



C.M.A.(MD).No.838 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.838 of 2014

The Employees' State Insurance Corporation
Represented by its Director/
Additional Commissioner,
Sub-Regional Office, 'PANCHDEEP BHAVAN'
4th Main Road, K.K.Nagar,
Madurai -20.

... Appellant/Respondent

-VS-

Madurai Radha Transport,
Represented by its Partner,
Sri R.V.N.Kannan
8,9 West Avani Moola Street,
Madurai – 625 001.

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the E.S.I.Act, 1948, against the order dated 21.01.2014 in E.S.I.O.P.No.65 of 2012, on the file of the Labour Court (Employees' State Insurance Court), Madurai.

For Appellant : Mr.P.Ganapathisamy

For Respondent : Mr.S.Albert Jesudoss



C.M.A.(MD).No.838 of 2014

WEB COPY

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the E.S.I. Corporation challenging the waiver of 75% damages by the E.S.I. Court and imposing only 25% as penalty.

2. A notice was issued under Form C-18 to the employer on 21.04.2011 for the omitted wages. This was followed by an order under Section 45-A of the E.S.I. Act, on 10.10.2011 for a sum of Rs.2,29,893/- (Rupees Two Lakhs Twenty Nine Thousand Eight Hundred and Ninety Three only) covering the period between April 2006 and March 2008. The amount was remitted by the employer on 26.12.2011.

3. Thereafter, the Corporation issued D-18 show cause notice on 10.05.2012, for which, a reply was submitted on 15.06.2012. Not being satisfied with, an order under Section 85-B of the E.S.I. Act has been passed by the Corporation on 22.06.2012 imposing a sum of Rs.1,61,099/- (Rupees One Lakh Sixty One Thousand and Ninety Nine only) as penalty for the period between April 2006 and March 2008.



C.M.A.(MD).No.838 of 2014

WEB COPY

4. A perusal of annexed D-18 notice indicates that there is a delay, on the part of the employer in remitting the contribution amount. This order was challenged by the employer in E.S.I.O.P.No.65 of 2012 before the Labour Court, Madurai.

5. As per the contention of the employer before the Labour Court, he had remitted the amount immediately after passing the order under Section 45-A of the E.S.I.Act and there was no *mens rea* on his part in paying the contribution amount belatedly. He had further contended that the authority has chosen to impose the penalty on the higher side and therefore, he prayed for setting aside the order claiming damages. The E.S.I. Corporation has filed a reply contending that despite several hearings, they have not appeared and they wanted to delay payment of the contribution amount. In fact, the contribution amount was paid only after determination of the amount under Section 45-A of the E.S.I. Act and they have not voluntarily paid the said amount for the omitted wages. Hence, he prayed for confirming the order passed by them.



C.M.A.(MD).No.838 of 2014

WEB COPY

6. The Labour Court, after considering the evidence on either side, has arrived at a finding that the employer has not offered any valid or legally acceptable explanation for the delay that has occurred and the Labour Court further found that the petitioner has not offered any reason or explanation for the delay occurred before the Court. The E.S.I. Court further found that there is no inadvertent omission by the petitioner and the delay in payment of contribution is the conscious act on the part of the employer. After arriving such a finding, the E.S.I. Court further found that the damages have been imposed on the higher side and it proceeded to waive the damages to the extent of 75% and imposed 25%. This order is under challenge in the present appeal.

7. According to the learned counsel appearing for the appellant/E.S.I Corporation, after arriving at a finding that the employer had consciously omitted to pay the contribution amount, the E.S.I. Court ought not to have waived 75% of the damages. When the *mens rea* as against the employer has been made out, the E.S.I. Court ought to have confirmed the order under



C.M.A.(MD).No.838 of 2014

Section 85-B of the E.S.I Act passed by the E.S.I. Corporation.

8. Per contra, the learned counsel appearing for the respondent had contended that though there was some delay in payment of the contribution amount. Within two months from the date of order passed under Section 45-A of the E.S.I. Act, amount has been remitted and the damages imposed at the rate of 100% by the E.S.I. Corporation is not legally sustainable. Therefore, the Labour Court has chosen to waive 75% and imposed penalty of 25% and the same may be confirmed.

9. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

10. There is no dispute that the employer has suffered an order under Section 45-A of the E.S.I. Act, dated 10.10.2011, demanding a sum of Rs.2,29,853/-. The said amount has been remitted by the employer on 26.12.2011. Five months thereafter, D-18 notice has been issued for claiming damages. On perusal of the records, it is seen that the E.S.I. Court has arrived



C.M.A.(MD).No.838 of 2014

at a specific finding that the employer has consciously omitted the wage amount and he has not offered any legally acceptable explanation for remitting the contribution amount belatedly. However, this Court has found that 100% imposition of damages cannot be considered, especially, when the contribution amount has been remitted within a period of two months once from the date of passing order under Section 45-A of the ESI Act. This Court is in agreement with the said order and does not find any illegality or infirmity with the waiver of 75% and imposition of penalty at 25%. The substantial questions of law are answered as against the appellant.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

23.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Labour Court,
Madurai.

2. The Section Officer,



C.M.A.(MD)No.838 of 2014

WEB COPY

Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.838 of 2014



WEB COPY



C.M.A.(MD).No.838 of 2014

23.06.2023