IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Ins.APP.No. 104 of 2012 ()

IC. NO.42/2011 OF EMPLOYEES' INSURANCE COURT, ALAPPUZHA.
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APPELLANT/RESPONDENT :

THE DY. DIRECTOR,
ESI CORPORATION, SUB REGIONAL OFFICE,
KALOOR, KOCHI-17.

BY ADV. SRI.T.V.AJAYAKUMAR.

RESPONDENT/APPLICANT :

P.G. SIVAN, ANITHA BHAVAN,
KARIKKAMURY CROSS ROAD,
ERNAKULAM.

BY ADV. SRI.A.V.XAVIER.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

P.B.SURESH KUMAR, J.

Ins.Appeal.No.104 of 2012

Dated this the 9th day of July, 2015

JUDGMENT

The decision of the Employees Insurance Court, Alappuzha in I.C No.42/2011 is under challenge in this appeal. The Deputy Director of the Employees State Insurance Corporation ('the Corporation' for short) is the appellant.

2. The respondent was running a toddy shop. The establishment of the respondent was covered by the Employees State Insurance Act ('the Act ' for short). When the respondent defaulted payment of contribution under the Act for the period from April 1991 to March 1994, the Corporation initiated proceedings for recovery of the same by issuing a demand notice. The demand notice issued by the Corporation was challenged by the respondent before

the Insurance Court in I.C No.20/1995. The said insurance case was allowed holding that the establishment of the respondent is not covered under the Act. The decision of the Insurance Court in I.C No.20 of 1995 was challenged by the Corporation before this Court in M.F.A No.1363 of 1998.This Court held that the toddy shop of the respondent was covered under the Act and the respondent is liable to pay contribution in respect of his employees under the Act. The decision of this Court in M.F.A No.1363 of 1998 was taken up by the respondent before the Apex Court and it is conceded that the Apex court dismissed the civil appeal preferred by the respondent on 17.9.2003, confirming the decision of this Court in MFA No.1363 of 1998.

3. The case of the Corporation is that though the issue relating to the liability of the respondent to pay contribution under the Act was decided by the Apex Court on 17.9.2003, the contributions due under the Act were remitted by the respondent only on 16.11.2010. It is also the case of the

Corporation that when the proceedings were initiated by the Corporation for recovery of the dues, the respondent again initiated proceedings before the Insurance Court as I.C.No.44 of 2005 and obtained interim order against the recovery of contributions from him. According to the Corporation, proceedings for recovery of contributions from the respondent could therefore, be initiated only after the disposal of the said case. The case of the Corporation is that in the aforesaid facts and circumstances, the respondent is liable to pay damages as provided for under Section 85B of the Act and accordingly, damages were levied against him by two separate orders. Among the said orders, Ext.P4 is the order issued by the Corporation for the period from April 1991 to March 1993 and Ext.P5 is the order issued for the period from April 1993 to March 1994. The respondent challenged the said orders before the Insurance Court and the Insurance Court as per the judgment impugned in this appeal allowed the application filed by the respondent and declared that Exts.P4 and P5 orders are unsustainable. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

4. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

5. Exts.P4 and P5 orders were made available to me at the time of hearing. The said orders indicate that penalty was levied against the respondent excluding the period during which various proceedings between the parties concerning the liability of the respondent to pay contributions under the Act including I.C.No.44 of 2005, were pending. As noticed above, the contention raised by the respondent when proceedings were initiated for recovery of contribution was that the establishment is not covered under the Act. The question that was considered in the circumstances by this Court in M.F.A No.1363 of 1998 was as to whether the establishment of the respondent

which is a toddy shop is covered under the provisions of the Act. This Court decided the issue against the respondent. The matter was taken up before the apex court. Even before the apex court, it is seen that the issue raised was as to whether the establishment of the respondent is covered under the provisions of the Act. The Apex court, by dismissing the civil appeal preferred by the respondent, had confirmed the decision of this Court that the establishment of the respondent is covered under the provisions of the Act. There was absolutely no justification thereafter for the respondent to file I.C.No.44 of 2005, concerning the liability of the respondent to pay contributions under the Act. Nevertheless, in the matter of computing the damages leviable under Section 85B of the Act, the Corporation has excluded the period during which respondent obtained an interim order in I.C No.44 of 2005.

6. The learned counsel for the respondent pointed out that substantial amounts were paid along with the

contributions by way of interest and therefore, there was no justification for levying damages from the respondent. The interest claimed to have been paid by the respondent is statutory in nature. Since it is found that there was no justification for not paying contributions after 17.9.2003, I am of the view that the Corporation cannot be faulted for having taken the view that non payment of contributions for the aforesaid period was wilful and contumacious. The Insurance Court has not appreciated the facts correctly in arriving at the conclusion that the levy of damages as per Exts.P4 and P5 orders are unsustainable. It is seen that the Insurance Court exonerated the respondent from the liability for the reason that he has remitted contributions on 16.11.2010 and that the delay is due to pendency of various litigations. As stated above, the fact that he has remitted contributions is not a ground to exonerate him from the liability to pay damages. Likewise, the finding of the Insurance Court that litigations were pending all through out is not correct. As noticed above, since the issue as to the liability of the respondent was decided finally by the Apex Court on 17.9.2003, the subsequent litigation initiated by the respondent can only be regarded as one initiated for the purpose of delaying the payment of contributions due under the Act.

For the aforesaid reasons, the appeal is allowed, the impugned judgment is set aside and I.C No.42 of 2011 before the Insurance Court, Alappuzha is dismissed.

P.B.SURESH KUMAR, JUDGE.

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