



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD).No.597 of 2016

The Deputy Director,
Employees' State Insurance Corporation,
Sub-Regional Office,
Tallakulam, Madurai - 2. ... Appellant/Respondent

Vs.

M/s.Jayaraj Motors,
I.O.C.Dealers,
D.No.159, Dindigul Road,
Palani - 624 601. ... Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the order dated 07.02.2015 of the Labour Court (Employees' State Insurance Court or, in short, ESI Court), Madurai in E.S.I.O.P.No.33 of 2001.

For Appellant : Mr.P.Ganapathisamy
For Respondent : Mr.M.Sridhar

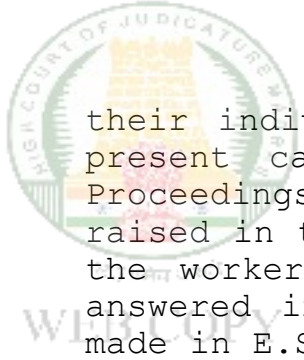
JUDGMENT

Heard the learned counsel on either side.

2.The ESI Corporation has filed this appeal, questioning the order made in E.S.I.O.P.No.33 of 2001, on the file of the Labour Court (Employees' State Insurance Court), Madurai.

3.The respondent herein is a Petroleum Outlet. Admittedly, even the Petroleum Outlets are liable to be covered by the provision under the Employees' State Insurance Act, 1948, if the number of workers is ten or more. In the present case, the case of the appellant Corporation is that there are more than 14 workers employed in the respondent/Establishment. The respondent herein contested the said claim. According to the respondent/Establishment, there are only 7 workers employed by them.

4.The learned counsel appearing for the respondent would therefore contend that the establishment is not liable to be covered by the provision of the Act. It has been consistently held by the Supreme Court that the matters relating to the determination as to coverage or contribution will have to be made only in the presence of the workers. The workers will have to be represented either in



their individual capacity or in a representative capacity. In the present case, the workers were not made parties to the E.S.I Proceedings at all. Therefore, the substantial question of law raised in the appeal as to whether the matter has to be remanded as the workers were not made as parties by the employer has to be answered in favour of the appellant. The order dated 07.12.2015 made in E.S.I.O.P.No.33 of 2001, Labour Court, Madurai, is set aside and the matter is remitted to the ESI Court.

5.The respondent herein shall take steps to implead the workers in representative or individual capacity. The E.S.I. Court will dispose of E.S.I.O.P.No.33 of 2007, afresh and in accordance with law.

6.This Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To
The Judge,
Labour Court (Employees' State Insurance Court or ESI Court),
Madurai.

Copy to:

The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai (2 Copies)

+1CC to Mr.P.Ganapathisamy, Advocate, SR.No. 90997

+1CC to Mr.M.Sridhar, Advocate, SR.No. 90893

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05.12.2017

tsg/lis

AM/JC/SAR 2/28.05.2018/2P/6C