



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A(MD)No.300 of 2017

1. The Employee's State Insurance Corporation,
Sub Regional Office,
represented by
The Joint Director,
Panchdeep Bhavan,
ESIC Complex,
Salai Street,
Vannarapettai,
Tirunelveli - 627 003.
2. The Deputy Director,
The Employee's State Insurance Corporation,
Sub Regional Office,
Panchdeep Bhavan,
ESIC Complex,
Salai Street,
Vannarapettai,
Tirunelveli - 627 003.
3. The Recovery Officer,
The Employee's State Insurance Corporation,
Sub Regional Office,
Panchdeep Bhavan,
ESIC Complex,
Salai Street,
Vannarapettai,
Tirunelveli - 627 003. ... Appellants/Respondents

Vs.

M/s.Chithranjandas Agencies,
represented by its
Managing Partner,
C.Ajoykumar

... Respondent/Petitioner

PRAYER: Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948, against the judgment and decree dated 03.08.2016 passed in E.S.I.O.P.No.12 of 2015 by the Employee's State Insurance cum Labour Court, Tirunelveli.



For Appellants : Mr.K.C.Ramalingam
For Respondent : Mr.M.Azeem

JUDGMENT

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Challenging the order of the Employee's State Insurance cum Labour Court, Tirunelveli, dated 03.08.2016, in and by which, the Employee's State Insurance cum Labour Court set aside the order dated 28.01.2014 passed by the appellant-Corporation levying damages of a sum of Rs.34,976/- (Rupees Thirty Four Thousand Nine Hundred and Seventy Six only) for the delayed payment of contribution, the appellant-Corporation is on appeal.

2. The respondent-employer was charged with deficiencies in contribution on the ground that he has not included certain amounts paid towards wages while remitting the contribution. The contribution for the wages so omitted was worked out at Rs.64,895/- (Rupees Sixty Four Thousand Eight Hundred and Ninety Five only). The said levy was challenged by the respondent-employer and the Employee's State Insurance cum Labour Court set aside the order passed by the appellant-Corporation and remitted the matter back to the appellant-Corporation.

3. Again, the appellant-Corporation raised a demand. The respondent-employer had admittedly paid a portion of the demand and has again filed E.S.I.O.P.No.12 of 2015.

4. During the interregnum, an order dated 28.01.2014 came to be passed levying damages of Rs.34,976/- (Rupees Thirty Four Thousand Nine Hundred and Seventy Six only) for the delayed payment of contribution for the period from April 1996 to March 2001.

5. It is not in dispute that the respondent-employer has paid the contribution as demanded. Thereafter, the respondent-employer came forward with a petition seeking refund of the amount of interest and damages collected by the appellant-Corporation.

6. The Employee's State Insurance cum Labour Court, on appreciation of facts and circumstances of the case, came to the conclusion that the interest demanded is justified and dismissed the claim for refund of interest. However, with reference to damages, the Employee's State Insurance cum Labour Court relying upon the judgment of the Honourable Supreme Court in **ESI Corporation v. HMT Limited** reported in **2008-I-LLJ-814 (SC)** and the judgment of the Division Bench of this Court in **Beema Manufacturers (P) Ltd., v. Regional Director, ESI Corporation** reported in **1991 (2) LLJ 29 (Mad)**, concluded that there is no mala fide intention on the part of the respondent-employer and hence,



levy of damages is not justified. On the aforesaid findings, the Employee's State Insurance cum Labour Court directed the appellant-Corporation either to refund a sum of Rs.34,976/- (Rupees Thirty Four Thousand Nine Hundred and Seventy Six only) collected towards damages or adjust the said amount in future subscriptions payable by the respondent-employer.

7. The learned Counsel for the appellant-Corporation would contend that the levy of damages is based on the ground that the respondent-employer has not paid the contribution on the due dates. According to the learned Counsel for the appellant-Corporation, Section 85-B of the ESI Act, 1948, empowers the appellant-Corporation to levy damages in the event of delayed payment.

8. As pointed out by the Honourable Supreme Court as well as the Division Bench of this Court in the decisions cited supra, levy of damages is not automatic. Unless there is an element of mala fide that could be attributed to the respondent-employer, the damages could not be levied.

9. The Division Bench of this Court has also further made it clear that the order levying damages must contain reasons as to why the damages are levied. The order impugned in E.S.I.O.P.No.12 of 2015 levying damages does not disclose any reason except stating that there is a delay in payment. This order does not satisfy the parameters that are laid down by the decisions cited supra. Hence, I do not find any illegality or irregularity in the order dated 03.08.2016 passed in E.S.I.O.P.No.12 of 2015 by the Employee's State Insurance cum Labour Court, Tirunelveli.

10. Therefore, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Employee's State Insurance cum Labour Judge,
Tirunelveli.

+ 1 CC TO Mr.K.C.RAMALINGAM, ADVOCATE IN SR No. 52372
+ 1 CC TO Mr.M.AZEEM, ADVOCATE IN SR No. 52193

RSB