

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 20.2.2020
FAO No.2301 of 2019 (O&M)

M/s KL Mehta Dayanand Public High School ... Appellant

Versus

The Regional Director, Employee State Insurance Corp. ... Respondent

FAO No.2302 of 2019 (O&M)

M/s KL Mehta Dayanand Public Senior Secondary School
... Appellant

Versus

The Regional Director, Employee State Insurance Corp. ... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Pawan K. Mutneja, Advocate for the appellant.
Mr. Vikas Suri, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2301 and 2302 of 2019 as identical questions of law and facts are involved for adjudication. For facility of reference, facts are taken from FAO No.2301 of 2019.

Challenge in the present appeal has been directed against order dated 17.1.2019 passed by the Civil Judge (Sr. Division), Faridabad whereby petition under Section 75 of the Employees State Insurance Act (hereinafter referred to as 'the Act') has been dismissed.

The sole submission made by counsel for the appellant is that the appellant neither disputes M/s KL Mehta Dayanand Public High

School, Faridabad liable to be covered within the purview of the Act nor dispute its liability to pay interest to the tune of Rs.1,33,479/-. It is argued that the Court framed issue No.1 in respect of damages, reads thus:-

Whether the impugned order dated 21.02.2018 whereby damages to the tune of Rs.2,40,954/- was levied upon petitioner is liable to be set aside as prayed for?OPP

It is further argued that while deciding issue No.1, in para 11, the Court has made observations if the impugned order dated 31.05.2017 vide which respondent therein had claimed interest and damages to the tune of Rs.3,82,827/- from the petitioner therein is liable to be set aside. In the subsequent paras under issue No.1, the Court has adverted to various judgments that deal with liability to pay interest and not damages. It is further submitted that since the Court below has not dilated on the issue of liability of the appellant to pay damages in respect whereof issue No.1 was framed, findings of the Court on issue No.1 cannot sustain and liable to be set aside.

Counsel representing the respondent, on the contrary, has supported liability of the appellant to pay damages, ascertained by the respondent corporation. He would inform that there is error with regard to the amount, sought to be recovered from the appellant in respect of damages.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Indisputably, the Court framed issue No.1 with regard to

liability of the appellant to pay damages vide impugned order dated 21.2.2018 passed by the respondent Corporation. However, on a plain but careful reading of the observations made by the Court while deciding issue No.1, it can safely be gathered that the Court has dilated on the question of liability of the appellant to pay interest and not damages. Counsel for the respondent, in response to a query, is not in a position to controvert that the judgments to which reference has been made in paras 14 onwards of the impugned order pertain to the question of liability of employer to pay interest, held to be statutory in nature. In this view of the matter, I find merit in contention of the appellant that the Court has not decided the question of liability of the appellant to pay damages but had relied upon judgments dealing with liability of the employer to pay interest and disposed of issue No.1. That being so, findings of the Court on issue No.1 cannot stand the test of judicial scrutiny and set aside. The matter is remitted to the Court for decision of issue No.1 afresh, in accordance with law.

For the foregoing reasons, the appeals are allowed. The impugned orders are set aside and the matter is remitted to the Court for decision of issue of liability of the appellant to pay damages afresh. Counsel for the respondent would be at liberty to raise an issue before the Court below with regard to the exact amount of damages sought to be recovered from the appellant.

No order as to costs.

Parties through their counsel are directed to appear before the

Court below on 02.03.2020. The Court is directed to decide the petition within a period of six months of the parties putting in appearance.

20.02.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No