



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A.(MD)No.372 of 2018

WEB COPY

1.The Sub-Regional Office,
ESI Corporation,
39/57, Theerthamalai Vaniga Valagam,
Three Roads, Salem - 636 009.

2.The Branch Office,
ESI Corporation, Golden Square,
11th cross, Thillainagar,
Trichy - 18.

... Appellants / Respondents

Vs.

1.N.five Rose Khan
2.Velazhagan

... Respondents / Petitioners

Prayer: Civil Miscellaneous Appeal filed under Section 82 of the ESI Act, 1948, against the order dated 06.02.2018 of the Labour Court (Employees' State Insurance Court or, in short, ESI Court) Tiruchirappalli in E.S.I.O.P.No.4 of 2016.

For Appellants : Mr.P.Ganapathisamy
For R1 : Mr.K.Rajmohan

JUDGMENT

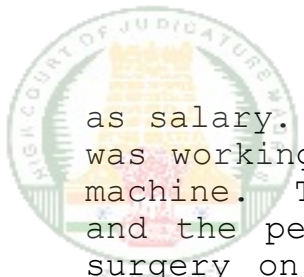
This Civil Miscellaneous Appeal is filed against the order in E.S.I.O.P.No.4 of 2016 on the file of the Labour Court (Employees' State Insurance Court or ESI Court), Tiruchirappalli, dated 06.02.2018.

2. The Appellants are the respondents. The respondents are the petitioners in E.S.I.O.P.No.4 of 2016. The respondents herein filed a petition in E.S.I.O.P.No.4 of 2016 before the Labour Court (E.S.I. Court), Tiruchirappalli, to reimburse the medical expenses and to pay the benefits under the Employees' State Insurance Act and the ESI Court passed an award. Against which, the appellants herein preferred this Appeal.

3. Brief substance of the petition before the E.S.I.Court is as follows:

The petitioner was appointed as a Machine Operator by the first respondent Company and the petitioner was paid Rs.6,500/- per month

<https://hcservices.ecourts.gov.in/hcservices/>



as salary. On 05.03.2008, at about 07.30 p.m. though the petitioner was working diligently, his right forearm got stuck in the pressing machine. The said accident had occurred in the course of employment and the petitioner was admitted as an in-patient and he undergone surgery on 10.03.2008 and his five fingers in the right hand were amputated and he was in-patient for two months, he was aged about 22 years at the time of accident and the respondent has to be directed to reimburse the medical expenses and to pay the other E.S.I benefits.

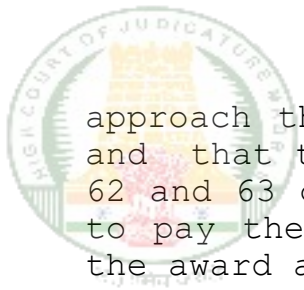
4. Brief substance of the counter filed by the respondents 2 and 3 is as follows:

The petitioner was not registered as an employee under the E.S.I. Act by the employer and the first respondent as an employer had not submitted any accident report to the ESI Corporation as such, the ESI Corporation was an un-necessary party and that the first respondent and the petitioner were colluded together and the petitioner already failed in an attempt to get compensation under the Workmen Compensation Act and hence, the petition is to be dismissed.

5. After hearing both sides, the E.S.I. Court directed the respondents to pay a sum of Rs.1,49,502.50/- as medical expenses and to pay the benefits on the basis of 60% permanent partial disablement and to pay sick benefits for 55 days to the petitioner. Against which, the appellants preferred this Appeal.

6. On the side of the appellants E.S.I. Corporation, it is stated that the first respondent was stated to have joined in the factory of the second respondent as a helper in the year 2005 and later on, he was working as Machine Operator. On 05.03.2008, while the first respondent was on duty in the factory, the right forearm of the first respondent got stuck in the pressing machine and at the time of accident, the second respondent herein was not registered with the E.S.I Corporation and only on 28.02.2011 an application to register the Firm was filed and the E.S.I. coverage was only after the said period. There was no E.S.I. coverage during the alleged period of accident and Section 68 of E.S.I. Act is applicable only to the insured person and not to the first respondent herein. The second respondent was not registered under the E.S.I. Corporation, during the relevant period and as such the first respondent was not insured and no police complaint was registered, no information was given to the petitioner and the appellant E.S.I. Corporation was not aware whether the accident took place inside the premises or outside the premises.

7. On the side of the appellants, it is stated that under Section 54 of the E.S.I Act, the duty to determine the question of disablement has been entrusted to the duly constituted Medical Board



approach the E.S.I. Court only the assessment by the Medical Board and that the respondent Company should be registered under Sections 62 and 63 of the E.S.I. Act, and that the appellants are not liable to pay the award amount and only the second respondent has to pay the award amount.

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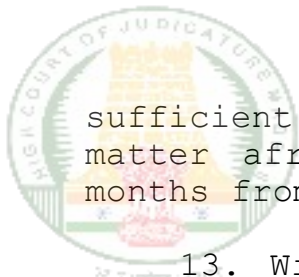
8. On the side of the respondents, it is stated that the appellants are raising a new plea, at the stage of appeal. The contention of the appellants before the Tribunal is only with regard to non-registration of the employee, there is no statement or counter filed by the appellants regarding the allegation as to the non-registration of the Company. Even the E.S.I. Court in its judgment at Paragraph No.,8 has discussed that the second respondent company was registered and now at the stage of appeal, the appellant cannot raise a new plea.

9. A judgment of the Hon'ble Supreme Court published in **2003 (1) L.L.N. 819 [Bharagath Engineering Vs. R.Ranganayaki and another]** is cited, wherein, it is stated that the date of payment of contribution is really not very material. In fact, Section 38 of the Act casts a statutory obligation on the employer to insure its employees. It is further stated that the disability was fixed at 60% and therefore, the Civil Miscellaneous Appeal is to be dismissed.

10. On the side of the appellants, it is stated that in the counter, the appellants have pointed out that they are not liable to pay medical expenses since the first respondent is not registered as an employee by the employer at the time of occurrence and this fact indicates that the employer has not registered the Company under the E.S.I.Act. The employer remained *exparte* before the E.S.I. Court and the contention of the appellants is that the Company was registered only on 28.02.2011 and there was no coverage as on 05.03.2008. It is stated that the application, to register the said Company was filed only on 12.05.2008 and the same was registered on 28.02.2011. The appellants were not given an opportunity to file their additional counter, inspite of their specific plea.

11. In the above circumstances, whether the Company was registered and whether the registration is valid as on 05.03.2008 is to be decided. Hence, in the interest of justice, the appellants are to be given an opportunity to file an additional counter.

12. With the above observations, the order dated 06.02.2018 passed by the Labour Court, (Employees' State Insurance Court or ESI Court), Tiruchirappalli in E.S.I.O.P.No.4 of 2016, is set aside and the matter is remanded back to the E.S.I. Court with liberty to the appellant to file an additional counter, within a period of two weeks from the date of receipt of a copy of the order. The E.S.I. Court is directed to consider the case on merits after giving



sufficient opportunities to both the parties and to decide the matter afresh in accordance with law within a period of three months from the date of receipt of a copy of this order.

13. With the above direction, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Is

To

1. The Labour Court
(Employees' State Insurance Court or ESI Court),
Tiruchirappalli.

2. The Section Officer,
VR Section, (2 copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.RAJESHWARAN, Advocate (SR-105682[F] dated
18/12/2019)

C.M.A. (MD) No.372 of 2018
16.12.2019

MK (14.02.2020) 4P 5C