

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2023

PRONOUNCED ON : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.884 of 2016

1.The Joint Director
Employees' State Insurance Corporation
Assistant Regional Office
Panchadeep Bhavan, ESI Complex
Salai Street, Vannarpet
Tirunelveli 627 003

2.The Deputy Director
Employees' State Insurance Corporation
Assistant Regional Office
Panchadeep Bhavan, ESI Complex
Salai Street, Vannarpet
Tirunelveli 627 003

... Appellants

vs.

1.Sundaram Textiles Limited
Nambinagar
Nanguneri
Tirunelveli District
Represented by its Mill Manager

2.The President
T.V.S.Employees Sangam
Sundaram Textiles Branch
Nanguneri

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 82(2) of the ESI Act, 1948, to set aside the decree and judgement of the ESI Court (Labour Court) Tirunelveli passed in E.S.I.O.P.No.31 of 2014 dated 15.09.2015 and allowed the above civil miscellaneous appeal.

For Appellants : Mr.C.Karthik

For Respondents : No appearance

J U D G M E N T

The present appeal has been filed by the E.S.I.Corporation challenging the order passed by the E.S.I.Court partly allowing the petition challenging an order passed by the E.S.I.Corporation under Section 45-A of the E.S.I.Act.

2. There is no dispute that the respondent Mill is covered under E.S.I.Act. Inspection was conducted on 03.01.2014 by the Official of the E.S.I.Corporation and it was found that the employer has failed to pay compensation under various heads. Form-C18 notice was issued on 07.02.2014 and an order under Section 45-A of the Act was passed on 10.04.2014 for the period covering 2019-2020 demanding a sum of Rs.1,35,759/-. This order was challenged by the employer in E.S.I.O.P.No.31 of 2014 before the Labour Court, Tirunelveli. The

Labour Court was pleased to allow the appeal partly reducing the total liability to Rs.81,952/-. This order is under challenge in the present appeal filed by the E.S.I.Corporation.

3.According to the learned counsel for the appellants, an order under Section 45-A was passed pointing out various heads under which the contribution were due from the employer. When the employer filed E.S.I.O.P.No.31 of 2014, in ground No.(k), he had admitted that out of building repair charges, he admitted to an extent of Rs.15,950/- and he has challenged only a sum of Rs.5,000/- under the head of painting charges. However, the E.S.I.Court in Paragraph No.10 of the order, had directed the employer to pay only 20% of the said amount. Therefore, according to the learned counsel for the appellants, the E.S.I.Court ought not to have interfered in the order under Section 45-A of the Act, when the employer himself has admitted his liability.

4.The learned counsel for the appellants had further contended that the employer has not disputed his liability to pay contribution for the payments under the head of newspaper allowance, entertainment allowance and educational allowance. However, the E.S.I.Court has reversed the order of the Corporation on the ground that these allowances

are offered not under the statute ,but at the discretion of the employer.

5.The learned counsel for the appellants had further contended that the contribution for the loading and unloading charges ought not to have been reversed by the E.S.I.Court. The loading and unloading charges are part and parcel of the functioning of the respondent mill and they are incidental to the production activities. The learned counsel had further contended that the contribution levied for the garden and maintenance amount ought not to have been reversed stating that the maintenance amount is meant for some other garden not connected with the respondent factory. When the respondent mill has spent amount on the maintenance of the garden of some other factory, necessarily they will have to pay contribution for the same. Hence, he prayed for allowing the appeal.

6.Though the respondent mill has been served and their names are reflected in the cause list, there is no appearance either in person or their counsel.

7.The E.S.I.Corporation has levied contribution under the head of building repair charges demanding a sum of Rs.20,950/-. The employer in the application of E.S.I.O.P.No.31 of 2014 in ground No.(k) has

admitted his liability to an extent of Rs.15,950/- but has only challenged to an extent of Rs.5000/-. However, the E.S.I.Court in Paragraph No.10 of the order has directed the employer to pay only 20% of the total amount of Rs.20,950/- without considering the admission made by the employer.

8.Therefore, this Court is of the view that the contribution demanded under the head of building repair to a tune of about Rs.15,950/- should have been accepted by the E.S.I.Court.

9.As far as the loading and unloading charges are concerned, it is not the case of the Corporation that they are permanently employed in the premises. It is also not the case of the Corporation that the same employee are available in the premises on all working days. The loadman are fluctuating group of person and they are likely to be employed with different employees even on the same day. That apart, it is not the case of the Corporation that they are under the direct supervision of the respondent employee.

10.In view of the above said facts, this Court is not inclined to interfere with the findings of the E.S.I.Court with regard to the loading and unloading charges.

11.As far as the case of payment of contribution towards newspaper allowance, entertainment allowance and educational allowance are concerned, those allowances cannot be considered to be part of wages and therefore, the E.S.I.Court was right in reversing the order of E.S.I.Corporation. As far as the case of the E.S.I.Corporation under the head of garden maintenance is concerned, it is the specific case of the employer that those charges were incurred not with regard to the maintenance of the garden inside the mill, but they relate to the garden located in Aviyoor and Therku Street. It is not the case of the Corporation that the employer is having branch unit in those places and the expenses have been incurred for the said branch unit. Therefore, the E.S.I.Court was right in rejecting the claim of the Corporation.

12.The Corporation has claimed as a sum of Rs.7,350/- towards contribution under the head of repair charges. The E.S.I.Court has found that the charges have been incurred for the purpose of cleaning septic tank and the charges of Rs.6,300/- has been incurred for cleaning the septic tank. Therefore, it could be seen that the said charges are incurred once in a while and it cannot be considered to be wages of the worker, especially when they are not under the direct supervision or control of

the employer. Therefore, this Court does not find any illegality or infirmity in the findings of the E.S.I.Court.

13.Considering the above said facts, the appeal is partly allowed only to the extent of payment of contribution under the head of building repair to a tune of Rs.20,950/-. In all other respects, the award of the E.S.Court is hereby confirmed.

14.Accordingly, this Civil Miscellaneous Appeal is partly allowed.
No costs.

31.03.2023

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

1.The Judge
Labour Court
Tirunelveli

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

CMA(MD).No.884 of 2016

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.884 of 2016

31.03.2023