



C.M.A.(MD).No.842 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.842 of 2012

The E.S.I. Corporation,
Represented by its Deputy Regional Director,
Sub Regional Office,
2nd West Street,
K.K.Nagar,
Madurai – 625 020.

.....Appellant/Respondent

-VS-

Madras Cement Limited,
Represented by its General Manager (Admin),
G.Madanagopal,
S/o.A.Govindasamy,
having Office at
No.47, P.S.K.Nagar,
Rajapalayam – 626 117.

.... Respondent /Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act, 1948, against the decree and judgment of the Employees' State Insurance cum Labour Court, Madurai, passed in E.S.I.O.P.No.65 of 2001, dated 20.10.2011.

For Appellant : Mr.N.Dilipkumar

For Respondent : Mr.M.Saravanan



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J U D G M E N T

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The present Civil Miscellaneous Appeal has been filed by the E.S.I. Corporation challenging the order of remand passed by the Employees' State Insurance cum Labour Court, Madurai, in E.S.I.O.P.No. 65 of 2001.

2. The respondent herein suffered with two orders under Section 45-A of the E.S.I. Act on 27.06.2001, wherein, the employer was directed to pay a sum of Rs.7,623/- (Rupees Seven Thousand Six Hundred and Twenty Three only) and the other order directed to pay a sum of Rs.77,416/- (Rupees Seventy Seven Thousand Four Hundred and Sixteen only).

3. As per the contention of the employer before the E.S.I Corporation, he was not given sufficient opportunity to place all the records before the ESI Corporation. Therefore, the orders passed under Section 45-A of the Act suffers from violation of principles of natural justice. Whenever the employer produced the documents, which were called for from the E.S.I. Corporation, the Corporation demanded new documents and therefore, adjournments were sought for the purpose of production of documents. Ultimately, when an adjournment was sought on the final hearing date, without considering the



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said request, the final order came to be passed. Therefore, the employer sought to set aside these two orders before the Labour Court.

4. However, E.S.I. Corporation had contended that atleast on 16 occasions, adjournments were granted to the employer for furnishing the relevant documents to establish their case. However, on every occasion, the employer produced only partial documents and sought for adjournments for production of the balance documents. Therefore, only the employer is under fault. The Corporation had further contended that the employer had not produced the wage register and other relevant records to establish the case that they are not covered under the E.S.I. Act.

5. The E.S.I Court, after considering the oral and documentary evidence on either side, had arrived at a conclusion that the employer was not given reasonable opportunity to produce the relevant records relating to two periods covered under two orders under Section 45-A of the E.S.I. Act on 27.06.2001 and had remitted the matter back to the E.S.I. Corporation for fresh consideration and provide opportunity to the employer to produce the documents. This order of remand is under challenge in the present appeal.



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6. According to the learned counsel appearing for the appellant, the employer was given sufficient opportunity for production of documents before passing of orders under Section 45-A of the E.S.I.Act. In fact, 16 hearings were afforded to the employer for production of documents. Despite given sufficient opportunity, the employer had not come forward to produce the documents and he was seeking adjournments only to drag on the issue. Therefore, the E.S.I. Court was not right in remitting the matter back to the Corporation to pass fresh orders under Section 45-A of the E.S.I. Act.

7. Per contra, the learned counsel appearing for the employer has contended that due to transfer of the Senior Manager of the employer, they were not in a position to produce all the records that are relevant. But, on every hearing, the Corporation demanded new document and therefore, they were constrained to seek adjournments. Hence, he prayed to sustain the order of remand.

8. I have carefully considered the submissions made by the learned counsel on either side.



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9. It is a settled position of law that the proceedings before the E.S.I. Court are the original proceedings and the parties have to place all the documents afresh before the E.S.I. Court to establish their respective cases. Therefore, the E.S.I. Court was not right in remitting the matter back to the E.S.I. Corporation. However, certain additional documents on the side of the employer have not been produced. In fact, the employer had submitted before the E.S.I. Court that they were ready to produce the relevant documents and statements relating to the above said period.

10. In view of the above said facts, the employer is permitted to produce the documents before the E.S.I. Court instead of remitting the matter back to the Corporation, since the proceedings before the E.S.I. Court is not a proceeding before the appellate Court, but they are original proceedings. The parties are at liberty to produce all the documents before the E.S.I. Court including those documents which were not presented before the E.S.I. Corporation. Therefore, the order of remand passed by the E.S.I. Court is not legally sustainable.

11. In view of the above, the substantial questions of law are answered in favour of the appellant and the order of remand passed by the E.S.I. Court



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is hereby set aside and the matter is remitted back to the E.S.I. Court. Both the employer as well as the E.S.I. Corporation are at liberty to place the records before the E.S.I. Court to establish their respective cases. However, the E.S.I. Court is directed to complete the enquiry within a period of four months from the date of receipt of a copy of this order.

12. With the above said observation, this Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

06.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Employees' State Insurance cum Labour Court,
Madurai.
2. Madras Cement Limited,
Represented by its General Manager (Admin),
G.Madanagopal,
S/o.A.Govindasamy,
having Office at
No.47, P.S.K.Nagar,
Rajapalayam – 626 117.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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