road in the compound of an industrial establishment. The entry was regulated by passes. In that circumstances of the case, the above mentioned Full Bench had held that:
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> "It will have, therefore, to be held that all places where the members of public have an access, for whatever reasons, whether as of right or controlled in any manner whatsoever,

[8] 1988 ACJ 674

> would be covered by the definition of 'public place' in Section 2(24) of the Act."

(17) In the present case, it was a factory but the factory was being allowed to be used by members of the public by permission. There is no denying that the truck had permission to enter the said premises and had right to access. Thus, this Court has no hesitation in holding that the factory was a public place.

B. The second issue is as to whether it was an employment injury.

(18) Admittedly, the injury as a result of the accident on account of the truck bearing No.UA-08E-9577 which occurred on account of the negligence of the driver of the said truck who hit into the deceased while reversing it. The negligence of the driver has been upheld beyond doubt. The duty of the respondent was not on the truck or with the truck. He had nothing to do with the truck in question. The only thing was that he was on duty at the work place when the incident occurred. Hence, it cannot be said to be an employment injury although the liability of ESI too cannot be diluted just because it is not an outcome of employment injury as long as it was in the work place where the injured was present in his capacity as an employee.

(c)The fact that the claim under the Motor Vehicles Act would amount to claim against the third party and, therefore, maintainable inspite of the bar under Section 53 of the ESI Act stands answered by the Division Bench of Kerala High Court in the judgment rendered in the case of ***K.P. Kuriakose*** versus ***G.Santhosh Kumar & others***[9] by following the judgment rendered in the case of **Regional Director ESI Corporation Vs**. **Francis De Costa** as under:-

> "We are persuaded to agree that the decision in Regl. Director, E.S.I.C., v. Francis De. Costa (supra) covers the specific issue raised in this case. Claim is raised against a stranger to the contract of employment for compensation on the basis of negligence for causing the accident. The claim is not for compensation for employment injury and in these circumstances the observations in para 44 of Regl. Director E.S.I.C. V. Francis De Costa must be preferred. Following the dictum therein we accept that a claim for compensation in tort against a stranger can coexist with a claim for

[9] 2010 ACJ 662

benefits under the E.S.I. Act. The use of the words "any person" in Section 53 of the E.S.I. Act which we extract below cannot take within its sweep the claim in tort against the stranger/tort fearer under Section 166 of the M.V. Act for compensation for the loss suffered in a motor accident caused by negligence.

"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. (emphasis supplied).The expression "any other person" in Section 53 can take within its sweep only such other person who is sought to be made liable, under or on the basis of the contract of employment, to compensate the employee for the 'employment injury' suffered by him. If an injury is suffered to a motor accident and such injury is an employment injury also, Section 53 does not bar the claim in tort under Section 166 of the M.V. Act against the stranger tort fearer. But bars the claim against the employer under any other law. As held by Supreme Court in Francis De Costa the insurance coverage under the Act is in addition to and not in substitution of the other remedies against a stranger."

(19) The object of Section 53 as held in the case of Mangalamma (supra) was not to burden the Employer twice, whereas, the Motor Vehicles Act is totally separate from ESI and independent, a stranger.

(20) Thus, the above mentioned conditions being satisfied in the case in hand, Section 53 of ESI Act would not come in his way to claim the compensation under the Motor Vehicles Act in the facts of the present case.

(21) Learned counsel for the appellant-Insurance Company has not been able to point out any illegality in the compensation so awarded with respect to the quantum, which has been admittedly granted as per

the judgment rendered in the case of ***National Insurance Company Limited*** versus ***Pranay Sethi and others***[10].

(22) Dismissed accordingly.

FAO-794-2016

(23) The present appeal is filed by the claimant for enhancement of the compensation awarded vide award dated 31.3.2014.

(24) Learned counsel for the appellant has not been able to show as to how the claimant is entitled to more enhancement than is granted by the Tribunal under any of the heads.

(25) Accordingly, both the above mentioned appeals stand dismissed.

Tribhuvan Dhaiya

[10] 2017 AIR(SC) 5157