

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.4471 of 2004

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Date:24.02.2015

Between:

The Employees State Insurance
Corporation, High Fort Road,
Hyderabad rep. by its Regional
Director.

..... Appellant.

AND

M/s. The Aruna Stra Boards
Pvt. Ltd.,
Surya Rao Palem,
Duvva rep. by its Managing
Director, Mr.V.V.Subba Rao.

.....Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A No.4471 of 2004

JUDGMENT:

This appeal is preferred against order dated 30-06-2004 in E.I. Case No.17/2001 whereunder the Industrial Tribunal-I, Hyderabad reduced the quantum of damages from Rs.60,680/- to Rs.30,000/-. Aggrieved by the same,

Employees State Insurance Corporation preferred present appeal.

2. Brief facts of the case is that the factory of respondent is under the coverage of E.S.I Act and the factory failed to pay E.S.I Contribution within the time as stipulated under Section 40 of the Employees State Insurance Act, 1948 (hereinafter referred as Act, 1948) and on that, a show cause notice was issued to the Principal Employer on 11-07-2000 demanding Rs.60,680/- as quantified damages and as the objection of the Principal Employer is not tenable, Regional Director levied damages under Section 85 (B) of Act, 1948 against the employer and aggrieved by that order, the Principal Employer preferred E.I Case before Industrial Tribunal and the Chairman Industrial Tribunal-I, Hyderabad, by showing some mercy, reduced this quantum of damages from Rs.60,680/- to Rs.30,000/-. Aggrieved by which, Employees State Insurance Corporation preferred the present appeal.

3. Heard both sides.

4. Advocate for appellant submitted that the Court below without any valid reasons, reduced the quantum of damages. He submitted that the Principal Employer contended that due to Cyclone, the establishment suffered some losses and for that reason, there was delay but the Cyclone was in the year 1996, the delays in payment was for

the period 1997, 1998, 1999 and 2000 and therefore, that reason is not tenable, but the lower Tribunal though observed that it is not a fit case to set aside the order of the Regional Director still reduced the quantum on mercy grounds. He submitted that the order of the Tribunal is not legal, therefore, liable to be set aside.

5. Now the point that would arise for my consideration in this appeal is whether the order of the lower Tribunal is legal, proper and correct?

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6. **Point:-** I have perused the record. There is no dispute with regard to non payment of contributions for the years 1997, 1998, 1999 and 2000. The only contention of the Principal Employer is that as it sustained some losses due to Cyclone in the year 1996, there was delay. In fact the very same objection was raised before the Regional Director in answer to show cause notice and the Regional Director disbelieved it and gave a finding that the employer submitted returns with undue delay even for subsequent periods. As seen from the material, it is clear that employer has deducted the amounts from the employees for these years, therefore, there cannot be any excuse for the employer in not contributing the amounts collected from the employees. The lower Tribunal even held that there are no grounds to set aside the order dated 06-11-2000 of Regional Director, but only on mercy grounds reduced the quantum. As rightly pointed out by Advocate for appellant when the Cyclone was

in the year 1996 showing mercy for the non-payment of contributions for subsequent periods even up to 2000 in my view is not a correct exercise of judicial discretion and therefore, the same has to be set aside. On a scrutiny of the material, I am of the view that the lower Tribunal erred in reducing the damages without any valid reasons and as such, the order of the Industrial Tribunal, dated 30-06-2004, is liable to be set aside.

7. Accordingly, appeal is allowed and the order dated 30-06-2004 in E.I.Case No.17/2001 on the file of Chairman, Industrial Tribunal-I, Hyderabad is set aside and the order of the Regional Director, dated 06-11-2000, is upheld. No costs.

8. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand disposed of.

JUSTICE S. RAVI KUMAR

Date:24.02.2015

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