REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8155 OF 2014

Dhropadabai and Others — **Appellant(s)**

Versus

M/s. Technocraft Toolings — **Respondent(s)**

J U D G M E N T

Dipak Misra, J.

The present appeal, by special leave, is directed against the judgment and order dated 16th July, 2012, passed by the High Court of Bombay Bench at Aurangabad in First Appeal No.462 of 2011, whereby the High Court has allowed the appeal and set aside the award passed by the Commissioner under the Workmen's Compensation Act, 1923, (for short, 'the 1923 Act').

The facts which are requisite to be stated are that the appellants, the legal heirs of Ambadas Lahane, filed an

application for grant of compensation under the 1923 Act before the labour Court, Maharashtra at Aurangabad, forming the subject matter of Application No.51 of 2006. It was asserted in the application that the appellant No.1, Dhropadabai, is the wife and the other respondents were minor children of the deceased-employee, who had suffered a chest pain at the work place about 8.30 a.m. on 2nd April, 2005. He was immediately taken to the Medical College Hospital, Ghati, Aurangabad, where he was declared dead. After the death took place, the appellant No.1 approached the authorities of the respondent-employer for grant of compensation. As the same was not granted, she along with her children, was compelled to move the labour Court.

Before the labour Court, the employer, the respondent herein, took two fold stand, namely, (i) that the legal heirs of the deceased-employee were not entitled to get any compensation under the 1923 Act as the deceased-employee was an insured person under the Employees' State Insurance Act, 1948 (for short, 'the 1948 Act'), and (ii) the accident did not occur during course of his employment as the death took place due to coronary disorder, which has nothing to do with the work place. The labour Court framed two principal issues, namely, whether the accident had occurred during course of employment of the deceased-employee, and whether

the legal heirs were entitled for grant of compensation amounting to Rs.3 lacs along with 50% penalty and interest at the rate of 18% per annum on the total amount of compensation from the date of accident till realization of compensation amount as per law.

The labour Court considering the material brought on record and the decision of this Court in *Jyothi Ademma* vs. *Plant Engineer, Nellore & Another*[1], came to hold that the deceased-employee had died in course of employment while remaining on duty with the respondent-employer. Thereafter, it referred to the applicability of the 1923 Act in the backdrop of Section 53 of the 1948 Act and came to hold that there was no justification to deny the compensation under the 1923 Act solely because the employee was an insured person under the 1948 Act. Being of this view, the labour Court directed that a sum of Rs.4,07,700/- shall be awarded towards the payment of compensation on the death of deceased Ambadas Lahane to his legal heirs. It also stipulated that if the employer failed to pay such compensation within a stipulated period, that is, one month, it will be open to the legal heirs of the deceased-employee to file an application under Section 4(a) of the 1923 Act.

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1 (2006) 5 SCC 513

Being grieved by the aforesaid award, the employer moved the High Court and reiterated both the contentions. The High Court analyzing the evidence on record and the stand put forth by the employer affirmed the view expressed by the labour Court that the deceased was an employee under the respondent-firm and he has breathed his last during the course of employment. As far as the applicability of the 1923 Act is concerned, the learned Single Judge opined on the basis of the decision rendered by this Court in *A. Trehan* vs. *Associated Electrical Agencies and Another*[2] that the legal heirs would not be entitled to get compensation under the 1923 Act as he was an insured person.

We have heard Mr. Sandeep Singh Tiwari, learned counsel for the appellants and Mr. Shashibhushan P. Adgaonkar, learned counsel for the respondent.

The status of the employee and the factum of his breathing last during the course of employment, cannot be called in question as it hinges on the facts and we find that the approach of the labour Court, as well as of the High Court on this score is absolutely infallible. Therefore, the only question that remains for consideration is whether the High Court is justified in denying the benefit under the 1923 Act. In this context, we may refer to Section 53 of the

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2 (1996) 4 SCC 255

1948 Act, which reads as under:

> **"53. *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 employment injury sustained by the insured person as an employee under this Act."**

The aforesaid provision came to be interpreted by a two-Judge Bench in *A. Trehan's* case, wherein the Court after reproducing the said provision and taking note of the definition of workman as provided under Section 2(1)(n) of the 1923 Act, came to hold as follows:

> **"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 assured that the workmen had a better right under the Workman'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."**

Be it noted, the Court distinguished the decision rendered in *Regional Director, ESI Corporation* vs. *Francis De Costa*[3], and overruled the Full Bench decision of the High Court of Kerala in *P. Asokan vs. Western Indian Plywoods Ltd., Cannanore*[4].

In *Bharagath Engineering vs. R. Ranganayaki and Another*[5], a two-Judge Bench has ruled thus:

> **"The deceased employee was clearly an 'insured person', as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise. We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked**

3 **(1993) Supp. 4 SCC 100**

4 **AIR 1987 Kerala 103**

5 **(2003) 2 SCC 138**

out by the Corporation and shall be extended to the eligible persons."

In *National Insurance Company Ltd.* vs. *Hamida Khatoon and Others*[6], reference has been made to *A. Trehan's* case, as well as *Bharagath Engineering's* (supra) and as it appears to us, the later Bench has concurred with the view expressed in the earlier case.

The aforesaid authorities make it eminently clear that once an employee is an "insured person" under Section 2(14) of the 1948 Act, neither he nor his dependents would be entitled to get any compensation or damages from the employer under the 1923 Act. We are obliged to hold so as the plain language used in the Act clearly conveys so. Therefore, we do not find any flaw in the view expressed by the High Court. At this juncture, we may state that while this Court granted leave on 22nd February, 2014, had directed the respondent to deposit Rs.4 lacs in the Registry of this court within four weeks and permitted the appellants to withdraw the said sum on furnishing a personal bond. We have been apprised that the amount has been deposited by the employer and also has been withdrawn by the legal heirs of the deceased employee. Though the respondent is getting the benefits under the 1948 Act, yet we do not intend that the amount that has already been withdrawn by the legal heirs of the deceased-employee,

6 (2009) 13 SCC 361

should be recovered by the employer by way of deducting the periodical sum that is paid to the family members of the deceased employee. We have passed this order as we are compelled to feel that the cause of justice should be best sub-served as the appellants have been fighting the litigation since a decade.

Consequently, the appeal, being devoid of merit, stands dismissed. However, there shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

New Delhi
March 19, 2015.