



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	02.12.2021
DELIVERED ON	23.12.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI
C.M.A. (MD) .No.1059 of 2011

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The Management,
Bagyalakshmi Trading Ompany,
Anna Street - Tirunelveli,
Tirunelveli District.

...Appellant/Petitioner

Vs.

The Joint Director,
Employees' State Insurance Corporation,
4th Main Road - K.K.Nagar,
Madurai - 2.

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the E.S.I.Act, 1948, to set aside the decree and Judgment of the E.S.I. Court, Tirunelveli, in E.S.I.O.P.No.9 of 2007 dated 07.01.2011 and the respondent's order, dated 11.12.2003 under Section 85B of the E.S.I. Act, 1948 and allow the appeal as prayed for.

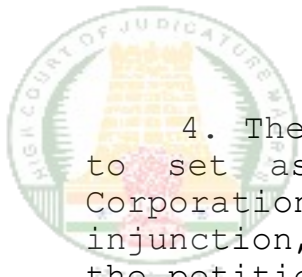
For Appellant	:Mr.Karthikeyan for Mr.P.Chandra Bose
For Respondent	:Mr.N.Dilip Kumar

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the decree and Judgment, dated 07.01.011 in E.S.I.O.P.No.9 of 2007 on the file of the E.S.I. Court, Tirunelveli, and the order passed by the respondent, dated 11.12.2003 under Section 85B of the E.S.I. Act, 1948.

2. Heard on either side. Perused the material documents available on record.

3.This Civil Miscellaneous Appeal is filed on the ground that the E.S.I. Court has completely failed to note that there was no specific finding by the respondent that existence of *mens rea* to countenance of the statutory provisions of Section 85B of fixing damages were absent. The E.S.I. Court has erroneously dismissed the petition filed by the petitioner and erroneously concluded the damages to the tune of Rs.4,01,534/-, at any rate the order of the E.S.I. Court and also the order passed by the respondent is liable to be set aside.



4. The appellant has filed a petition in E.S.I.O.P.No.9 of 2007 to set aside the order passed by the Joint Director, E.S.I. Corporation, Madurai, levying damages of Rs.2,97,526/-and to grant injunction, against the action of the recovery of the amount from the petitioner firm by the E.S.I. Directors.

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5.The case of the Appellant is that the establishment disputed the coverage under E.S.I. Act before this Court and this Court has confirmed the applicability of the E.S.I.Act to the establishment and passed orders, confirming the coverage as per order, dated 14.11.1994 and copy of the same order was received in by their letter TN/INS/C-18/57/12484/10/481/2000, for the period from 01.01.1991 to 30.09.1999 amounting to Rs.7,58,898/-on wages paid for the said period and fixed personal hearing on 17.05.2000. On the basis of the enquiry held, the Deputy Director, E.S.I. Corporation, Madurai, has passed an order on 04.09.2000 under Section 45(A) of E.S.I. Act and fixed the liability towards E.S.I. Contribution at Rs.4,01,534/-. The petitioner has immediately remitted the same on 18.09.2000. This amount was paid only by the employer. Neither the employer nor the employees availed any of the benefits provided under the E.S.I. Act at any time. The petitioner has fully paid the E.S.I. Contribution of Rs.4,01,534/-within 7 days of the orders u/s 45-A of the E.S.I. Act, received on 12.09.2000. But, after 3-years, the Joint Director has issued a notice D-18 under reference 57-12484-10-MDU/SRO/INS-I, dated 10.10.2003 levying a sum of Rs.2,97,526/-towards damages. Therefore, the order of the Joint Director, E.S.I. Corporation, Madurai, levying damages of Rs.2,97,526/-under Section 85(B) of E.S.I. Act, dated 11.12.2003 has to be set aside. Petition has to be allowed.

6.The respondent has filed counter and stated that the petitioner is not in habit of remitting the contribution regularly. On the other hand, the petitioner is a chronic defaulter in paying the contribution. As the petitioner has failed to pay the contribution within the stipulated time, a notice under Form D-18, dated 20.12.2000 was issued to the petitioner. Once this Court has pronounced its verdict, accordingly damages has been calculated and claimed in respect of each day of delay after allowing the grace period of 21 days from the date of Judgment of this Court. The employees of their petitioner establishment have been taken into account while making payment towards medical expenses to State Government of Tamilnadu in the relevant period whether their employees availed the benefits under the E.S.I. Scheme or not. Therefore, the reasons stated by the petitioner for the delay involved in payment of contribution is not maintainable and is not sustainable as per law. The petitioner is liable to pay the damages under Section 85(B) of E.S.I. Act.

7.Admittedly, already coverage dispute was raised before this Court and the same was ended against the petitioner as early as on

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14.11.1994. Then, liability of the appellant would start to pay compensation.

8.As per Judgment reported in **AIR 2008 SC 1322 Employees State Insurance Corporation Vs. H.M.T. Limited and another**, it is held that existence of *mensrea* or *actus rea* to contravene a statutory provision must also held to be a necessary ingredient for levy of damages.

9.In this case, the appellant after receiving notice, dated 29.03.2000 in Form-C-18 to pay contribution of Rs.7,58,898/-he approached the Deputy Director, E.S.I. Corporation on 04.09.2000 under Section 45(A) the Deputy Director reduced the amount to Rs.4,01,534/-. As per the order of the appellant, the petitioner has remitted the amount on 18.09.2000. This is the amount for the period from 01.01.1999 to 09/1999. For that period contribution was not paid earlier so benefits also extended to the employee's of the appellant firm.

10.The payment of contribution to E.S.I. Corporation for the employees is mandatory and it must be voluntary. But, due to the litigation, the delay occurred to pay contribution. After the order, dated 04.09.2000 the appellant has paid contribution within 15-days. It shows that the appellant has not evade the payment of contribution voluntarily.

11.Therefore, the E.S.I. Corporation may consider the fact as per the proviso under 85(B) of the Corporation may reduce or waive the damages recoverable under this Act in relation to an establishment which is a sick company.

12.So, the respondent is directed to reduce the damages and fix 10% of amount already paid as damages.

13.Finally, this Civil Miscellaneous Appeal is partly allowed and order, dated 11.12.2003 passed by the respondent under Section 85B of the E.S.I. Act, 1948, is modified as the damages levied by the E.S.I. Corporation is reduced into 10% of Rs.4,01,534/-. No Costs.

Sd/-

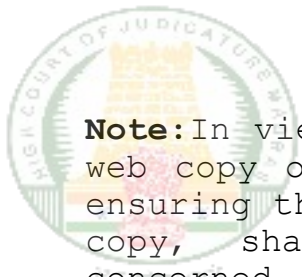
Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

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To

1. The Judge,
E.S.I. Court,
Tirunelveli.
2. The Joint Director,
The Employees' State Insurance Corporation,
4th Main Road - K.K.Nagar,
Madurai - 2.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-40292[F] dated 23/12/2021)

C.M.A. (MD) .No.1059 of 2011
23.12.2021

RK(04/01/2022) 4P 6C