

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

**Regular Second Appeal No.962 of 2012
Date of decision : 07.05.2015**

Sarabjit Kaur ...Appellant
versus

Employees State Insurance Corporation & anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

Mr. Vikas Suri, Advocate,
Sr. Standing Counsel for the respondents

RITU BAHRI, J (Oral)

The appellant-Sarabjit Kaur has come up in regular second appeal against the judgment of the trial Court dated 24.10.2008 and lower appellate Court dated 28.10.2011 whereby her suit for declaration seeking dependents' benefits under the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act').

The suit of the appellant/plaintiff has been dismissed by the trial Court. Reference has been made to Rule 58 (1) (B) that she was entitled to be considered under the category of female dependents until she attained the age of 18 years. The plaintiff was more than 18 years of age and she was not eligible for the said benefit. The suit was dismissed and the lower appellate Court has affirmed the findings recorded by the trial Court.

After issuance of notice, counsel for the respondent has taken an objection that under Section 75 of the Act, the necessary

application could be made before the Employees Insurance Court.

Counsel for the appellant states that the plaint, which was filed before the civil Court was under the Act. Keeping in view the above fact and in view of the judgment of the Hon'ble Supreme Court, in the case of **Om Aggarwal Vs. Haryana Financial Corporation & ors., 2015 (4) SCC 371.** the jurisdiction question can be raised at any stage and necessary ingredient is to be examined in the plaint.

Counsel for the appellant further states that the appellant/plaintiff made an application under the Act before the Civil Judge (Sr. Division), exercising the power of the Insurance Court under the Act, but the suit was registered as a civil suit and decided as such.

It is not disputed by the parties before this Court that the plaint was filed before the Civil Judge, under the Act.

Accordingly, the judgments of both the Courts are set aside and the matter is remanded back to the Employees State Insurance Court constituted under Section 74 of the Act, to decide the matter on merits within a period of six months.

Parties are directed to appear before the Employees State Insurance Court on 25.05.2015 and the Court shall complete the proceedings within a period of six months.

07.05.2015
Vinay

(RITU BAHRI)
JUDGE