

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 2679 of 2003.

1. Employees State Insurance Corporation through its Regional Director, Regional Office, Sector 16, Faridabad.
2. The Manager, Local Office, Employees State Insurance Corporation, Rai, Tehsil & District Sonapat.

Respondents-Appellants.

Versus

1. Nirmala Devi (widow);
2. Nagender Kumar (son);
3. Munni Kumari (minor daughter) and
4. Sonu Kumar (minor son),

widow and children of Shri Sakhi Chand Gupta son of Shri Saranjeet Singh Gupta, permanent residents of Village Partap Pur, P.O. Partap Pur, District Shiwan (Bihar). Minors through their mother and natural guardian Smt. Nirmala Devi).

Petitioner-Respondents.

5. S.K.Systems Private Limited through its Managing Director / Director/ Factory Manager 150-151 H.S.I.D.C. Industrial Area, Phase II, Kundli, District Sonapat, Haryana.

Performa-Respondent.

Before: Hon'ble Mr. Justice R.S.Madan.

Present: Shri Vikas Suri, Advocate, for the appellants.

Shri Sudarshan Goel, Advocate, for respondents
No. 1 to 4.

Shri Surinder Saini, Advocate, for respondent No.5.

R.S.Madan, J

By filing the present appeal bearing No. 2679 of 2003 against
the order dated March 26, 2003 passed by the Employees Insurance

Court, Sonapat, appellants have raised the questions of locus-standi and the maintainability of the application of the dependents' before the E.S.I. Court for grant of benefit to the dependents" of the deceased employee, as per clause 8 Schedule 1 of the Employees' State Insurance Act, 1948 (hereinafter to be referred to as the "Act" as well as for awarding interest at the rate of 24 % per annum, on the awarded amount, from the date of death i.e. 16.1.1999.

On receipt of application under Sections 75, 76 and 77 of the Act, from the dependents' of the deceased Sakhi Chand Gupta, for the grant of dependents' benefit, the ESI Court issued notices to the respondents, who put in appearance. Respondents No. 1 and 2 filed joint written statement whereas respondent No.3 filed separate written statement denying the averments made in the application.

After the appearance of the respondents and the filing of written statements, the E.S.I. Court framed the following issues for adjudication of the dispute between the parties.

1. Whether Sakhi Chand Gupta had died while performing his duties under respondent No.3? If so, to what effect? OPP.
2. Whether the applications have no locus-standi to file the present application? OPR.
3. Whether the petitioner is not maintainable in the present form? OPR.
4. Whether the applicants have no cause of action to file the present suit? OPR.
5. Relief.

The learned trial court, after going through the evidence, documents brought on the record and hearing the arguments of the learned counsel for the parties, returned the findings on all the issues in favour of the applicant-respondents. As a result, the application was allowed vide order dated March 26, 2003, which is under challenge as

already indicated above.

In order to adjudicate upon the core questions posed by the counsel for the appellants, it is necessary to quote here the relevant section, dealing with the issue;-

Section 52. dependents' benefit.- (1) If an insured person dies as a result of an employment injury sustained as an employee under this Act (whether or not he was in receipt of any periodical payment for temporary disablement in respect of the injury) dependents' benefit shall be payable at such rates and for such period and subject to such conditions as may be prescribed by the Central Government to his dependents specified in sub-clause (i), sub clause (i-a) and sub-clause (ii) of clause (6-A) of Section 2.

If the death is due to any employment injury sustained as an employee then the dependents are entitled to compensation. What is an employment injury is defined in **Section** 2(8) of the ESI **Act** . It reads as under :

"2(8) "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an **insurable** employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India."

The popular concept is that an employment injury can be only a physical hurt sustained in the course of employment and can be only the result of an accident. This may not be the correct perception in these days of development of science and expanding of industrial activities. A person can sustain injury to various parts of his person even without involving in a physical accident but by mere exposure to the advanced manner of working at the work place and employing of developed equipment's and

machineries. There can be a situation whereby continued exposure to chemicals, radiation etc. at the workplace, chemical change can take place in the blood cell composition of a worker and he be victim of terminal illness. This is a form of injury. Working at high altitude may generate vertigo in a worker, this can also be an injury correlated to the work. Exposure to high decibel of noise impairs the capacity of hearing. This may also be an employment injury. Illustrations thus of injury suffered due to occupational hazards are infinite and to interpret the expression "employment injury" to means confining it only to bodily harm sustained by the worker in the course of employment is shutting out the advances made by science. Therefore, the meaning of the expression 'injury' in these circumstances cannot be static and it has to take colour, depending on the advances made in the nature of work, its correlation with the worker, its impact on his health and such other relevant and material considerations. Unless more futuristic meaning is ascribed to the expression 'employment injury' in the present changing scenario due to the development in science and other allied factors, the very object of the constitution of Employees' **State Insurance** would be rendered futile.

The philosophy behind the ESI scheme being converting an individual responsibility for employment injury into a matter of social responsibility the victim of the tort should be protected. The employer, in fact, is an industrial tort-feasor. As such it is not necessary to await a statutory legislation for enlarging the meaning of the expression 'employment injury' I am fortified from the observations made in this behalf in ***Miliangos v. George Frank (Textiles) Ltd., 1975 All E.R. 1076***.

The concept of accident in the course of employment was considered by the Madhya Pradesh High Court and it was observed that the fact that a workman met with his death as he was walking into the

factory to join his shift and not while he was actually working does not mean that his death took place outside the course of his employment. The phrase "in the course of employment" in Section 2 (8) does not exclude a happening which takes place outside, both in time and place. It is also not necessary that accident should take place during actual handling of tools. Reference in this regard can be had from AIR 1959 Madhya Pradesh 338.

It has come in the evidence of the applicants as also admitted by the respondents in the written statements that Sakhi Chand Gupta was on duty when he met with the accident. According to the respondents, the deceased died due to hypertension. From the evidence available on the record and the documents in the shape of medical evidence, it is proved keeping in view the observations of the Madhya Pradesh High Court (supra) that even if the employee met with an accident outside the factory premises and was on the way for his duty, the injuries sustained by the employee falls within the meaning of employment injuries. Thus, in my view the learned E.S.I. Court has correctly decided the issue by observing that the dependents' of the deceased employee were entitled to the dependent's benefit as provided under Section 52(1) of the the Act, contained in Chapter V.

As per Section 82 of the Act, the State Employee's Insurance Court has already granted the benefit to the respondents. It would not be open for this Court to go into the finding of fact recorded by the court below. However, the counsel for the parties have failed to point out any substantial question of law involved in this appeal. Therefore, this Court would not disturb the pure finding of fact. However, the Act does not provided any statutory provision with respect to the granting of interest as has been awarded by the Court below. To this extent the order of the Court below is modified and it is held that the respondents shall not be entitled to any interest.

As a result of my above discussion, except for the modification on the point of payment of interest, as already indicated above, the appeal fails being devoid of any merit and the same is hereby dismissed.

(R.S.Madan)
Judge

August 31 , 2007.

Malik