

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1288 of 2009 (O&M)
Date of Decision: March 17, 2015

Employees' State Insurance Corporation Appellant

vs.

HMT Limited and another Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vikas Suri, Senior Standing counsel for the appellant.

Mr. Lalit Thakur, Advocate for respondent No.1.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Employees' State Insurance Corporation (in short the 'ESIC') has filed this appeal against the order dated 14.11.2008 passed by the court of Civil Judge (Sr. Divn.), Ambala, exercising the powers under the Employees State Insurance Act, 1948 (in short 'the ESI court').

The controversy was that the ESIC had issued an order of recovery dated 09.03.2001/12.03.2001 for recovery of ₹91,103/- against HMT Ltd.-respondent No.1 . HMT Limited-respondent No.1 challenged the said order before the ESI Court. The ESI Court while deciding issue No.1, held as under:

“It is evident on record through oral as well as documentary evidence led by the applicant that impugned

order Ex.P8 is related to the period w.e.f. 4/76 to 11/87, whereas the impugned order had been passed by the respondents on 09.03..2001/12.03.2001. Therefore, this order is related to the period beyond 5 years, whereas Section 77 of the Employees State Insurance Act, 1948 proviso Sub Clause (b) (1-A) says that no claim shall be made by the Corporation after 5 years period to which claim relates. By virtue of aforesaid proviso, the demand of the respondents being related to the period beyond 5 years seems to be time barred.”

It was further held that no proper opportunity of hearing was given to the applicant (respondent No.1 in the present appeal). Consequently, the impugned order was passed against the ESIC for effecting the recovery.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Before this Court, learned counsel for the ESIC has produced authority of Hon’ble the Apex Court in case of **“ESI Corpn. vs. C.C. Santha Kumar”, 2007(1) SCC 584**, wherein the Hon’ble Apex Court examined whether the limitation is applicable to the order passed by the ESIC under Section 45-A of the ESIC Act, 1948. The Hon’ble Apex Court formulated the following questions for decision:

“11. In the present case, the controversy centres on the proviso to clause (b) of Section 77(1-A). The crucial question is, “Does the proviso to clause (b) of Section 77 (1-A) fix the limit of time, in which the Corporation can

make a claim from the employer, on the basis of the orders passed under Section 45?”

12. Section 45-A is a part of Chapter IV. Section 77(1-A) (b) proviso is contained in Chapter VI. The question is whether there is any connecting link between Chapter IV and Chapter VI.”

The Hon'ble Apex Court came to the conclusion that Limitation Act is not applicable to the proceedings before the ESI court. The relevant extract of the judgment is reproduced as under:

“27. If the period of limitation, prescribed under proviso (b) of Section 77(1-A) is read into the provisions of Section 45-A, it would defeat the very purpose of enacting Sections 45-A and 45-B. The prescription of limitation under Section 77(1-A) (b) of the Act has not been made applicable to the adjudication proceedings under Section 45-A by the legislature, since such a restriction would restrict the right of the Corporation to determine the claims under Section 45-A and the right of recovery under Section 45-B and, further, it would give benefit to an unscrupulous employer. The period of five years, fixed under Regulation 32(2) of the Regulations, is with regard to maintenance of registers of workmen and the same cannot take away the right of the Corporation to adjudicate, determine and fix the liability of the employer under Section 45-A of the Act, in respect of the claim other than those found in the register of workmen, maintained and filed in terms of the Regulations.

29. Section 77 of the Act relates to commencement of proceedings before the ESI Court. The proviso to sub-

section (1-A) (b) of Section 77 of the Act cannot independently give any meaning without reference to the main provision, namely, Section 77 of the Act. Therefore, the provisio to clause (b) of Section 77(1-A) of the Act, fixing the period of five years for the claim made by the Corporation, will apply only in respect of claim made by the Corporation before the ESI Court and to no other proceedings.”

It being so, the order of the ESI court cannot be sustained in the eye of law. Therefore, the impugned order is set aside and the case is remanded back to the ESI court to hear both the parties by giving them opportunity of hearing and decide the same a fresh on merits. The parties are directed to appear before the ESI court, Ambala on 21.04.2015. However, the parties shall be at liberty to lead evidence, if any.

It is made clear that since the matter pertains to the year 2001, therefore, ESI court is directed to decide the same expeditiously but not later than six months.

In view of the aforesaid, the present appeal is allowed.

March 17, 2015
sarita

(KULDIP SINGH)
JUDGE