



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.06.2023

PRONOUNCED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1350 of 2012

and

Cross Objection No.6 of 2013

Director and Additional Commissioner
Employees' State Insurance Corporation
Sub-Regional Office
K.K.Nagar, Madurai 600 020

.....Appellant in the appeal
/ Respondent in the Cross Objection

Vs.

V.V.V & Sons Edible Oils Ltd.,
No.443, Bazaar
Virudhunagar
Virudhungar District
Represented through its Director

....Respondent in the appeal
/Cross Objector

PRAYER in CMA(MD).No.1350 of 2012:- Civil Miscellaneous Appeal filed under Section 82(2) of the E.S.I.Act, 1948, to set aside the order dated 05.07.2012 passed by the E.S.I.Court (ie.Labour Court), Madurai in ESIOP.No.85 of 2011 and allow this Civil Miscellaneous Appeal with necessary directions in the favour of the appellant.



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

PRAYER in Cross Objection No.6 of 2013: - Cross Objection has been filed under Order 41 Rule 22 of C.P.C. to set aside the decree and judgement of the E.S.I.Court, Madurai in ESIOP.No.85 of 2011 dated 05.07.2012 and allow our appeal filed before the ESI Court, Madurai by way of quash the appellant/respondent's order under Section 85B dated 10.10.2011.

For Appellant : Mr.P.Ganapathisamy
in the appeal
& Respondent in the Cross Objection

For Respondent : Mr.C.Karthikeyan
For Mr.K.Raamanathan
For Respondent in the appeal &
Cross Appellant in Cross Objection

J U D G M E N T

The above appeal has been filed by the Corporation challenging the order of Labour Court in ESIOP.No.85 of 2011 wherein the damages were waived to an extent of 80%.

2.The employer has filed Cross Objection No.6 of 2013 challenging the non-waiver of the balance 20% of the damages.

3.It is not in dispute that the establishment is covered under E.S.I.Act. On 08.07.2011, an inspection was conducted on the establishment by the Social Security Officer of the corporation. As per the said report, the omitted wages were arrived at Rs.52,82,778.67 for



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

which the contribution was demanded at Rs.3,43,381/-. The demanded contribution amount was paid on 17.08.2011 by the employer. Thereafter, the corporation had issued a show cause notice on 02.09.2011 calling for explanation why the proceedings should not be initiated under Section 85-B of the E.S.I.Act. The employer had appeared through his Manager (Administration) and requested waiver of damages on the ground that the delay was not intentional and they have paid the contribution of omitted wages as soon as it was pointed out by the Social Security Officer. The said explanation was not accepted the Corporation authorities and they proceeded to pass an order on 10.10.2011 under Section 85-B of the Act imposing a damages to a sum of Rs.1,44,511/-. The said order was challenged by the employer in E.S.I.O.P.No.85 of 2011.

4.The employer had contended that the Social Security Inspector had pointed out that the employer had omitted to pay contribution on certain items for which the employer had contended that they are not liable to pay contribution on the ground that building repair and maintenance charges will not attract the definition of wages under Section 2(22) of the E.S.I.Act. When the employer had disputed his



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

liability to pay contribution amount, the authorities ought to have conducted an enquiry and passed an order under Section 45-A of the E.S.I.Act. But without determining the contribution, the amount was sought to be recovered and thereafter, proceedings have been initiated for payment of damages. When the delay in payment of contribution was not intentional, the damages ought not to have levied.

5.Per contra, the Corporation had contended that the employer had suppressed the material facts relating to the contribution for the omitted wages and therefore, the order under Section 85-B of the Act is legally sustainable.

6.The Labour Court after considering the oral and documentary evidence on either side, arrived at a finding that the corporation has failed to prove the mens rea and therefore, the quantum of damages can be reduced. The E.S.I.Court further found that the damages can be imposed only when the employer had failed to pay contribution within the time as per Regulation 31-C. When the employer has not acted deliberately in defiance of law, the quantum of damages assessed by respondent can be reduced. Based on the said finding, the E.S.I.Court had waived the damages to an extent of 80% and directed the employer



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

to pay balance 20% as damages. This order is challenged both by the E.S.I. Corporation as well as by the employer.

7.A perusal of the observation memo dated 08.07.2011 which is marked as Exhibit P1 indicates that the omitted wages are classified under the following heads.

- (a).Wages difference between Form-6 and ledger
- (b).H.R.A paid
- (c).Cooly wages, loading and unloading charges
- (e).City allowance
- (f).Building upkeep
- (g).Building repairs and maintenance expenses
- (h).Security charges
- (i).Repairs and maintenance

8.The amount demanded as per the inspection report was accepted by the employer and the entire contribution amount demanded was paid within a period of 2 months. The employer has not waited for any enquiry to be conducted for adjudication of the amount claimed in the inspection report. He has volunteered to pay the said amount. Therefore, the contention of the employer that without passing an order under



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

Section 45-A of the E.S.I.Act, the imposition of damages is not correct and is not legally sustainable.

9.A perusal of the heads under which the demands have been made in the inspection report clearly indicate that they are not exempted from the definition of wages under Section 2(22) of the E.S.I.Act. Though the learned counsel for the appellant had contended that as far as the loading and unloading charges are concerned, the loadmen are not employed by them and they work under different employers on the same day, however, the employer has not chosen to get the said issue adjudicated before the authorities and he has chosen to pay the amount without protest. Therefore, this Court is not inclined to go into the said issue relating to the different heads under which the demands were made by the corporation.

10.Considering the goodwill expressed by the employer in remitting the amount immediately on receipt of the inspection report, without offering any response, the corporation ought not to have imposed damages to such an extent. Therefore, the E.S.I.Court was right in waiving the damages considering the above said facts. However, when the liability to pay contributions under any one of the heads is not being



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

disputed by the employer, the damages ought not to have been waived to an extent of 80%. Therefore, this Court is of the view that 50% of the damages could be waived and the employer could be made liable to pay balance 50% of the damages.

11.In view of the above said deliberations, C.M.A(MD).No.1350 of 2012 is partly allowed and the damages imposed by the E.S.I.Corporation is waived to an extent of 50% instead of 80%. The employer is liable to pay balance 50% of the damages determined by the corporation. Cross Objection No.6 of 2013 stands dismissed. No costs.

13.06.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
mas

To

1. The E.S.I.Court
(Labour Court), Madurai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CMA(MD).No.1350 of 2012 and Cross Obj.No.6 of 2013

R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgement made in
C.M.A(MD)No.1350 of 2012
and
Cross Objection No.6 of 2013

13.06.2023