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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21 / 06 / 2024

JUDGMENT PRONOUNCED ON : 29 / 08 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.13 OF 2022
AND CMP NO.100 OF 2022

The Management
Employees State Insurance Corporation
Sub-Regional Office
Rep. By its Deputy Director
No.1897, Trichy Road,
Coimbatore – 641 045.

... Appellant / 1st Respondent

Versus

1.N.Aaran @ Aruchamy
2.Tmt.Chinnakannal

... Respondents / Petitioners

3.The Management
SCM Creations
S.F.No.40, Nallikavundampalayam,
Thekkalur, Avinashi Taluk,
Tirupur District.

... Respondent / 2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948, praying to set aside the order dated 14.09.2021 passed in ESICMA No.1 of 2017 on the file of the Employees Insurance Court, Coimbatore.

For Appellant : Ms.G.Narmadha



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For Respondents 1&2: Mr.A.Deivasigamani
For Respondent 3 : Mr.D.M.Senthilkumar

J U D G M E N T

Challenging the Order dated September 14, 2021, passed by ‘the Presiding Officer, Principal Labour Court (Employees Insurance Court) Coimbatore’ [henceforth ‘E.S.I. Court’ for brevity] in ESICMA No.1 of 2017, the first respondent therein, namely ‘Employees State Insurance Corporation’ [henceforth ‘ESIC’], has preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties will hereinafter be referred to as per their array before the E.S.I. Court.

Petitioners' case

3.Petitioners are the parents of the deceased - Rajasekar. The case of the petitioners is that their son - Rajasekar, 20 years old, was working as a Worker in the packing section of the second respondent - Employer for a daily wage of Rs.350/-. The deceased was accommodated within the factory premises. On June 3, 2010 at about 09.30 p.m., their son - Rajasekar fell down from the third floor and sustained injuries. Then he was taken to Revathy Hospital, Tirupur for treatment, where he was declared dead at 12.10 a.m. The next day *i.e.*, on June 4, 2010, the first petitioner lodged a police



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complaint on the file of Avinashi Police Station, Tirupur at about 07.15 a.m., pursuant to which, First Information Report (FIR) was registered under Section 174 of the Code of Criminal Procedure, 1973, in Crime No.1881 of 2010.

4. According to the petitioners, the second respondent - Employer had entered into an Agreement with the petitioners on June 4, 2010, as per which, the second respondent had paid a sum of Rs.1,00,000/- (Rupees One Lakh only) to the petitioners. In the said Agreement, the second respondent had admitted that the accident happened while the deceased was on duty. Further, the second respondent is registered with the Employees State Insurance Corporation (first respondent) viz., Employer's code : 56-64386-16F. The deceased's ESI number is 56-03861259.

4.1. The petitioners filed a petition before 'the Commissioner of Labour under Workman's Compensation Act, Coimbatore' (hereinafter 'Commissioner') in W.C.No.67 of 2010 under Employees' Compensation Act, 1923, praying for compensation from the second respondent. During enquiry, the second respondent - Employer informed the Commissioner that the deceased is an insured person under the 'Employee State Insurance Act, 1948'



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(E.S.I. Act for brevity).

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4.2. Thereafter, the Commissioner issued a letter to the first respondent - ESIC requesting for a report in this regard. Accordingly, the first respondent - ESIC issued letter dated April 7, 2011, stating that the second respondent - Employer as well as the deceased was covered under the E.S.I. Act; however, since the accident was '*not in the course of Employment*', the petitioners are not entitled for dependents' benefits under E.S.I. Act.

4.3. The Commissioner vide Order dated March 3, 2012 held that the above accident was in and out of the course of employment and hence, the death was 'employment death' and accordingly, directed the second respondent - Employer to compensate the petitioners with a sum of Rs.3,96,400/- along with interest.

4.4. According to the petitioners, against the above-mentioned Order of the Commissioner, the second respondent - Employer filed an appeal before this Court in CMA No.2515 of 2012, in which, this Court set aside the Order of the Commissioner, and granted liberty to the petitioners to approach the first respondent - ESIC for extension of dependents' benefits under E.S.I. Act as well as to thereafter approach the E.S.I. Court, if necessary.



4.5. Accordingly, the petitioners filed Application dated September 17, 2014, before the first respondent, for which the first respondent neither replied nor extended the dependents' benefits to the petitioners. Therefore, the petitioners filed a petition before the E.S.I. Court praying for extension of dependents' benefits under the E.S.I. Act.

1st Respondent's case

5. The first respondent – ESIC filed counter stating that the accident is not an industrial accident nor was it in the course of employment as the deceased slipped and fell from the third floor of the building where he was accommodated while speaking with his parents on phone after returning from work; that the allegation that Rs.1,00,000/- received from the second respondent does not come under the terms of compensation is highly objectionable, since the amount has been disbursed by the second respondent only after entering into an agreement; that the findings in W.C.No.67 of 2010 has clearly established that the first respondent need not necessarily pay any compensation since the injury was non-employment injury.

5.1. Further stated that, according to the employer (2nd respondent), the daily wage of the deceased was Rs.140/-, whereas the



petitioners claim it to be Rs.350/-. Since the salary details of the deceased have not been furnished to the first respondent by the 2nd respondent, no concrete amount can be formulated with regard to the wages of the deceased. Thus, they prayed to dismiss the petition.

2nd Respondent's case

6.The second respondent filed counter denying the allegations levelled against them. Further, they have stated that the petition filed by the petitioners is barred by limitation and it should be dismissed *in limine*; that the contention of the petitioners that the deceased was earning a sum of Rs.350/- per day is false and baseless.

6.1.Further, the second respondent has reiterated and admitted about what happened before the Commissioner in W.C.No.67 of 2010 as well as the appeal before this Court in CMA No.2515 of 2012.

6.2.Further the second respondent has stated that, since the second respondent as well as the deceased is registered under the first respondent, since the accident took place during the course of employment, the first respondent alone is liable to pay compensation, if any, to the petitioners. Further stated that, the petitioners have not given any valid



reasons for their delay in filing the petition, that too, after a period of one year and accordingly, prayed to dismiss the petition.

Trial and Findings of the E.S.I. Court:

7.At trial, on the side of the petitioners, first petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.18 were marked. On the side of the second respondent, one Thiru P.Thirumurthy, Factory Manager of the second respondent - Employer was examined as R.W.1 and Ex-R.1 to Ex-R.6 were marked.

8.The E.S.I. Court framed the following points for determination:

- i. *“Whether the deceased Rajasekar died due to injury sustained by him in course of employment and arising out of employment?*
- ii. *Whether the deceased Rajasekar wage was Rs.350/- per day?*
- iii. *Whether the 1st respondent's order dated 07.04.2011 is liable to be set aside and declaring non-replying on the part of the second respondent to the letter dated 17.09.2014 is unsustainable?*
- iv. *Whether the petitioners are entitled for compensation, as per the ESI Act?”*

9.The E.S.I. Court after analyzing the oral and documentary



evidence, held that the second respondent provides hostel facilities to their workmen for their own benefits and hence, there is nexus between the circumstance, time of employment and the accident. Accordingly, held that the death of the deceased is '*employment injury death*' and thus, answered the first point in favour of the petitioners.

9.1.The E.S.I. Court, relying upon the wage register, held that the deceased - Rajasekar was earning a daily wage of Rs.109/- and thus, answered second point against the petitioners.

9.2.The E.S.I. Court further held that, the Order of the E.S.I. Court will prevail over Ex-P.14 - letter of the first respondent / ESIC dated April 07, 2011. Accordingly, the E.S.I. Court concluded that the prayer for declaration with respect to Ex-P.14 is not necessary and thus, answered the third point in favour of the petitioners.

9.3.The E.S.I. Court further held that, since the petitioners are coming under the definition of dependents as contemplated under sub-section 6A of Section 2 of the E.S.I. Act, the petitioners are entitled for the dependents' benefits under Section 52 of the E.S.I. Act. Thus, the fourth point was also answered in favour of the petitioners.



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9.4. Consequently, the E.S.I. Court allowed the petition in part directing the first respondent to pay the dependents' benefits as per Rule 58 of the Employees State Insurance (Central) Rules, 1950 within two months from the date of the said Order. As far as the other prayers against the second respondent are concerned, the E.S.I. Court dismissed the petition.

10. Assailing the said Order passed by the E.S.I. Court, the first respondent – E.S.I. Corporation has preferred this Civil Miscellaneous Appeal.

Question of Law:

11. The Question of Law involved in this Appeal is as follows:

“Whether the findings of the E.S.I. Court that the accident occurred in and out of the course of employment and the injury sustained by the deceased is employment injury, are justifiable in law when the accident occurred in the factory premises at 09.30 p.m. i.e., beyond regular working hours and when the deceased was accommodated within the factory premises for the benefit and convenience of the employer?”



Arguments:

12. Heard the learned Counsel appearing for the appellant / first respondent - ESIC and the learned Counsel appearing for the first & second respondents / petitioners. Learned Counsel for the third respondent - Employer was not present and did not put forth any arguments.

13. The learned Counsel for the appellant / first respondent - ESIC has argued that the deceased was working in the Packing Department of the second respondent – Employer to iron and pack the stitched clothes. He resided in the hostel provided by the second respondent – Employer. After working hours, the deceased while talking on his phone on the terrace of the hostel provided by the Employer, inadvertently fell down from the third floor and sustained injuries. Immediately, he was taken to hospital, where he succumbed to injuries on the early hours of June 4, 2010. The injury sustained by the deceased is not employment injury as per Section 2 (8) of E.S.I. Act. The injuries were not sustained in and out of the course of employment as the accident occurred neither in the course of employment nor is there any casual connection between the injuries sustained by the deceased and his employment. The claim against the appellant / ESIC is unsustainable.



Accordingly, the insurance company is not liable to pay compensation to the dependents of the deceased.

13.1. The learned Counsel for the appellant / first respondent - ESIC would rely the following case laws for his arguments:

- i. Judgment of the Hon'ble Supreme Court in The Regional Director, ESI Corporation and Another Vs. Francis De Costa and Another reported in (1996) 6 SCC 1.
- ii. Judgment of the Hon'ble High Court of Andhra Pradesh in Mummidipalli Syamaladevi Vs. Regional Director, ESI Corporation reported in 2003 (2) ALD 436 = [(2003) 11 LLJ 345 (AP)]

14. Per contra, learned Counsel for the petitioners / Respondent Nos. 1 and 2 has argued that the deceased was residing in the factory premises. The accident occurred in and out of the course of employment, as admitted by the second respondent in its counter. Contrary to the admission made in its pleadings, R.W.1, who is the Factory Manager at the second respondent - Employer, in his chief examination, has deposed that accident occurred when the deceased, after the working hours, went upstairs disregarding the instructions of the employer and negligently leaned against the parapet wall



resulting in his fall from the third floor. Hence, his evidence contrary to the pleadings is not reliable. The employer and the insurance company are liable to pay compensation. E.S.I. Court has rightly decided the issue. Hence, there is no necessity to interfere with the Order passed by the E.S.I. Court. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

Discussion and Decision:

15.This Court has heard the submissions made on either side and perused the materials available on record in light of the Substantial Question of Law.

16.The deceased-Rajasekar was working in the packing department of the second respondent - Employer. The second respondent as well as the deceased was covered under the Employees' State Insurance. The deceased was accommodated in the factory premises while the petitioners were residing approximately 55 Kms away from the factory premises in Periyakalandai, Pollachi Taluk, Coimbatore District. On the fateful day viz., June 3, 2010 at about 09.30 p.m., the deceased fell off the third floor of the building where he was accommodated within the factory premises and sustained injuries. Then, he was admitted unconscious in Revathy Hospital,



Tirupur at about 10.30 p.m., where he passed away at about 12.10 a.m. despite treatment. The next day, an FIR was registered in Crime No. 1881 of 2010 on the file of Avinashi Police Station, Tirupur. There is no dispute with regard to the above facts.

17.The Hon'ble Supreme Court in its decision in ***South India Flour Mills' case*** [*Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd.* reported in AIR 1986 SC 1686] has held as follows:

“13.The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of section 2(9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made.”

(Emphasis supplied)



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17.1.This Court would approach the instant case in light of the dicta laid down by the Hon'ble Supreme Court in the ***South India Flour Mills' case***.

18.The petitioners in the petition has stated that, on June 3, 2010 at around 09.30 p.m., their son - Rajasekar, while in the course of employment, fell down from the third floor and sustained injuries. Later, he succumbed to the injuries. According to the petitioner, the injuries to which their son - Rajasekar succumbed, are employment injuries as they arose in and out of the course of employment. No doubt that whether an accident occurred in the course of employment or not is essentially a question of fact that has to be decided based on evidence and the attendant circumstances of the case.

19.In the Ex-P.9 - Agreement entered into by the petitioners and the second respondent on the very next day after the accident *i.e.*, June 4, 2010, whereby the second respondent agreed to pay Rs.1,00,000/- to the petitioners, it has been stated that the deceased passed away while working, in other words, the deceased passed away in the course of employment. Relevant extract is hereunder:



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**“இழப்பீட்டுத் தொகை பெற்றுக்கொண்டதற்கான
ஒப்பந்த அறிக்கை**

கோவை மாவட்டம் பொள்ளாச்சி தாலுக்கா பெரிய களந்தையில் வசிக்கும் நல்லான் மகன் ஆரான் மற்றும் சரசா என்கிற சின்ன கண்ணா க/பெ. ஆரான் (ஒன்று & இரண்டு நபர்கள்) க்கும், மூன்று நபர் திருப்பூர் மாவட்டம் தாலுகா S.F. நெம்பர் 40ல் செயல்படும் S.C.M.கிரியேஷன் சார்பாக திரு.B.ராஜசேகர் பதவி H.R.மேனேஜர் ஆகிய மூவருக்கும் இடையில் ஏற்பட்ட புரிந்துணர்வு ஒப்பந்தம் யாதெனில் எமது மகன் ராஜசேகரன் (22)

மேற்படி S.C.M.கிரியேஷனில் பணிபுரிந்து வந்த

போது மூன்றாவது மாடியில் செல்போனில் பேசியபடி வந்தபோது தவறி விழுந்து சிகிச்சை பலனளிக்காமல் இறந்துவிட்டான் (03/06/2010 இரவு மணி 12.10 அளவில்) மேற்படி S.C.M.நிர்வாகம் எமது குடும்பத்தின் ஏழ்மை நிலை கருதியும் எனது நான்கு பெண் குழந்தைகளின் எதிர்காலம் கருதியும், சட்டப்பூர்வமாக விபத்து இழப்பீடு பெறுவதற்கான ஆவணங்கள் தந்து உதவி செய்வதாகவும் கூறிய காரணத்தினாலும், மேற்படி எமது மகனின் மரணம் தொடர்பாக எந்த ஒரு இடையூறும் S.C.M.கிரியேஷன் நிறுவனத்திற்கு தரமாட்டோம் என்று உறுதி கூறுகிறோம்.

இவ்வாறே S.C.M.கிரியேஷன் சார்பு பிரதிநிதியான மூன்றாம் நபராகிய திரு.B.ராஜசேகரன்



(பதவி H.R.மேனேஜர்) அவர்கள் வழங்கிய ரூபாய் ஒரு லட்சம் கருணை தொகையை நன்றியுடன் பெற்றுக்கொண்டோம்.”

(Emphasis supplied)

20.Further, second respondent in his counter has admitted that the accident occurred in the course of employment. Relevant extract is hereunder:

“6.The 2nd respondent further submits that since the 2nd respondent concern is an ESI covered establishment and the above petitioner's son, the deceased (Late) A.Rajasekar is also ESI covered employee and moreover in their petition they themselves had admitted that they are entitled towards compensation and other benefits under the Employees State Insurance Act 1948 and hence the 1st respondent is liable for compensation.

7.The 2nd Respondent further submits that for the above stated reasons and also since the accident took place during and in the course of employment, only the 1st Respondent alone is liable to pay compensation to the above petitioners.”

(Emphasis supplied)

20.1.The above admission made by the second respondent in writing before ESI Court is a clear admission as per Section 58 of the Indian Evidence Act, 1872.

20.2.No doubt that R.W.1, examined on behalf of the second respondent, cannot depose against or in contrary of second respondent's



admissions. If he does so, it renders his evidence unreliable to the extent of contradiction of the admissions. Further, in Ex-P.9 - Agreement, entered between the petitioners and the second respondent on the very next day after the accident, it has stated that the deceased sustained injury in the course of his employment. Considering all these, this Court is of the view that the evidence of R.W.1 contrary to their pleadings does not inspire the confidence of this Court.

21.The E.S.I.Court has held that the deceased was accommodated within the factory premises for the benefit and convenience of the employer, such as attending emergent works or overtime tasks. Ex-R.2- Appointment Letter of the deceased would show that the working hours of the deceased is from 09.00 a.m. to 06.00 p.m. It would also show that when there is overtime work, the worker (deceased) may attend the same on his/her own will and in such a case, all benefits for the same would be extended as per law. Further, R.W.1 has admitted in his evidence that work would continue beyond 6.00 p.m. when there are urgent orders/work. Moreover, the second respondent is a garment company where urgent orders requiring the workers to work beyond regular working hours are quite common. In these



circumstances, the view of the E.S.I. Court that the deceased was accommodated within the factory premises for the benefit and convenience of the employer is a plausible one, and this Court does not find any reason to deviate from the said factual finding. Hence, there is a causal link or nexus between the place of accident and the employment.

22. In view of Ex-P.9 - Agreement dated June 4, 2010, the petitioners' have *prima facie* established that the accident occurred in the course of employment, and hence, the onus is now upon the respondents to prove the contrary. In this case, the petitioners are living far away from the factory premises. According to the petitioners, they were informed via phone that their son fell off the third floor of a building in the factory premises, upon which, they rushed to the Hospital. Note that, admittedly, the accident occurred within the premises of the second respondent. Relevant documents such as attendance registers, overtime registers, *etc.*, to establish whether the deceased was in the course of employment or not at the material point of time would be available with the second respondent. In such a scenario, the respondents are in a better position to establish as to whether the accident occurred in the course of employment or not. Neither the first respondent nor



the second respondent produced any such document in this regard. FIR registered is also silent in this regard. The respondents have failed to prove that the deceased was leaning on the parapet wall while talking to his parents after returning from work. To be noted, the FIR was lodged by the 1st petitioner based on the information received from those present at the Hospital. The respondents have failed to prove that the deceased was not in the course of employment during the accident. The deceased could have had been doing overtime or some emergent tasks on the fateful day at the material time. Given the admission made by the second respondent in Ex-P.9, the terms of Ex-R.1-Appointment Letter and the nature of work of the deceased as well as the general nature of work in the garment industry, it is highly probable that the deceased was in the course of employment at the material point of time. There is nothing to suggest the contrary. Note that, the E.S.I. Act is a social security legislation. Hence, this Court is of the view that there is a casual link between the circumstances and time of accident and the employment.

23. Under these facts and circumstances, bearing in mind Section 51-A to 51-E of the ESI Act, 1948 and the dictum laid down by the Hon'ble



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Supreme Court in *South India Flour Mills'* case, this Court concludes that the accident occurred in the course of employment and the injuries sustained by the deceased are employment injuries. Hence, the dependents of the deceased are entitled to the 'dependents' benefits' under the E.S.I. Act. The E.S.I. Court is justifiable in law in holding that the accident occurred in and out of the course of employment and that the injury sustained is employment injury. Consequently, the appellant / ESIC is liable to extend the dependents' benefits contemplated under Section 52 of the E.S.I. Act read with Rule 58 of the Employees State Insurance (Central) Rules, 1950 to the petitioners. Hence there is no need to interfere with the Order of the E.S.I. Court. Accordingly, the Substantial Question of Law is answered in favour of the petitioner.

24. Accordingly, this Civil Miscellaneous Appeal is dismissed, and the Order dated September 14, 2021, passed in ESICMA No.1 of 2017 by the Presiding Officer, Principal Labour Court (Employees Insurance Court) Coimbatore is confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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R.SAKTHIVEL, J.

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To

The Presiding Officer
Principal Labour Court
(Employees State Insurance Court)
Coimbatore.

PRE-DELIVERY JUDGMENT MADE IN
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