IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Ins.APP.No. 94 of 2011 ( )

IC 75/2009 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

APPELLANTS/RESPONDENTS :

1. **THE DEPUTY DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, REGIONAL OFFICE NORTH SWARAJ ROUND, THRISSUR-20.**

2. **THE RECOVERY OFFICER, EMPLOYEES STATE INSURANCE CORPORATION, REGIONAL OFFICE, NORTH SWARAJ ROUND, THRISSUR-20.**

BY ADV. SRI. P.SANKARANKUTTY NAIR

RESPONDENT/APPLICANT :

TRACO CABLE COMPANY LTD., IRUMPANAM.P.O., THRIPOONITHURA-682301.

THIS INSURANCE APPEAL HAVING COME UP FOR ADMISSION ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

Ins.APP.No. 94 of 2011 ( )

APPENDIX

PETITIONER'S ANNEXURES :

ANNEXURE I: COPY OF THE JUDGMENT IN CIVIL APPEAL NO. 5527/1993 DT 11/10/1993.

RESPONDENT'S ANNEXURES : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.B.SURESH KUMAR, J.

INS.APPEAL.No.94 of 2011

Dated this the 12th day of August, 2015

JUDGMENT

The decision of the Employees' State Insurance Court, Alappuzha in I.C.No.75 of 2009 is under challenge in this appeal. The Deputy Director of the Employees State Insurance Corporation ('the Corporation' for short) and its recovery officer, are the appellants.

2. The Insurance case referred to above was instituted by the respondent which is an establishment covered under the Employees' State Insurance Act ('the Act' for short). They have been remitting all along the contributions payable under the Act in respect of their employees promptly. By a notification issued by the Government of India, the wage ceiling of the employees brought under the Act was raised from Rs.1600/- to

Rs.3000/- with effect from 1.4.1992. A batch of writ petitions were though filed by the affected establishments before this Court including the respondent, challenging the said notification, the same were dismissed. However, in appeal, the Division Bench of this Court directed that the notification shall be implemented only prospectively, with effect from 1.11.1992. Accordingly, the respondent paid the contributions in respect of their employees brought under the enhanced wage limit with effect from 1.11.1992. In the meanwhile, one of the matters decided by the Division Bench of this Court as referred to above was taken up by the Corporation before the Apex Court and the said matter was allowed by the Apex Court, holding that the decision of this Court directing the Corporation to implement the notification prospectively with effect from 1.11.1992 is unsustainable. Pursuant to the said decision of the Apex Court, the Corporation determined the contributions payable by the respondent for the period from 1.4.1992 to 1.11.1992 and the respondent paid the said contributions

with interest. Thereafter, the Corporation initiated steps under Section 85B of the Act for levy of damages for the delayed payment of contributions for the period from 1.4.1992 to 1.11.1992. The order issued by the Corporation levying damages on the respondent was challenged by them before the Insurance Court. The Insurance Court, on an appraisal of the facts and circumstances of the case, found that since there was no appeal against the judgment in the individual case preferred by the respondent before the Division Bench which was decided along with the batch of cases, the respondent is not even liable to pay contribution for the period from 1.4.1992 to 1.11.1992 and that therefore the order impugned is unsustainable. The operative portion of the order reads thus :

> "1. declaring that the applicant is not liable to pay any contribution with regard to the employees in the wage group of Rs.1,600/- and Rs.3,000/- for the period from 1.4.1992 to 1.11.1992 as per the Writ appeal Judgment which is a binding inter parte judgment
>
> and
>
> 2. that Sec.85B order of the respondent dated

> 12.11.2008 imposing Rs96,960/ as damages by way of penalty for the delayed payment of contribution with regard to the employees in the wage group of Rs.1,600/- and Rs.3000/- for the period from 1.4.1992 to 1.11.1992 is unsustainable."

The Corporation is aggrieved by the said decision of the Insurance Court.

3. Though notice was issued on the respondent, there was no appearance for them.

4. Heard the learned counsel for the appellants.

5. The learned counsel for the appellants, rightly has not attempted to challenge the finding of the Insurance Court that levy of damages on the respondent for delayed payment of contributions from 1.4.1992 to 1.11.1992 is unsustainable. On the other hand, the only point canvassed by him was that the Insurance court was not right in declaring that the respondent is not liable to pay any contribution in respect of the employees in the wage group of Rs.1600/- to 3000/- for the period from 1.4.1992 to 1.11.1992. According to the learned counsel, the respondent

has not disputed their liability to pay contribution for the employees in the wage group of Rs.1,600/- and 3,000/- for the period from 1.4.1992 to 1.11.1992 and that the grievance highlighted by them before the Insurance Court was only concerning the levy of damages.

6. It is seen from the materials placed before me that the respondent has not disputed before the Insurance Court the liability to pay contributions in respect of the employees in the wage group of Rs.1,600/- to Rs.3000/- for the period from 1.4.1992 to.1.11.1992, as they have paid contributions in respect of the said class of employees for the aforesaid period long prior to the institution of the Insurance Case. As rightly pointed out by the learned counsel for the appellants, the grievance highlighted by the respondent in the application before the Insurance court was only concerning the levy of damages. In the aforesaid circumstances, the declaration granted by the Insurance Court in favour of the respondent that they are not liable to pay contributions with regard to the employees in the wage group from Rs.1600/-

to Rs.3,000/- for the period from 1.4.1992 to 1.11.1992 was not justified.

In the result, the appeal is allowed in part and relief (1) granted to the respondent as per the order impugned in this appeal is vacated.

P.B.SURESH KUMAR, JUDGE.

smm