

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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First Appeal Order No.6252 of 2014 (O&M)
Date of Decision: December 15, 2015

M/s Libra Motors (Regd), Head Office Sirhind

...Appellant

Versus

Employees State Insurance Corporation, Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Raj Kaushik, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the order dated 26.11.2013 passed by the Employees Insurance Court, Chandigarh, whereby application under Section 75 of the ESI Act for quashing the order dated 25.08.2006 passed under Section 45-A of the ESI Act claiming contribution amounting to ₹2,93,178/- for the period April, 2002 to March, 2004 plus interest, has been dismissed.

2. It is the contention of learned counsel for the appellant that the notice Exhibit R-1 which was the basis for initiating proceedings against the appellant is based upon presumptions and assumptions. He contends that the conclusions drawn in the said notice are beyond comprehension and in any case, as per the response which has been given by the appellant, the same gives ample justification and explanation to the notice, which has not been properly considered by the authorities including the Employees Insurance Court, Chandigarh, and, thus, the impugned order dated 26.11.2013 cannot sustain.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned order, apart from the records which was summoned from the Court below but the said submissions of the counsel for the appellant cannot be accepted.

4. A perusal of the notice Exhibit R-1 would show that justifiable reasons have been given for the clarification which has been sought. The stand of the appellant had been that for the casual labours for the years 2002-03 and 2003-04, the ESI contribution has been correctly deposited. As regards the casual workers, since they were getting salary of more than ₹7,500/- per annum, no contribution under the ESI Act was required to be made and accordingly, such an action has been taken by the appellant which cannot be said to be illegal. But this assertion of the counsel cannot be accepted as the appellant, who had produced the ledger book showing the payments is not duly authenticated by the competent authority i.e. the Labour Department. It is not in dispute that the appellant-company is bound by the provisions as contained under the labour laws and one of the requirements under the said laws is that the attendance register and the wage register have to be duly got inspected and verified by competent authority which admittedly has not been done. In the absence of such a verification having been carried out by the competent authority, the findings as recorded by the Employees Insurance Court, Chandigarh, with regard to the authenticity or otherwise and reliability of the said document, cannot be faulted with.

5. As regards the contention of the counsel for the appellant that the casual labours, who were employed were getting salary at the rate of ₹7,500/- per month or above during the relevant period, suffice it to say

when the regular employees were getting the average salary of ₹2,032/- per month it is difficult to accept that the casual labourers were being paid ₹7,500/- per month or above. In any case, while dealing with this aspect, various irregularities committed by the appellant have been pointed out in the impugned order passed by the Court below based upon the records which have been produced by the appellant including where for a casual employee, who had absented himself or has not attended duty or left the job, he has been paid the full salary for the month. There is no justification for such an action having been taken.

6. The findings, thus, recorded in the impugned order, cannot be faulted with as the same are based upon proper appreciation of the evidence which has been brought on record. There is no illegality in the impugned order which would call for any interference by this Court.

7. Finding no merit in the present appeal, the same stands dismissed.

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.17004-CII of 2014, stands disposed of as infructuous.

December 15, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE