

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1650 of 2015
and MP No.1 of 2015

Employees State Insurance Corporation
Rep.by its Joint Director
Sub Regional Office, "Panchdeep Complex"
1897, Trichy Road, Ramanathapuram
Coimbatore - 641 045. ...Appellant

Vs.

1.Palanisamy
2.M/s SIV Industries Limited
Rep by Official Liquidator
High Court of Madras
Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai,
Chennai - 600 001. ...Respondents

This appeal is filed under Section 82 of ESI Act, against the order of the Labour Court (Employees State Insurance Court), Coimbatore dated 07.02.2014 made in E.S.I.O.P No.3 of 2010 to set aside the same.

For Appellant :Mr.Venkatachalapathy Sr. Counsel
for MR.G.Bharadwaj

For 1st Respondent : Mr. Palanisamy
Party in person

For Official Liquidator : S.R.Sundar

J U D G E M E N T

The employees State Insurance Corporation, aggrieved by the order passed by ESI Court in an appeal filed under section 54 (A) (2) (ii) of the Employees' State Insurance Act, has come forward with this appeal.

The facts leading to the proceedings are as follows:-

2. The Claimant / first respondent had joined the services of M/s.South India Viscose Industries Ltd. (a Company under liquidation), which is engaged in manufacture of rayon and viscose fabrics from viscose on 11.12.1973. In the year 1977, he contracted a peculiar skin disease, and took treatment at the Government Medical College Hospital at Coimbatore. Thereafter, he was referred to the Christian Medical College Hospital, Vellore, where he took treatment as an inpatient between 21.02.1979 and 09.03.1979, and on 14.01.1980 to 11.6.1981 he had taken further treatment in Chennai. On 22.01.2003, the 1st respondent/employee resigned from service of the Company and made a claim on 10.02.2004 with the ESI Corporation to refer him to the Medical Board, since according to him, the skin condition that he suffered commonly known as Acne Conglobata is an occupational disease contracted by him, because of regular exposure to the chemicals used in manufacture of rayon and viscose fabrics.

3. The appellant/Corporation referred him to a Medical Referee and the Medical Referee gave a report on 18.09.2006, wherein he would conclude that the skin disease may not be "occupational". He would also recommend a reference to the Special Medical Board for final opinion. Hence, the 1st respondent/employee was referred to the Medical Board and the Medical Board had diagnosed the skin disease suffered by the 1st respondent/employee as Acne Conglobata and had concluded that it is "non occupational". This conclusion of the Medical Board was Challenged by the 1st respondent/employee before the ESI Court in ESI CMA No. 3 of 2010 under section 54 (A) (2) (ii) of the Employees' State Insurance Act, 1948, read with Rule 20-B of the Employee State Insurance (Central) Rules, 1950.

4. The ESI Court has condoned the delay in filing the appeal. The appellant/Corporation contested the claim of the 1st respondent/employee on the ground that no similar cases have been reported in the factory concerned as well as on the ground that the opinion of the Medical Board is final and as such the 1st respondent/employee is not entitled to any permanent disability benefit.

5. The ESI Court, upon examination of the rival claims, framed the following issues:

1. Whether the petitioner has contracted with the occupational disease?
2. To what relief the petitioner is entitled to?

6. Upon examination of the oral and documentary evidence, the learned ESI Judge concluded that the disease, namely Acne Conglobata, contracted by the petitioner which had resulted in

severe facial disfigurement, is in fact an occupational disease and would fall under Entry 13 of Part B of the III Schedule to the Employees' State Insurance Act, 1948. Upon the said finding, the learned Trial Judge concluded that 1st respondent/employee would be entitled 100% disablement compensation.

7. Aggrieved, the ESI Corporation is on appeal.

8. I have heard Mr.M.Venkatachalapathy, learned Senior Counsel appearing for Mr.G.Bharadwaj, learned counsel for the appellant, Mr.Palanisamy, 1st respondent appearing in person and Mr.S.R.Sundar, learned counsel appearing for the Official Liquidator.

9. Mr.Venkatachalapathy, learned Senior Counsel appearing for ESI Corporation would contend that the claim has been filed belatedly, he would point out that the employee had contracted the disease in the year 1977, and he undergone treatment between 21.02.1979 and 09.03.1979 at the Christian Medical College Hospital, but he has not chosen to make a claim till 2004, and there is a considerable delay on the part of the employee in making the claim. He would further contend that the opinion of the Medical Board should have been accepted by the ESI Court, and the ESI Court was not right in going beyond the opinion on the Medical Board and accepting the discharge of summary issued by the Christian Medical College Hospital in the year 1979.

10. Per contra, Palanisamy, 1st respondent/employee appearing in person, contended that the opinion of the Medical Board has not set out any reason for stating that the disease is non occupational disease. The opinion of the Medical Board is subject to review by Tribunal or Employees' Insurance Act under the Section 52 (A) of the Act, in the absence of any reason attributed by the Medical Board for its conclusion, the ESI Court or Tribunal as the case may be has the power to decide as the correctness of the same. According to the 1st respondent/employee the absence of the reasons in the report of the Medical Board would make it vulnerable and the ESI Court was justified in concluding that the said report of the Medical Board cannot be accepted.

11. In the light of above submissions, the following question is framed for determination:

Whether the ESI Court is right in overruling the view of the Medical Board and concluding that the disease namely Acne Conglobata suffered by the 1st respondent/employee, is an occupational disease?

12. The disease Acne Conglobata is unusually severe form of Acne which is characterized by burrowing and inter-connecting abscesses and irregular scars often producing pronounced disfigurement. The primary cause of the disease is said to be unknown.

13. Ex.B3 which is a the summary/ discharge record issued by the Christian Medical College Hospital, Vellore which is a renowned institution suggests that the disease had occurred due to regular contact with Greasy Chemicals. It is also suggests that the disease is occupational. The advise found in the said discharge summary says that the patient should avoid prolonged contact with Greasy Chemicals. Therefore, it clear that the 1st respondent/employee has contracted the disease because of the exposure of Greasy Chemicals, as a part of his work as a Mechanic in the factory of M/s.South India Viscose Industries Ltd. The report of the Medical Board does not suggest any other cause of the disease and therefore, the ESI Court had rightly overruled the decision of the Medical Board and held that the disease namely Acne Conglobata, suffered by the employee was caused because of the exposure of Greasy chemicals during his employment as a Mechanic in the factory of the 2nd respondent.

In this regard, it is worthwhile to quote Entry 13 of Part B of Schedule III of the Act, which reads as follows:

Sl.No	Occupational disease	Employment
13	Skin disease caused by physical, chemical or biological agents not included in other items	All work involving exposure to the risk

14. Once it is concluded that the employee has contracted this disease due to exposure to chemical agents which he had come into contact during the course of employment, the said disease can only said to be occupational disease. Therefore, I do not see any error in the conclusion of the ESI Court.

15. Insofar as the percentage of disability concerned, it is seen from Entry 5 of Part 1 of the II Schedule that severe facial disfigurement, results in 100% loss of earning capacity. The Tribunal cannot be faulted with in coming to the conclusion that severe facial disfigurement has resulted in 100% loss of earning capacity.

16. I do not find any merits in this appeal, hence the appeal is accordingly dismissed. However, there will be no

order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Labour Court
(Employees State Insurance Court),
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.S.R.Sundar, Advocate Sr. 63309
+1cc to Mr.G.Bharadwaj, Advocate Sr. 63770
+1cc to Mr.R.Palaniswamy, Advocate Sr. 63320

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and MP No.1 of 2015

SV(CO)
VR(23/10/2017)

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