IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Ins.APP.No. 84 of 2011 ( )

EIC 35/2004 of E.I.COURT, KOZHIKODE

APPELLANT/RESPONDENT:

THE REGIONAL DIRECTOR,
E.S.I.CORPORATION, THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S)/APPLICANT:

M/S.ABLE AUTO AGENCIES,
REPRESENTED BY ITS MANAGING PARTNER, A.M.ANTONY
EAST NADAKKAVU, PIN 673011, CALICUT.

BY ADV. SRI.SIVARAM
BY ADV. SRI.SHANKAR V.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Ins. Appeal No.84 of 2011.

Dated 10th February, 2015.

J U D G M E N T

The decision in E.I.C.No.35 of 2004 on the file of the Employees' Insurance Court, Kozhikode is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation, hereinafter referred to as 'the Corporation' for short, is the appellant.

2. The respondent is a partnership firm. The Managing Partner of the respondent firm and others were engaged in the business of automobile spare parts in partnership in the name Able Automobiles at Calicut with branches at Tellicherry, Kannoor, Manjeri and Tirur. On 1.4.2001, as per Ext.P6 release deed, the assets of the firm were partitioned among the partners and the business at Calicut was allotted to two partners, namely, M.A.Moideen Koya and V.P.Abdul Kareem. As per the terms of the said release deed, the branches of the firm at Tellichery, Kannoor, Manjeri and Tirur have been allotted to the remaining partners, viz., A.M.Antony, Jessy Antony and Anil

Antony on condition that they should thereafter, conduct business in the name Able Auto Agencies. The respondent firm came into existence accordingly as per the terms of Ext.P6 release deed. The firm Able Automobiles was a firm covered under the Act prior to the partition. As the respondent was not employing the qualified number of employees after the partition, they have not complied with the provisions of the Employees State Insurance Act (hereinafter referred to as 'the Act' for short) thereafter. The Corporation however, directed the respondent to comply with the provisions of the Act in relation to its employees, who were covered by the provisions of the Act before the partition of the assets of the erstwhile firm Able Automobiles. The said decision of the Corporation was impugned in the proceedings before the Insurance Court. The Insurance Court, on an elaborate consideration of the materials on record, found that the respondent firm which was established pursuant to the partition of the erstwhile firm Able Automobiles, can only be considered as a distinct establishment and they can be brought under the cover of the Act only if they employ the qualified number of employees. Consequently, the Insurance Court declared that the Act and the Schemes made thereunder are not applicable to the respondent. The Corporation is aggrieved by the said decision of the Insurance Court.

3. Heard the learned counsel for the appellant.

4. Section 1(6) of the Act provides that an establishment to which the Act applies shall continue to be governed by the Act, notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under the Act. The contention raised by the Corporation is that in so far as the respondent was a part of the firm Able Automobiles which was a covered establishment under the Act, in the light of the provision contained in Section 1(6) of the Act, it cannot be contended that the establishment is not covered after the partition, merely for the reason that the strength of the employees came down below the statutory limit. The learned counsel for the appellant pointed out that the partners of the erstwhile firm Able Automobiles who were

continuing business at Calicut in the name Able Automobiles have also raised a contention that their establishment is not liable to be covered under the Act after the partition for the very same reason, namely that the strength of the employees came down below the statutory limit and the said contention was repelled by the Insurance Court and the decision of the Insurance Court was upheld by this Court in Insurance Appeal No.16 of 2005. A copy of the judgment in Insurance Appeal No.16 of 2005 was also made available to me. Paragraph 47 of the judgment in Insurance Appeal No.16 of 2005 reads thus :

> "47. In this context, it has to be mentioned that even if there is a genuine reconstitution of a new firm and the registration etc. are genuine whatever be bona fides, the intention behind the introduction of section 1(6) is to protect the employees and to to prevent or bar the firm of a new establishment even if a new establishment is constituted the intention of the Legislature is that the benefit which the firm is entitled to get under the provisions of the Act should not be denied to him irrespective of the reconstitution or reformation of the business. The employees were working in the establishment continuously in the former as well as the present establishment. Therefore, what is described is not reconstitution or formation of a new business or running a new

> business but the Act is enacted with a view to protect the employees who were working in both the establishments. This intention is to be upheld and even if it is found that there is genuine reconstitution or reformation in view of the loss sustained in the business etc. the employees who were worked in both these establishments should get the benefit irrespective of the reconstitution."

In the light of the said judgment, the appeal is allowed and E.I.C.No.35 of 2004 on the file of the Employees' Insurance Court, Kozhikode is dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)