

**Durga Steel Vs. Rajesh Kumar and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/699011](http://sooperkanoon.com/699011)

**Court :** Delhi

**Decided On :** Aug-28-1998

**Reported in :** II(1998)ACC685; 1999ACJ1380; 1998VIAD(Delhi)887; 76(1998)DLT314; 1999(48)DRJ460; [1999(81)FLR923]; (1999)IILLJ1334Del; (1999)121PLR1

**Judge :** C.M. Nayar, J.

**Acts :** Employees' State Insurance Act, 1948 - Sections 53

**Appeal No. :** FAO No.317 of 1996

**Appellant :** Durga Steel

**Respondent :** Rajesh Kumar and Another

**Advocate for Pet/Ap. :** Mr. D.N. Vohra, Adv

**Judgement :**

ORDER

**C.M. Nayar, J.**

1. The present appeal is directed against the Order dated 19th August, 1996 passed by Shri Shiv Lal Singh, Commissioner Workman's Compensation.

2. The brief facts of the case are that the respondent was employed with M/s Durga Steel, appellant herein as a machine man on a monthly salary of Rs.900/-. On 17th August, 1992 while he was on duty he sustained injury in his right leg and his leg is completely paralysed and thereby he lost his 100% earning capacity. He is unable to walk or uplift the load and is also unable to do the same work on machine by standing. The respondent was aged about 22 years. He was admitted to ESI Hospital and then he was shifted to Irwin Hospital (Lok Nayak Jai Prakash Narain Hospital). He sent demand notice to the Management but no amount has been paid as compensation. The appellant Management failed to appear before the Commissioner and they were proceeded against ex-parte on 23rd December, 1993 which order was set aside on 18th May, 1994 and the appellant was permitted to file written statement. The following issues were framed on the pleadings of the parties:-

1. Whether the claim is not maintainable in view of the preliminary objections?

2. Whether the workman is covered under ESIC or not?

3. What amount of compensation the workman is entitled?

4. Relief.

3. The respondent workman was partly cross-examined on 31st May, 1995 but the Management was not again represented and as a consequence was proceeded ex-parte on 16th October, 1995.

4. The appellant admitted that the respondent workman was employed with them and suffered injuries while he was on duty. However, it was stated that the appellant was registered with the ESI Corporation and the workman could claim compensation from the Authority under Employees' State Insurance Act. On the other hand the respondent placed on record a letter dated 4th August, 1993 issued by the ESIC wherein it was specifically written that the case of the workman had not been accepted by the ESI. As a consequence thereto the award in the sum of Rs.1,10,685/- was made. The operative portion of the order passed by the Commissioner reads as follows:-

'Considering the entire facts and circumstances of the case and the age of the workman i.e. 22 years I hold that the workman has proved that he has lost 100% of the earning capacity. Thus I hold that the Issue No.3 is decided in favor of the workman in the manner that the workman has lost 100% of his earning capacity and is entitled to compensation accordingly as under:-

$221.37 \times 100 \times 500 = \text{Rs.}1,10,685/-$ .

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Since the management has neither paid any compensation nor deposited in the Court inspite of having the knowledge of the accident and further after receiving the notice, the workman is held to be entitled for penalty compensation of 50% of the principal amount Along with interest @ 6% p.a. from the date of accident till the date of actual payment.

The management is directed to deposit the aforesaid amount in this Court within 30 days from the date of issue of this order failing which the said amount will become recoverable as arrears of land revenue.'

5. The present appeal has been filed against the award as referred to above. The learned counsel for the appellant has argued that the matter is squarely covered by the judgment of the Supreme Court reported as A.Trehan v. Associated Electrical Agencies and another (1996) 89 F J R 1 wherein it has been held that the workman who is covered under the Employees' State Insurance Act is barred from claiming compensation under the Workmen's Compensation Act. Section 53 of this Act has been cited to reiterate this proposition. The question now arises as to whether the above provision will deprive the respondent workman to claim compensation from the appellant in the facts and circumstances of the present case. This provision 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 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.]'

6. The interpretation of law in this regard is stated as under:

'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 Act 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 assumed that the workmen had a better right under the Workmen'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.

In this background and context, we have to consider the effect of the bar created by section 53 of the ESI Act. The 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 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 the bar created by section 53 the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable.'

7. The appellant Management has failed to prove that the respondent was an insured person under the Employees' State Insurance Act, 1948 and could only claim compensation under that enactment. On the other hand the respondent workman placed on record a letter dated 4th August, 1993 issued by the Employees' State Insurance Corporation declining to pay any compensation to the respondent. In this background it was open for the appellant to take up the matter with that Authority for release of the amount for the permanent injury and disability which the respondent suffered consequent to an accident which admittedly took place in the factory premises of the appellant. In this kind of situation the employer usually can be more magnanimous and pay an ex-gratia amount to the workman who suffered serious injury during the course of his duties. Unfortunately, instead of taking any such steps, the appellant has filed the present appeal and obtained an interim order of stay. It is admitted that no amount has been disbursed which speaks of the callous attitude of the appellant. The pleas raised in the appeal are clearly misconceived in the present facts and cannot be entertained. The appeal as a consequence is dismissed with costs which are quantified at Rs.20,000/-. The amount awarded as well as the costs shall be paid to the respondent workman within four weeks from today.