

the plaintiff is allowed to withdraw this suit with liberty to file a fresh one in respect of the same subject matter on payment of Rs. 20 as costs. The suit is dismissed, as withdrawn. The file be consigned on completion and the documents, if any, be returned to the parties."

(3) This petition is accepted on the short ground that the impugned order is no judgment in the eye of law. A bare reading of the said order would show that no reasons have been given by the learned Judge as to how he came to the conclusion that the requirements of Order 23, rule 1 were satisfied in this case. It is not sufficient to say that from the statement of the plaintiff, the Court was satisfied that there was a formal defect "in the frame and form of the suit". Curiously enough even the said statement had not been recorded in the order. The suit had gone on for quite some time, when the plaintiff made the statement, referred to in the impugned order. The learned Judge should have examined the provisions of Order 23, rule 1, Code of Civil Procedure, before giving the necessary permission to the plaintiff. Needless to say that the same could be granted only if the case fell within the four-corners of the said rule.

(4) This petition is, accordingly, accepted, the impugned order set aside and the trial Judge is directed to hear the parties again and decide the case afresh. Parties have been directed to appear before him on 19th October, 1971. There will, however, be no order as to costs.

B. S. G.

APPELLATE CIVIL

Before S. S. Sandhawalia, J.

LAKSHMI OIL MILLS, CIRCULAR ROAD, AMBALA CITY.—Appellant.

versus

THAKAR DASS ETC.,—Respondents.

First Appeal From Order No. 141 of 1970 with Civil Misc.
No. 589 of 1970

September 17, 1971.

Employees' State Insurance Act (XXXIV of 1948)—Section 61—Workmen's Compensation Act (VII of 1923)—Section 3—Workman insured under

Lakshmi Oil Mills, Circular Road, Ambala City v. Thakar Dass etc.
(Sandhawalia, J.)

Employees' State Insurance Act, dying during the performance of his duties—Dependants of the deceased entitled to the benefits of the insurance—Whether debarred from claiming compensation under Workmen's Compensation Act.

Held, that the plain language of the provision of Section 61 of the Employees' State Insurance Act, 1948 is intended to create a bar against the claim of any similar benefits admissible under the provisions of other enactments. Workmen's Compensation Act, 1923 is obviously an enactment under which similar benefits or compensation for injury received by a workman is admissible. If a person entitled under the Insurance Act to receive compensation is allowed to make a similar claim under other enactments, such as the Workmen's Compensation Act, the express provisions of Section 61 of the Act would be rendered virtually *otiose*. The Insurance Act provides for statutory compulsory insurance in certain cases by the employers. They have to pay the insurance premia for the insured workman working in their factories. It will be incongruous that such an employer should continue to be liable to the workman for the injury. On the general principles of insurance law, it is inapt that a person, who has insured himself against loss, should nevertheless remain liable for the same despite such insurance. The very object and purpose of the insurance and the premium paid by the employer will be lost if he were to continue to be liable under other enactments for all those benefits which are available to the insured workman under the Act. The object of Section 61 of the Act is apparently to prevent such a contingency. Equally so, the bar appears to have been created to avoid a multiplicity of legal proceedings. If statutory insurance under the Act enures to the benefit of an insured workman, and the Corporation created under the Act is to be liable for the payment of disablement and dependents' benefits, then there is no reason why a duplication of the proceedings should be allowed in allowing the insured workman to make similar or identical claims under other enactments also. Hence Section 61 of the Act debars the dependents of an insured workman under the Act from claiming a similar benefit under the provisions of Section 3 of the Workmen's Compensation Act. (Paras 6, 7 and 9).

First Appeal from the order of the Court of Shri I. M. Malik, Senior Sub-Judge Exercising the Powers of Commissioner under the Workmen's Compensation Act, Ambala, dated 21st July, 1970, granting the applicants a compensation in the amount of rupees seven thousand from respondent No. 1 as per schedule attached to the Workmen's Compensation Act at the rate of compensation payable to the employee drawing salary between Rs. 100 to Rs. 150 p.m. and entitling the applicant to recover the costs of the application from the Respondent No. 1 and dismissing the application against Respondent No. 2 with costs.

Civil Misc. No. 5,899/70 : Application under section 151 Civil Procedure Code read with Section 30-A of the Workmen Compensation Act, 1923,

praying that the Workmen Compensation Commissioner be directed not to make the payment of Rs. 7,000 to the Respondent No. 1 till the Final decision of this appeal.

L. M. Suri, Advocate, for the appellants.

Faqir Chand Aggarwal, Advocate, for Respondent No. 1.

K. L. Kapur, Advocate, for Respondent No. 2.

JUDGMENT

SANDHAWALIA, J.—(1) Whether a workman insured under the relevant provisions of the Employees' State Insurance Act, 1948, or his dependants are barred by virtue of section 61 of the said Act from claiming compensation or other similar benefit under the provisions of the Workmen's Compensation Act, 1923, is the sole issue which arises for determination in this appeal.

(2) The only point that has been agitated is one of pure law and the briefest reference to the facts relevant thereto would suffice. Kharaiti Lal deceased was employed as a workman on monthly wages of Rs. 120 in the factory owned by the appellant—Messrs Lakshmi Oil Mills of Ambala City. On the 26th of November, 1966, the workman above-said whilst working in the said factory fell into the hot water tank situated on the premises and was extricated therefrom in an unconscious condition. His father Thakar Dass reached there on information received and along with an employee of the appellant removed Kharaiti Lal deceased to the Civil Hospital, Ambala, where he succumbed to his injuries at 3 P.M. on the same day. The parents of the deceased then brought an application under section 3 of the Workmen's Compensation Act seeking Rs. 10,000 as compensation. Apart from controverting the case of the applicants on merits the appellant took a legal plea that they were not liable to pay any compensation to the deceased or his dependants as the former was insured under the Employees State Insurance Act and the Corporation created under that statute alone was liable. The trial Court framed the following issues :—

- (1) Whether the Lakshmi Oil Mills (respondent No. 1) is liable to pay any compensation in view of the fact that deceased was insured under the Employees State Insurance Act ?

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- (2) Whether the deceased received fatal injuries during the course of his employment ?
- (3) Whether the applicants are dependants of the deceased ?
- (4) To what amount of compensation are the applicants entitled and from whom ?
- (5) What is the effect of non-issuance of notice by the applicants on the employer ?

Issue No. 1 which is crucial for the present appeal was decided against the appellant and it was held that even though the applicants could claim the benefit from the Employees State Insurance Corporation, nevertheless the claim could also be made against the present appellant. Holding further in favour of the respondent-applicants on the other issues, the trial Court awarded Rs. 7,000 as compensation to the respondents.

(3) Mr. Suri in support of the appeal has not in fact adverted at all to the findings of the trial Court on issues Nos. 2 to 5 on merits. The sole challenge is as regards the finding on issue No. 1. The gravamen of the argument raised is that section 61 of the Act creates a statutory bar against the respondent-applicants for recovering any compensation from the appellant under section 3 of the Workmen's Compensation Act when admittedly they are entitled to receive a similar benefit under the Employees' State Insurance Act 1948 (hereinafter called the Act). It also deserves notice that Mr. F. C. Aggarwal on behalf of the respondents conceded that the compensation claimed by his clients under the Workmen's Compensation Act was a similar or identical benefit available to them under the Act. The case was hence argued on the accepted premises that the benefit sought to be claimed by the respondents was of a similar nature under either of the two enactments.

(4) There is no dispute that the deceased Khariti Lal was a duly insured workman under the provisions of the statute. The appellants paid the relevant insurance premia under the Act in regard to the deceased. In fact on behalf of the applicant-respondents it was

admitted that Messrs Lakshmi Oil Mills used to contribute a sum towards insurance of the deceased and had been issued the relevant identity card by the Employees' State Insurance Corporation. It is further not the subject-matter of challenge that the deceased workman and his dependants in the context of the above-said admitted facts would be entitled to receive benefits and compensation accruing to them under the Act. The trial Court in terms held so in these words :—

“In my opinion the applicants could claim dependants benefit from respondent No. 2 and also the compensation from respondent No. 1 on account of the death of their son.”

It is the above-said finding which is the subject-matter of the core of the attack on behalf of the appellants. The trial Court in holding against the appellants relied primarily on *Bhajan Ram v. Employees' State Insurance Corporation* (1). A close reference to the facts and the ratio of the above-said judgment would show that the learned trial Court has misconstrued the ratio thereof. Therein the dependants of an insured Line-man of the Punjab Electricity Board had applied for and already received compensation under the Workmen's Compensation Act, 1923. It was thereafter that an application was made on behalf of the deceased's dependants under the provisions of the Act and an objection was raised that the dependants having already received compensation under the Workmen's Compensation Act were not entitled to the same under the Employees' State Insurance Act. Repelling this contention Jain J. held as follows :—

“Section 61 prevents a dependant from receiving over again any benefit similar to 'dependants benefit' which he is entitled to receive under any other enactment but does not provide for the situation as to what would happen where a person actually receives such benefit under any other enactment before he prefers a claim under the Act. If I accept the contention of the learned counsel for the respondent, then I shall be reading in section 61 something which does not exist. The Legislature, if it had so intended, would have made a provision debaring a person from

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claiming dependants' benefit under the Act in case he had already received the same under any other enactment."

The facts and the ratio above-said would show that *Bhajan Ram's case* was a reverse case to the facts of the present one. Here the primary issue is whether the deceased workman's dependants, who are clearly entitled to the benefits under this Act, are barred to receive any similar benefit under the Workmen's Compensation Act. *Bhajan Ram's case* does not cover this issue nor lay down anything to show that the respondents would in any case be entitled to make the claim under the Workmen's Compensation Act.

(5) The relevant statutory provisions on the construction of which the matter turns is section 61 which is in these terms :—

61. BAR OF BENEFITS UNDER OTHER ENACTMENTS:
When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

(6) The plain language of the above-said provision is intended to create a bar against claiming any similar benefits admissible under the provisions of other enactments. In fact, the words of the section expressly say so. Obviously, the Workmen's Compensation Act is an enactment under which similar benefits or compensation for injury received by a workman is admissible. It has already been held in *Bhajan Ram's case* (1) (supra) that a person who has already been able to secure a benefit under the Workmen's Compensation Act is not debarred from making a claim under the present Act. If the view of the trial Court were to be upheld, it would also enable a person entitled under the Act to receive compensation to make a similar claim under other enactments. This would in terms render the provisions of section 61 of the Act to be virtually otiose. On such a construction no bar whatsoever would remain even though the plain language of section 61 above-quoted is expressly intended to impose one. It is an elementary canon of construction that an interpretation which tends to render the provisions of a statute to be nugatory has to be avoided.

(7) On principle also the view taken by the trial Court appears to be plainly unsustainable. The Act provides for statutory compulsory insurance in certain cases by the employers. They have to pay the insurance premia for the insured workmen working in their factories. It would be incongruous that such an employer should continue to be liable to the workman for the injury. On the general principles of insurance law, it is inapt that a person, who has insured himself against loss should nevertheless remain liable for the same despite such insurance. The very object and purpose of the insurance and the premium paid by the employer would be lost if he were to continue to be liable under other enactments for all those benefits which are available to the insured workman under the Act. The object of section 61 above-said is apparently to prevent such a contingency. Equally so, the bar appears to have been created to avoid a multiplicity of legal proceedings. If statutory insurance under the Act enures to the benefit of an insured workman, and the Corporation created under the Act is to be liable for the payment of disablement and dependants' benefits, then there appears no reason why a duplication of the proceedings should be allowed in allowing the insured workman to make similar or identical claims under other enactments also. The object can equally be to prevent a double benefit accruing to the workman as also a corresponding double liability falling upon the insured employer. The primary liability for the benefits available under the Act is provided under the relevant provisions of the same with the express exclusion of claiming similar ones under other enactments.

(8) The view which I am inclined to take both on principle as also on the specific language of section 61 receives support from observations in two judgments though the point therein appears to be slightly different. The learned Judge in *Regional Director, Employees State Insurance Corporation, New Delhi v. Dyer Meakin Breweries Ltd. and another* (2) in terms has observed as follows :—

“Section 61, however, prevents a person entitled to any benefit under this Act from obtaining a similar benefit under any other enactment.

It is to be noted that this section prevents recovery of benefit under any other enactment but not under ‘any other law.’

M/s. Groz-Beckert Saboo Ltd., Chandigarh v. The Commissioner of Income Tax, Patiala (Pb.) (Mahajan, J.)

This section is in my opinion wide enough to prevent a dependant from receiving any benefit similar to 'dependants' benefit' which he is entitled to receive under any other enactment, e.g. Workmen's Compensation Act."

The Division Bench in *Workmen of Rohtas Industries Ltd. v. H. K. Choudhuri and others* (3) similarly whilst construing the scope of customary benefits etc. had briefly observed in these terms:—

"Section 61 debars a person entitled to anyone of the benefits provided by the Act from being entitled to receive any similar benefits admissible under any other enactment, but does not debar him to receive similar benefits to which the workman may be entitled under his service conditions or by way of customary concession."

(9) I would, therefore, hold that section 61 of the Act debars the dependants of an insured workman (the respondent-applicants) under the Act from claiming a similar benefit under the provisions of section 3 of the Workmen's Compensation Act. The finding of the trial Court on issue No. 1, therefore, is reversed and allowing the appeal I set aside the compensation granted to the respondents against the appellants. There will, however, be no order as to costs.

B. S. G.

INCOME TAX REFERENCE

Before D. K. Mahajan and H. R. Sodhi, JJ.

M/S. GROZ-BECKERT SABOO LTD., CHANDIGARH,—
Applicant.

versus

THE COMMISSIONER OF INCOME TAX, PATIALA (PB.),—
Respondent.

Income Tax Reference No. 12 of 1971.

September 20, 1971.

Income-tax Act (XLIII of 1961)—Section 10(3)—Assessee, an Indian Company, setting up factory for manufacture and sale of a particular item in collaboration with a foreign company which is also a partner

(3) A.I.R. 1965 Patna 127.