

IN THE COURT OF ADDITIONAL COMMISSIONER FOR EMPLOYEE'S
COMPENSATION, PUDUCHERRY

PRESENT: THIRU. S. MOUTTOULINGAM,
Additional Commissioner for Employee's Compensation,
Labour Department Complex – II Floor,
Vazhudavur Road, Gandhi Nagar,
Puducherry – 605 009.

E.C.A No.01/2020

BETWEEN:

1.Thiru.Puran Mahto,
2.Tmt. Kamala Devi



.....Applicants

Vs

1. The Managing Director,
M/s.POWERGRID Corporation of India Ltd.,
Puducherry.
2. M/s.Mary Constructions,
Moolaokaraipatti,Tirunelvi-Dist.
3. The Divisional Manager,
United India Insurance Co.Ltd.,
Tirunelvi.

..... Opposite Parties

ORDER

This claim application coming on 08.01.2021 for final hearing before me and represented in the proceedings by Thiru. M.Madheshwaran, counsel for applicant, Thiru. Mithun Chakravarthy, Counsel for Opposite Party No.1, Thiru N.Babu, Counsel for Opposite Party No.2, Thiru. B.Mohandoss, Counsel for Opposite Party No.3 and upon hearing both sides and having stood over till this day for consideration, this court pronounced the following:-

A brief reference to the factual position of the claim filed by the applicants runs as follows:-

1. The applicants Thiru.Puran Mahto and Tmt. Kamala Devi in their claim petition dated 02/12/2019 have averred that the applicants 1 and 2 are the parents of the deceased Thiru. Pyarelal Mahto. The applicants have averred that Thiru. Pyarelal Mahto, aged 21 years worked in the respondent's No.2 company being the contractor and was earning a sum of Rs. 18437/- per month. Further stated that on 25.10.2019 when Thiru. Pyarelal Mahto was cutting trees under the line corridor near buriyal yard, Kanavapet, Villianur, Puducherry, ^{while} ~~was~~ attending his work more carefully ~~yet~~ the employers did not take any precautions measures and made him to work near the electric lines which ended fatal to his life.

2. The applicants further submitted that the accident happened during the course of the employment and the said Thiru. Pyarelal Mahto succumbed to death on the same day due to electrocution. The deceased is the only earning member in his

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family and after death of Thiru. Pyarelal Mahto, his family were put into great mental shock and unbearable grief. Hence the applicants claim a sum of Rs.25,00,000/- towards compensation for the loss of love and affection, loss of income, funeral expenses, loss of estate and mental agony. The applicants stated that the accident was happened within this Hon'ble Authority jurisdiction.

The Opposite Party no.1 M/s Powergrid Corporation of India Ltd. In its counter statement averred that the opposite party No.2 has the Employees Compensation Liability Policy with the 3rd opposite party vide Policy No. 0910032718P112836958 and the same is in force at the time of accident. The Opposite party no.1 further stated that they have also paid a sum of Rs. 10,00,000/- (Rupees ten Lakhs only) to the applicants on 27.01.2020 as final amount of financial assistance and the same ought to have been taken into account while deciding the present claim petition. The opposite party no.1 further submitted that the opposite party no.2 alone is responsible for the compensation to be paid to the applicants as per the Employees Compensation Act, 1923 and further prayed this Authority to dismiss the application as against the 1st opposite party and render justice.

The opposite party no.2 in their counter statement submitted that the deceased was an insured under Employees Compensation Liability with the 3rd opposite party and therefore if any award passed by this authority, the 3rd opposite party is solely liable to pay the said award amount to the applicants.

The opposite party no.3 in its counter submitted that it issued an Employees Compensation Liability Policy to the 2nd opposite party covering 25 employees for a total sum insured of Rs.25,50,000/- (Rs.8500/- *12 months *25 employees) i.e. per employee sum insured is Rs. 1,02,000/- and so the maximum liability per employee is Rs.1,02,000/- per employee subject to the policy condition No.9 of the policy.

Points for consideration:

The following preliminary issues may be taken up for consideration as the question of jurisdiction has been raised by the Opposite Party No.1.

Whether the claim of the applicant is barred under section 53 of the Employee's State Insurance Act, 1948?

Upon perusing the records and averments made by both parties, it is observed that the applicant has filed the claim application under Employee's Compensation Act for the accident occurred to Thiru. Pyarelal Mahto during the course of his employment with the opposite party No.2 on 25.10.2019.



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In this context, the contention of opposite party is that deceased Thiru. Pyarelal Mahto is covered under ESI Act. During the course of enquiry it is observed that the Opposite Party's establishment is covered under the Employee's State Insurance Act, 1948 with registration of E.S.I. Employer's Code No.66000434520000699 and the deceased employee Thiru. Pyarelal Mahto is also having coverage under the Employee's State Insurance Act, 1948 with E.S.I. registration No.6633586792 dated 09.02.2018.

Section 53 of Employee's State Insurance Act, 1948 reads as follows:-

"53. Bar against receiving or recovery of compensation or damages under any other law:-

An insured person or his dependants 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 Employees Compensation Act, 1923 (8 of 1923) or any other law for time being in force or otherwise, in respect of any employment injury sustained by the insured person as an employee under this Act."

Further, in Bharagath Engineering Vs R. Rangaynayaki and Others in Case No. Appeal (Civil) 8623 of 2002 Supp (5) SCR 642, the Hon'ble Supreme Court of India in its judgment dated 20.12.2002 has held that

" by operation of Section 53 of ESI Act, proceedings under Employees Compensation Act, 1923 were excluded statutorily".

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 bar created by Section 53 of Employee's State Insurance Act, 1948 and the judgment of the Hon'ble Supreme Court of India cited above the application for compensation filed by the applicants of the deceased employee under the Employee's Compensation Act, 1923 is not maintainable and this authority lacks



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jurisdiction to entertain this claim, hence the claim is dismissed and the applicant is directed to approach the appropriate authority for their relief under Employee's State Insurance Act, 1948 .

No cost.

Dated 8th day of January 2021.

S. Moutoulingam
(S .MOUTTOULINGAM)
ADDITIONAL COMMISSIONER FOR
EMPLOYEE'S COMPENSATION,
PUDUCHERRY

To

1. Thiru.Puran Mahto,
Tmt. Kamala Devi
Panchayat Dondlo Block Bagodar,
Vill Dandlo Po DondloPs Bagodar,
Dandlo, Giridih, Jarkhand-825322
2. The Managing Director,
M/s.POWERGRID Corporation of India Ltd.,
400/230 KV Sub station, ramanathapuram- Village,
Thondamanatham Main Road,
Puducherry.
3. M/s.Mary Constructions,
Moolaokaraipatti, Nanguneri-Taluk,
Tirunelvi-District,
Tamilnadu-627354
4. The Divisional Manager,
United India Insurance Co.Ltd.,
Tirunelvi, Tamilnadu -627354

