

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CMA NO.3410 OF 2014

AND M.P.NO.1 OF 2014

Employees State Insurance Corporation
Rep. by its Regional Director
Puducherry.

.. Appellant /R1

Vs.

1.S.Venkatachalam R1/Petitioner

2.The Managing Director
Anglo French Textiles
A Unit of Pondicherry Textiles Corporation Ltd.,
(A Government of Puducherry Undertaking)
Mudaliarpeth, Puducherry - 605 004.

R2/R2

PRAYER: Civil Miscellaneous Appeal filed under Section 82
(2) of the ESI Act against the order of the Employees
Insurance Court, Pondicherry dated 25.08.2014 made in
E.S.I.O.P.No.1 of 2008 to set aside the same.

For Appellant : Mr.G.Bharadwaj
For Respondent-1 : Mr.P.R.Thiruneelakandan
For Respondent-2 : Ms.N.Mala

J U D G M E N T

Aggrieved over the order of the Employees
Insurance Court of Puducherry, dated 25.08.2014, made in
E.S.I.O.P.No.1 of 2008, the Employees State Insurance
Corporation, Puducherry, has preferred the above appeal.

2. The short background in the case is that the
first respondent/petitioner was employed in the second
respondent Textiles Mills. He joined the second respondent
Textiles Mills in the year 1959 and served there for forty
years till his retirement on 31.12.1999. The first
respondent / petitioner is covered by Employees State
Insurance Policy in ESI I.P.No.1461943 of Puducherry and
paid contribution till the end that is 31.03.2000.
According to him, he suffered Hypertension with chronic
Bronchial Asthma from 1993 onwards.

3. Schedule-III of Employees' State Insurance Act, 1948, Entry No.18 of Part-B, clearly describes Occupational Asthma caused by recognized sensitizing agents inherent to the work process, in an employment involving exposure to the risk concerned. Schedule-III of Employees' State Insurance Act, 1948, Entry No.3 of Part-C, clearly describes Bronchopulmonary diseases caused by cotton, flax, hemp and sisal dust (Byssinosis). Under both Parts, it is described as "Occupational disease."

4. The first respondent / petitioner had taken treatment for Bronchial Asthma with Hypertension ever since 1993. On 23.09.1997, he had taken treatment for Bronchitis Asthma at AFT Dispensary (second respondent herein) and the treatment card was also maintained for the purpose. The health condition of the first respondent / petitioner deteriorated gradually due to disease and the discharge slip dated 25.05.1999 of the hospital reveal that he was suffering from the occupational disease, namely, Hypertension with chronic Bronchitis and he was also given ESI leave. After that, when he has been treated by the ESIC Hospital, K.K.Nagar, Chennai, his case was designated as Occupational Asthma on 14.02.2000 and the in-charge of the Occupational Disease Centre has addressed a letter dated 07.03.2002 to the Director, ESIC Hospital, K.K.Nagar, Chennai, stating that it was an Occupational Asthma and his case was recommended for Special Medical Board, in order to get declaration of the percentage of disability. Since no action was forthcoming, he sent reminders on 12.02.2002, 19.02.2002 and 16.10.2002. However, the petitioner Corporation by their letters dated 25.02.2002 and 27.06.2003 have informed that the first respondent/petitioner is not eligible for grant of Occupational Disease, as requested by him. The contents of the said letter dated 27.06.2003 reads as under:

"No.51-N-19-18-173-2000-PDY-BF I Dated
27.6.03

To

Sri. S.Venkatachalam
Ins.No.55-1461943
63, Uppukkara Street,
Ariyankuppam,
PONDICHERRY.

Sir,

Sub: Occupational Disease - Reg.

Ref: Your Letters dt.12.2.02, 19.2.02
and 16.10.02

- - - -

With reference to your letter dt.16.10.02 it is informed that as per LOM, Pondicherry letter dated 29.8.2000 you have received Sickness Benefit from 31.12.1999 to 22.02.2000 and Extended Sickness Benefit for 309 days from 23.2.2000 onwards for the diagnosis, "Interstitial Lung Disease". As such the question of Occupational Disease does not arise after your retirement on 31.12.1999.

In view of the above, I regret to inform you are not eligible for grant of Occupational Disease as requested by you. This has already been informed to you in this office letter dated 25.02.2002."

5. Thereafter, the first respondent / petitioner has filed a petition in E.S.I.O.P.No.1 of 2008 for a relief to refer him to the Special Medical Board for its evaluation and opinion as to his Occupational Disease and its percentage of disability and consequently to grant permanent disablement benefit to him in accordance with law.

6. The said petition was strictly resisted by the appellant / first respondent on the ground that it was hit by law of limitation as the first respondent / petitioner has failed to file the petition within three years as per Section 77(1-A) of the Employees' State Insurance Act and that he has not filed any petition to condone the delay in filing the present petition; that by the nature of his employment, he was not exposed to the risk of cotton dust in the factory in which he was employed and thereby, he had contracted the Occupational disease of Bysionissis as required under Section 52-A of the Employees' State Insurance Act and that he failed to prove the same by any medical opinion / advise / certification. Therefore, they sought for dismissal of the petition filed by the first respondent / petitioner.

7. The Employees' Insurance Court at Pondicherry relying on the judgment in EMPLOYEES' STATE INSURANCE CORPORATION VS. ANDHRA PRADESH STATE ELECTRICITY BOARD [1970 Lab IC 921] has held that the provision of Limitation Act is not attracted to this case. Further, on the basis of the evidence on the side of the appellant / first respondent viz., R.W.1 during cross examination that only the Special Medical Board can determine the Occupational disease and by the evidence of the Dr.V.S.Ananthan, Occupational Disease Centre in-charge, has fixed the

permanent disability at 30%. After elaborately discussing the issue, the Court below has ordered that the first respondent / petitioner is entitled to get the benefit for 30% permanent disability.

8. Aggrieved over the order of the Court below, the Employees State Insurance Corporation filed the above appeal on the grounds of limitation that the first respondent / petitioner has not suffered Occupational disease during his employment and that the disablement benefits need not be paid for the injuries suffered after his retirement.

9. On the basis of the grounds raised, the following substantial questions of law are raised: -

(i) as to whether the claim is barred by limitation under Section 77-1(A) of the Employees' State Insurance Act or not?

(ii) as to whether the report of the Medical Board dated 14.02.2000 after the retirement of the first respondent / petitioner will entitle him for the benefits? ; and

(iii) as to whether the ESI Court is correct in awarding permanent disablement benefits contracted by the first respondent/petitioner.

10. In so far as the question of limitation is concerned, Section 77 (1-A) of the Employees' State Insurance Act, 1948, reads as under:

"77. Commencement of proceedings.- (1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1-A) Every such application shall be made within a period of three years from the date on which the cause of action arose."

According to this Section, every such application shall be made within a period of three years from the date on which the cause of action arose. In that context, we need to look into as to when the cause of action arises.

11. Section 46(1)(c) of the Employees' State Insurance Act, 1948, deals with payment of benefits for the persons suffering from disablement as a result of employment injury. The benefits is payable from the date on which it is certified by the authority to be eligible for such payments.

12. As far as the determination of question of disablement is concerned, Section 54 of the Employees' State Insurance Act, 1948, specifies that the disablement shall be determined by a Medical Board constituted in accordance with the provisions of the regulations.

13. Regulation 45 under Chapter III of Employees' State Insurance (General) Regulations, 1950, declares that a claim for any benefit under the Act shall for the purpose of Section 77 become due on the date on which an injured person is declared as permanently disabled.

14. Regulation 51 under Chapter III of Employees' State Insurance (General) Regulations, 1950, specify the authority for certifying the eligibility of claimants.

15. In so far as this case is concerned, a person, who is claiming disablement benefit, shall be certified by a special Medical Board constituted for the purpose under the provisions of law. Once the duly constituted Medical Board determines the disablement, as per Section 54 of the Employees' State Insurance Act, 1948, the benefits falls due and hence, the claim for any benefit for the purpose of Section 77 becomes due. In the instant case, the authorities have rejected his request for referring him to the Medical Board as early as 25.02.2002 or 27.06.2003. Therefore, it is vehemently contended by the learned counsel for the appellant/first respondent that the limitation for filing the claim petition lapsed by 27.06.2006, whereas the application was filed only in 2008.

16. As seen from the provisions of the Employees' State Insurance Act, 1948 and as discussed above, it is very clear that the case of the first respondent / petitioner was referred to Special Medical Board by the Employees' Insurance Court only in the year 2013 and he was certified by the Medical Board on 12.09.2013. Therefore, it is clear that the disablement was determined by the duly constituted Medical Board only on 12.09.2013 and as per Section 77(1-A) of the Act, the application made by the first respondent / petitioner is well within time. Even otherwise, the first respondent / petitioner has contracted with the Occupational disease as early as in 1993 and it was designated as Occupational disease on 14.02.2000, as admitted by the appellant / first respondent. It is also admitted by them that the period of contribution ended by 30.03.2000 and the first respondent / petitioner has paid the contribution till the end. As long as the employee had contracted the disease, while he was in service and has availed treatment from the appellant / first respondent

till his retirement and also received sickness benefits from 31.12.1999, the date of retirement, to 22.02.2000 and thereafter, the extended benefits for 30 days from 23.02.2000. All these dates goes to show that the employee was diagnosed with occupational Asthma while he was in service and till the contribution period was over. Therefore, for the failure to refer the employee for Medical Board, he cannot be said that he has approached the Court beyond limitation. Even otherwise, under Section 77 (1-A) of the Act, the claim for the benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due.

17. In this regard, it is useful to refer to the judgment of a Division Bench of this Court in EMPLOYEES' STATE INSURANCE CORPORATION (REP. BY REGL. DIRECTOR) CHENNAI VS. M.GANESAN [2003 - II - LLJ 895] wherein it is observed as follows:

"10. For claiming the disability benefit, it is a pre-condition that the employment injury should have been sustained at a time when the person was an employee. The fact that such an employee had made contribution during the preceding contribution period and would be entitled to the sickness, maternity and other benefits provided under the other sub-clauses of Section 46(1) would not on that score enable that employee to claim the disability benefit as well for an employment injury sustained during the benefit period. To hold otherwise would do violence to the clear language employed in Section 46(1)(c). A person who crosses the prescribed wage limit after the commencement of a contribution period is deemed to be an employee till the end of that contribution period and not beyond. Though he is allowed to enjoy certain benefits during the corresponding benefit period he does so not as an 'employee', but as a person who was an employee during the relevant contribution period. An employment injury sustained during such benefit period, when he had ceased to be an employee on account of crossing the prescribed wage limit and the contribution period during which he crossed the wage limit also having ended, will not be an injury sustained by him as an 'employee'. Disability benefit would not become payable to such a person. "

18. As already discussed, the claim became due on 30.09.2013. Even assuming the language employed under Section 77(1-A) that within such further period as the Employees' Insurance Court may allow on grounds which appear to it to be reasonable will make this application in time and it is not hit by law of limitation. Therefore, as per Section 54 of the Employees' State Insurance Act, 1948 and Regulations 45 and 74 of the Employees' State Insurance (General) Regulations, 1950, the cause of action arises when the occupational disease is determined by the Special Medical Board. Therefore, it is clear that the claim is not barred by limitation.

19. In this context, it is useful to refer to the judgment of the High Court of Orissa in UPENDRA JENA VS. REGIONAL DIRECTOR, ESI CORPORATION [2010 - III - LLJ - 588 (Ori)] wherein it is observed as follows:

"7. Apart from the above, another important aspect of the case is as to whether any power is vested in the E.I. Court to condone the delay in presenting an application under section 77 of the E.S.I. Act. A plain reading of Section 77 of the E.S.I. Act does not show any such power is vested in the E.I. Court. It may be relevant to mention here that while Sub-section(4) of Section 82 contains the provision for condonation of delay in presenting the appeal before the High Court, no such power is vested in the E.I. Court to condone the delay in presenting the application under section 77 of the E.S.I. Act before it. Now the question arises whether in absence of such a power the E.I. Court can condone delay in presenting an application under section 77 of the E.S.I. Act after expiry of three years from the date on which the cause of action arose.

In this context, it would be appropriate to refer to judgment of Hon'ble Supreme Court in Singh Enterprisers Vs. Commissioner of Central Excise, Jamshedpur and Ors. (2008)3 SCC 70. While considering the provisions of Central excise Act, 1944 the Hon'ble apex Court held:

"The provision to sub-section (1) of Section 35 makes the position crystal clear that the appellate

authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

A similar view has been taken by the apex Court in Commissioner of Customs, Central Excise, Noida Vs. Punjab Fibres Ltd., Noida, (2008) 3 SCC 73, Goodearth Steels (P) Ltd. Vs. Commissioner of Central Excise, Kanpur, (2008) 3 SCC 77, Gopal Sardar Vs. Karuna Sardar, (2004) 4 SCC 252."

20. In so far as the question raised by the appellant / first respondent that whether the first respondent / petitioner is entitled to claim the benefits after his retirement, the contention of the appellant / first respondent before the Employees' Insurance Court below is that if the first respondent / petitioner's plea for permanent disablement benefit for occupational disease is accepted, then all the 7000 employees employed in the said factory, in which the first respondent / petitioner employed can raise the similar plea. That reason may not be a valid reason and it runs contrary to the beneficial legislation of the Employees' State Insurance Act and runs riot against the objects of the Act. Even assuming that the diagnosis of the employment injury suffered by the first respondent / petitioner was only on 14.02.2000, that is after the date of his retirement on 31.12.1999, the contribution period ended with 30.03.2000. Therefore, the claim is well within the contribution period and the employee is very much entitled to receive the benefits.

21. Without prejudice to the above, it is an admitted case that the employee had contracted with the illness as early as 1993 i.e., six years before the date of his retirement. The contracting of this illness is borne

out by medical records. The treatment card issued by the employer, namely the second respondent and the medical slips issued by the appellant / first respondent stands proof for the same. The receipts issued by the appellant Corporation on 31.12.1999 by itself endorses the case of the first respondent / petitioner as an occupational disease. The occupational disease does not emerge on a single day. That injury is caused due to the exposure to an adverse claim over a period of time. Admittedly, the first respondent / petitioner was working in a Textile Mills, where he is thrown to dust. No one need to prove that he was exposed to dust in a Textile Mills. Even assuming that his nature of work is only washing and colouring, the appellant cannot take excuse that he has not suffered occupational disease. In a Textile Mills, dust is a common sense that dust spreads everywhere. Even the dust spreads out of the premises also. In such circumstances, no proof is needed when his employment is admitted that he is working in a Textile Mills.

22. Furthermore, as discussed above, Parts - B and C of Schedule-III clearly describes that all work involving exposure to the risk concerned. Since the first respondent / petitioner was doing washing and colouring of textile, he must have been exposed to the chemicals and the poisonous vapours and one cannot diagnose the exact reason for suffering the employment injury. When a competent person hinted the first respondent / petitioner's case and lets in evidence before the Court that the first respondent / petitioner was suffering from occupational Asthma, no further proof is required. Not stopping with that, the Special Officer of Occupational Disease Centre writes a letter dated 07.03.2002 to the Director of ESIC Hospital, K.K.Nagar, Chennai, that the case requires to be referred to Medical Board. In that instance, it cannot be said that the employment injury / occupational disease was not suffered during his employment and it is not connected with the nature of his employment. Therefore, these questions are answered against the appellant / first respondent. It only remains to answer the percentage of permanent disablement. The evidence of the Doctor of an Occupational Disease Centre under the very same appellant clearly states that the employee was suffering from Occupational disease and the percentage of disablement is 30%. In that case, the permanent disablement is proved and the Court below has rightly fixed the permanent disablement as 30% and the employee is entitled to monetary benefits.

23. The learned counsel appearing for the appellant would vehemently argue that as per Section 46(1) (c) of the Act, the certification by the authority gives

rise to the cause of action. Therefore, the competent person to certify is the Branch office in so far as the temporary disablement and Regional Office in so far as the permanent disablement under Regulation 51 of the Regulations. Once rejection is made, the cause of action to claim the benefit arises and it should be within three years.

24. This Court has already discussed the above issue and answered the point based on the Regulations cited therein. However, that is an another concept of continuing cause of action. When a person suffers employment injury, it may be a sickness or temporary disablement or permanent disablement. In cases of sickness, treatment will be given and in case of temporary disablement, benefits are given till the disablement gets cured. In so far as the permanent disablement is concerned, it continues throughout the life of the employee concerned. The loss of earning capacity due to the permanent disablement will also continue till the end. In that event, the case of permanent disablement and the employment injury / occupational disease suffered by him will give him continuous cause of action. Under this concept also, the petition filed by the first respondent / petitioner is not hit by law of limitation as provided under Section 77(1-A) of the Act.

25. For the foregoing reasons, the order dated 25.08.2014 passed by the Employees' Insurance Court, in E.S.I.O.P.No.1 of 2008, is upheld as the same was passed in accordance with law. The appellant Corporation is directed to issue all the monetary benefits within one month as stipulated in the Act to the first respondent / petitioner along with interest for the delay caused on their part. It is also made clear that the first respondent/ petitioner is entitled to the disablement benefits in addition with the sickness benefits extended to him.

26. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

TK

To

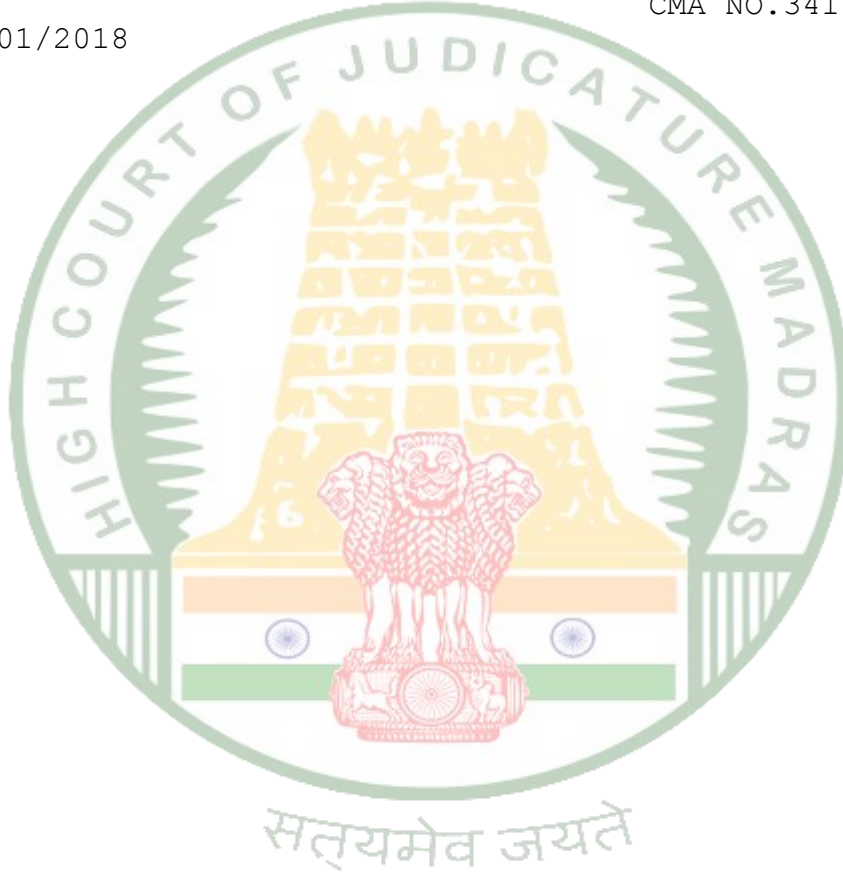
1.The proseedding officer,Labour court
Employees' Insurance
Pondicherry.

2.The section officer
vr section
High court of madras.(2copeis)

+1cc to Mr.P.R.Thiruneelakandan,Advocate sr.82503

CMA NO.3410 OF 2014

GSP/30/01/2018



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