

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO No. 93/2016 and C.M. Nos. 10222/16 & 6677/2016**

% **20th April, 2017**

SAKET GUPTA Appellant
Through: Mr. Suneel K. Atreya, Adv.
versus

IMRANA KHATOON & ORS. Respondents
Through: Mohd. Ataher Khan, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 30 of the Employees Compensation Act, 1923 challenges the judgment of the Employees Compensation Commissioner awarding the claim/compensation to the respondents herein, and who were the claimants before the Employees Compensation Commissioner, on account of the death of one Mohd. Yameen. The respondents herein are the legal heirs of deceased Mohd. Yameen.

2. The impugned judgment dated 18.11.2015 shows that the appellant had taken the objection that the deceased Mohd. Yameen was in fact an employee of M/s Gupta Traders which is a sole proprietary concern, not of the appellant, but of the father of the appellant Sh.

Vijay Prakash Gupta. The firm of M/s Gupta Traders; sole proprietor Mr. Vijay Prakash Gupta is duly registered under the Employees State Insurance Corporation Act, 1948 (in short 'ESIC Act') as per Code No. 10000357760001001 with effect from 2002. Accordingly, it was contended on behalf of the appellant that the respondents will have to take their benefit not under the Employees Compensation Act but under the ESIC Act in view of Section 53 of the ESIC Act. Section 53 of the ESIC Act contains a bar to the grant of compensation under the Employees Compensation Act in case the employee is covered under the ESIC Act.

3. ESIC was noticed by the Employee's Compensation Commissioner and since ESIC denied its liability, hence the Employee's Compensation Commissioner allowed the claim petition under the Employee's Compensation Act.

4. It may be noted that ESIC denied its liability on the ground that the deceased Mohd. Yameen was registered as an employee with the ESIC after his death and consequently respondents did not have entitlement under the ESIC Act. Mohd. Yameen died on 26.11.2013 and he was registered under the ESIC Act from 19.12.2013. Learned counsel for the appellant has placed reliance upon the judgment of the Supreme Court in the case of **Bharagath**

Engineering Vs. R. Ranganayaki and Another (2003) 2 SCC 138 and which judgment holds that once an employee is an employee covered under the ESIC Act, merely because the registration is granted under the ESIC Act to the employer with respect to the deceased employee after the death of the employee, would not mean that the ESIC Act will not apply. Supreme Court in the case of ***Bharagath Engineering (supra)*** has referred to various provisions of the ESIC Act and rules framed there under along with regulations framed under the ESIC Act to observe that in spite of insurance premium being not paid by the employer, the employee or his dependants cannot be deprived of the benefit of the ESIC Act.

5. Learned counsel for the appellant also states that appellant has in fact filed an appeal under Section 75 of the ESIC Act against the order of the competent authority under the ESIC Act refusing to treat the respondents as beneficiaries under the ESIC Act and this appeal is pending. It is stated that the appellant will add the present respondents, being the legal heirs of Mohd. Yaseen as co-appellants in that appeal, and needful will be done within a period of two weeks from today. Appellant will do the needful as per this statement.

6. Since the respondents are confronted with the bar under Section 53 of the ESIC Act whereby compensation cannot be claimed

under the Employees Compensation Act, learned counsel for the respondents agrees that this appeal be disposed of by setting aside the order of the Employees Compensation Commissioner dated 18.11.2015, but the respondents be held entitled to rights under the ESIC Act, and for which purpose as already stated above, respondents will be added as co-appellants in the appeal filed by the appellant under the ESIC Act. Ordered accordingly. The application when filed by the present appellant before the appellate authority under the ESIC Act will be signed by the respondents herein giving their consent for being added as co-appellants in the appeal filed under Section 75 of the ESIC Act.

7. In view of the above discussion, though the impugned judgment of the Employee's Compensation Commissioner dated 18.11.2015 is set aside, respondents are directed to be made as parties to the appeal filed under Section 75 of the ESIC Act and the respondents along with the present appellant will be entitled to pursue the appeal for getting appropriate claims under the ESIC Act in terms of the ratio of the judgment of the Supreme Court in the case of *Bharagath Engineering (supra)*. Appeal is accordingly disposed of, leaving the parties to bear their own costs.

APRIL 20, 2017/ib/Ne

VALMIKI J. MEHTA, J