



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.395 of 2016

Employees State Insurance Corporation,
Sub Regional Office,
Municipal Shopping Complex,
Salai Street, Sindhupoonthurai,
Tirunelveli-627 001,
Represented by its Joint Regional Director. ... Appellant/
Respondent

Vs.

M/s. Loyal Textile Mills Limited,
(Garments Division),
23-A, Mill Street, Kovilpatti-628501,
Thoothukudi District
(Represented by its Factory Manager). ... Respondent

Prayer: Appeal filed under Section 82 of the E.S.I. Act 1948, to set aside the order dated 25.09.2014 made in E.S.I.O.P.No.13 of 2013 before the ESI Court (Labour Court), Tirunelveli.

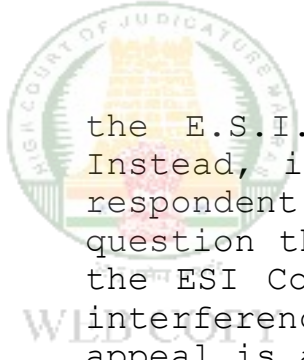
For Appellant : Mr.P.Ganapathysamy
For Respondent : Mr.M.E.Ilango

JUDGMENT

Heard the learned counsel on either side.

2.The Employees' State Insurance Corporation is the appellant herein. Damages were levied on the respondent by passing an order under Section 85(B) of the 'Act'. The same was questioned before the E.S.I. Court. The E.S.I. Court restricted the damages payable by the respondents to 25% of the amount levied by the Corporation. This is questioned in this appeal.

3.The Hon'ble Supreme Court has held in more than one case that damages can be levied only if it is established that the element of *mens-rea* was present. There must be a deliberate intent to violate the statute. In the order impugned in these proceedings, such a finding has not been arrived at. Therefore,



the E.S.I. Court ought to have set aside the order in toto. Instead, it just restricted the quantum of damages levied on the respondent. The respondent/establishment has not chosen to question the order passed by the E.S.I. Court. The order passed by the ESI Court (Labour Court), Tirunelveli, does not call for any interference. The substantial question of law raised in this appeal is answered against the appellant.

4.This Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Presiding Officer,
The ESI Court (Labour Court), Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. M.E.Ilango, Advocate Sr.No.90051

+1cc to Mr.P.Ganapathysamy, Advocate Sr.No.90140

TSG

VB/KK/SAR4/11/01/2018/2P/6C

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