

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Ins.APP.No. 89 of 2011 ()

**AGAINST THE JUDGMENT IN IC.NO. 12/2003 OF EMPLOYEES INSURANCE COURT,
(INDUSTRIAL TRIBUNAL), KOLLAM DATED 30-06-2011**

APPELLANT/OPPOSITE PARTY NO.1 :

**THE REGIONAL DIRECTOR,
EMPLOYEE STATE INSURANCE CORPORATION
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND,
THRISSUR.**

BY ADV. SRI.T.V.AJAYAKUMAR, SC

RESPONDENTS/APPLICANT & OPPOSITE PARTIES 2 & 3 :

**1. THE MANAGING DIRECTOR
M/S. KELWIN BUSINESS FIRMS (P) LTD., PLOT NO.4
INDUSTRIAL DEVELOPMENT AREA, KOCHUVELI
THIRUVANANTHAPURAM-695 021.**

**2. MOHANDAS J.,
SREE NILAYAM, PALLICHAL POST
THIRUVANANTHAPURAM-695 020.**

**3. PRATHEESH P.S.,
TC 30/1453, KALPPAKASSERY, PETTAH POST
THIRUVANANTHAPURAM-695 022.**

**R1 BY ADVS. SRI.GOPAKUMAR R.THALIYAL
SRI.M.S.VIJAYACHANDRAN BABU
R2 & R3 BY ADV. SRI.T.S.RAJASENAN**

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 13-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

P.B.SURESH KUMAR, J.

Ins.Appeal.No.89 of 2011

Dated this the 13th day of July, 2015

JUDGMENT

The decision of the Employees' Insurance Court, Kollam in I.C.No.12 of 2003 is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation ('the Corporation' for short) is the appellant in the appeal.

2. The first respondent is a factory engaged in the manufacturing of computer stationery, employing nine persons including its Managing Director. The Corporation brought the first respondent under the purview of the Employees' State Insurance Act ('the Act' for short) with effect from 2.4.2001, alleging that on verification of the records of the first respondent, it was found that on 2.4.2001, they had engaged two more casual employees.

The decision of the Corporation in bringing the first respondent within the purview of the Act was challenged by the first respondent before the Employees' Insurance Court, contending mainly that the casual employees alleged to have been engaged by the first respondent on 2.4.2001 cannot be regarded as employees coming within the definition of Section 2 (9) of the Act. The Employees' Insurance Court allowed the application, holding that the employees engaged by the first respondent on 2.4.2001 cannot be treated as employees within the meaning of Section 2(9) of the Act. The Corporation is aggrieved by the said decision of the Employees' Insurance Court and hence this appeal.

3. It is beyond dispute that in the course of an inspection in the premises of the first respondent, it was revealed that the first respondent gave payments to two casual labourers on 2.4.2001. One of them was found

engaged as a plumber and the other was found engaged as a driver. It is based on the said payments, the first respondent was brought under the purview of the Act reckoning its number of employees as eleven. Going by the definition of 'employee' as contained in Section 2(9) of the Act, as far as persons employed directly by the principal employer are concerned, only when a person is engaged for any work of, or incidental or preliminary to, or connected with the work of the factory, he/she is liable to be treated as an employee. The Employees' Insurance Court took the view that the first respondent being a factory engaged in the manufacturing of computer stationery, the plumber and driver engaged by them on 2.4.2001 cannot be regarded as employees of the first respondent, coming within the meaning of the Act. The said view of the Employees' Insurance Court cannot be said to be illegal or improper in any manner.

There is, therefore, no merit in the appeal and the same is accordingly dismissed.

P.B.SURESH KUMAR, JUDGE.

smm