

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2280 of 2019
C.M.P.No.10003 of 2019

The Regional Director,
Employees State Insurance Corporation,
No.178-100 feet Road (Opp RTO)
Ansari Nagar, Puducherry. ... Appellant/Respondent

vs.

P.Sivasankaran
... Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal filed under Section 82(2) of ESI Act, against the order dated 30.01.2019 passed in E.S.I.O.P.No.3 of 2016 on the file of the Employees Insurance Court (Industrial Tribunal cum Labour Court, Puducherry).

For Appellant : Mr.G.Bharadwaj

For Respondent : Mr.R.Sreedhar

J U D G M E N T

The order dated 30.01.2019 passed in E.S.I.O.P.No.3 of 2016 is under challenge in the present Civil Miscellaneous Appeal.

2. The ESI Corporation is the appellant.

3. The learned counsel appearing for the appellant states that the respondent was suffering from the sickness called "Cardiomyopathy" for which he had availed sickness benefit for 91 days during the benefit period from 01.01.2009 to 30.06.2009 and by virtue of the same, he was not eligible to avail himself of Sickness Benefit for the next benefit period from 01.07.2009 to 31.12.2009. It is contended that as per Regulation 103-A, the insured person can be provided by an authority competent in this behalf, extended sickness benefit till the end of relevant extended benefit period. Thus, he was referred to Medical Referee for grant of Extended Sickness Benefit and the same was granted from 08.07.2009 i.e., date of issue first certificate. Already the appellant paid Extended Sickness Benefit for the

following periods:

08.07.2009 to 03.08.2010	309 days
04.08.2010 to 27.11.2010	116 days
28.11.2010 to 26.03.2011	119 days
27.03.2011 to 29.06.2011	95 days

	639 days

4. Thus, the respondent availed benefit for the maximum eligible period of 730 days consisting of Sickness Benefit for 91 days and Extended Sickness Benefit for 639 days upto 29.06.2011. Apart from receiving Sickness Benefit for 91 days, the respondent had received the last payment of Rs.21,945/- in respect of ESB for 95 days from 27.03.2011 to 29.06.2011 vide Cheque No.262458 date 06.01.2012. The respondent had completely suppressed the receipt of sickness benefit received by him for 91 days and the last payment of Rs.21,945/- for 95 days. As per Sickness Benefit Law (Circular) the limit of extension of two years (730 days) after ESB is extended beyond 309 days, will exclude those days on which sickness benefit for any other disease is paid to the insured person but include all those days for which Sickness Benefit is paid for the same disease on which extension is sanctioned beyond 309 days. Admittedly, the extended sickness benefit was granted for the same disease for which Sickness Benefit was granted and therefore, 730 days will include the period of 91 days, for which Sickness Benefit was availed. Thus, the respondent was granted Extended Sickness Benefit for 730 days (91 days of Sickness Benefit + 639 days of Extended Sickness Benefit). The respondent had conveniently suppressed the payment of Sickness Benefit for 91 days and deliberately denied the receipt of the last payment of ESB for the period from 27.03.2011 to 29.06.2011.

5. In the petition in ESIOP, the respondent had stated that he had received ESB only for 544 days and claimed ESB at Rs.55,011/- for the remaining 186 days which is not correct. Having claimed Rs.55,011/- in the petition, the respondent had claimed only a sum of Rs.33,066/- in the proof affidavit filed by the respondent had claimed only Rs.33,066/- which was allowed by the ESI Court on an erroneous understanding of law and on wrong appreciation of facts.

6. The learned counsel appearing for the appellant stated that the appellant/ESI Corporation considered the Standard Benefit Rate and Sickness Benefit, Extended Sickness Benefit as per the rules which reads as under:

Standard Benefit Rate & Sickness Benefit
The respondent had failed to calculate the correct

Standard Benefit Rate.

There is no dispute that the Standard Benefit Rate on the basis of the salary drawn by the respondent is Rs.165/-

As per Rule 55(2) of the ESI (Central) Rules, 1950 (prior to amendment dt 01.07.2011), the Standard Benefit Rate of an insured person during any benefit period is calculated by using the prescribed ready Reckoner (in Annexure IV A) corresponding to the average daily wages earned by the Insured person during the corresponding contribution period. Thus, on the basis of the daily wages of the respondent, the Standard Benefit Rate comes to Rs.165/-. Sickness Benefit Rate is 20% more than the Standard Benefit Rate which comes to Rs.198/-. The Sickness Benefit was calculated at Rs.198/- for 91 days for the period from 01.01.2009 to 30.06.2009 and paid to the respondent.

Extended Sickness Benefit

Similarly, Extended Sickness Benefit (ESB) rate is 40% more than the Standard Benefit Rate which comes to Rs.231/- ($\text{Rs.165} + 66 = \text{Rs.231/-}$)

As per Sickness Benefit Law, the Corporation has enhanced the ESB rate to 40% more than the Standard Benefit Rate. Accordingly, the Extended Benefit Rate payable is Rs.231/- per day ($\text{Rs.165} + 66 = \text{Rs.231/-}$).

Accordingly, the ESB was paid for 639 days and the last payment was made for 95 days for the period from 27.03.2011 to 29.06.2011 at Rs.21,945/- ($231 \times 95 = 21945/-$) which had been received by the respondent on 06.02.2012.

When the respondent was granted only Extended Sickness Benefit which comes to Rs.231/- per day, he had claimed Temporary Disablement Benefit worked out at 50% which comes to Rs.247.50 per day.

The ESI Court had on an erroneous understanding of law and wrong appreciation of facts, blindly accepted the calculation given by the respondent and directed the appellant to pay a sum of Rs.33,066/-

The respondent had stated in Para 6 of the petition that the disablement benefit payable is 50% more than the standard benefit rate according to Rule 57(3) of ESI Rules.

Firstly, the said rule is applicable only to disablement benefit and not for sickness benefit. Even otherwise, only 40% more than the standard benefit rate is payable for disablement benefit and not 50% as claimed by the respondent.

7. The learned counsel appearing on behalf of the respondent, based on the claim petition and relying on the

findings of the ESI Court, made a submission that the Sickness benefit amount for about 91 days excluding 730 days has been paid. In other words, it is contended that the Sickness benefit for 95 days has not been paid at all and it is yet to be paid.

8. Contrarily, the appellant/ESI Corporation made a submission that the respondent suppressed the fact. In fact, the last payment of Rs.21,945/- was for 95 days and the period is from 27.03.2011 to 29.06.2011 and the said payment was also acknowledged by the respondent.

9. The learned counsel appearing for the appellant produced the copy of the acknowledgment signed by the respondent/P.Sivasankaran. The said payment reveals that a sum of Rs.21,945/- has been paid to the respondent. In view of the fact that the disputed payment had already been settled in favour of the respondent and the appellant also produced the acknowledgment for the said payment, the ESI Court has erroneously arrived a conclusion that the Sickness Benefit for 91 days has not been paid. In fact, the said payment has already been made and the respondent acknowledged the same and the said acknowledgment is also produced. This apart, the ESB calculated as 40% more than the standard benefit as per the ESI Manual and it is not 50% as claimed by the respondent. Thus, it is admitted that the payment had already been made and the calculation made is also in accordance with Rules and Act. Thus, the ESI Court has proceeded based on the mistaken impression and further, the respondent has failed to reveal these facts before the ESI Court. In this view of the matter, the order dated 30.01.2019 passed in E.S.I.O.P.No.3 of 2016 is set aside and the Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssb

To

Employees Insurance Court

(Industrial Tribunal cum Labour Court, Puducherry).

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.15511

+1cc to Mr.G.Bharadwaj, Advocate, S.R.No.16220

C.M.A.No.2280 of 2019

AAB(CO)

RG.17/04/2021