



*C.M.A(MD)No.549 of 2018*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.549 of 2018**

1.The Regional Director,  
Employee's State Insurance Corporation,  
Sub Regional Office (Tirunelveli),  
Salai Street, Vannarpet,  
Tirunelveli-627 003.

2.The Recovery Officer,  
The Employee's State Insurance Corporation,  
Sub Regional Office (Tirunelveli),  
Salai Street, Vannarpet,  
Tirunelveli-627 003.

... Appellants/Respondents

Vs.

Sri Ganapathy Roadways,  
C-67/16<sup>th</sup> Cross Street,  
Maharajanagar, Tirunelveli-627 011,  
Represented by V.Lakshmi  
Proprietor.

... Respondent/Petitioner

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 82 (2) of Employees State Insurance Act, to set aside the decree and judgment of the Employee's State Insurance cum Labourer Court, Tirunelveli passed in E.S.I.O.P.No.19 of 2016, dated 04.04.2017 as illegal and against law.



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For Appellants : Mr.I.Pinaygash

For Respondent : Mr.M.Jerin Mathew

### **JUDGMENT**

The present appeal has been filed by the E.S.I corporation challenging the allowing of E.S.I.O.P.No.19 of 2016 by Labour Court, Tirunelveli.

#### **2. Factual background:**

(i) One Mr.Kuppusamy was running Sri Ganapathy Motor Service with 5 buses and the employees and the said concern were covered under the E.S.I Act with code number 5421. During the life time of Mr.Kuppusamy, her daughter Lakshmi was running another motor service in the name and style of Sri Ganapathy Roadways and the E.S.I code number is 012421. Therefore, the father and the daughter were running 2 independent businesses which were covered under the E.S.I Act with two different E.S.I codes. The said Kuppusamy had passed away on 12.12.2009. Thereafter, by way of some family arrangement, two buses were allotted to the share of one of the daughters Lakshmi and two other buses were allotted to the share of another daughter Gandhimathi and one another bus was allotted to the share of the wife of Kuppusamy, namely Valli Perumal Nayaki.



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(ii) The E.S.I corporation had initiated proceedings under Section 45-A and passed an order on 23.07.2012 demanding a sum of Rs. 1,50,150/- for the period covering April 2010 – October 2011. The said order was challenged by Mrs.Gandhimathi in E.S.I.O.P.No.8 of 2014 contending that after the death of her father, she has received only 2 buses and the respective employees. Therefore, the entire demand cannot be fastened upon her. The said submission on the side of Gandhimathi was accepted by the labour Court and the E.S.I.O.P.No.8 of 2014 was allowed on 29.06.2016 and the case was remitted back to the E.S.I corporation with a direction to issue separate notices to the legal heirs of the deceased Kuppusamy and proceed further.

(iii) In view of the order of remand passed in E.S.I.O.P.No.8 of 2014, dated 29.06.2016, a notice was issued to Sri Ganapathy Roadways demanding a sum of Rs.13,788/- for the period between April 2010 and October 2011. An order was passed on 21.10.2016 under Section 45-A confirming the above said amount. This order was accepted and amount was remitted.



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(iv) In the meantime, the corporation had initiated proceedings for recovery of the E.S.I contribution from Sri Ganapathy Roadways (which is an independent entity owned by Lakshmi) by passing an order under Section 45-A on 19.02.2013 demanding a sum of Rs.67,389/-. Since the contribution was not paid, the corporation had initiated recovery proceedings under Section 45-C of the Act and an order was passed on 23.11.2015 demanding a sum of Rs.84,188/- which included the interest component also. These two orders were challenged in E.S.I.O.P.19 of 2006.

(v) The Labour Court after considering the fact that the E.S.I code numbers referred to in the order, dated 19.02.2013 and 21.10.2016 were one and the same, arrived at a finding that for the same period, for the same establishment, a second order has been passed which is not legally sustainable and thereby set aside the order, dated 21.10.2016. This order is under challenge in the present appeal by the E.S.I corporation.

3. According to the learned counsel appearing for the appellant/E.S.I corporation, 19.02.2013 order under Section 45-A though relates to the same period, it is in respect of the vehicles that were



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originally owned by Sri Ganapathy Roadways. However, the order, dated 21.10.2016 is in relation to two additional buses with 4 employees that were inherited by Lakshmi (Sri Ganapathy Roadways) due to the death of her father. Therefore, both the orders are relating to different employees of the same period. The E.S.I Court had not properly appreciated the said fact and allowed the petition.

4. On the other hand, the learned counsel appearing for the respondent had contended that in E.S.I.O.P.No.19 of 2016, they have challenged the 45-A order, dated 19.12.2013 and the recovery order, dated 23.11.2015 on the ground that those two orders were passed before order of remand and therefore, those two orders have lost their validity after an order of remand was passed in E.S.I.O.P.No.8 of 2014. He further contended that after remand, an order under Section 45-A has been passed on 21.10.2016 which they have accepted and paid the contribution amount. Therefore, the E.S.I Court was right in setting aside the 45-A order and recovery proceedings which were passed prior to the order of remand.

5. I have carefully considered the submissions made on either side.



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6. A perusal of the order, dated 19.02.2013 indicates that it has been issued as against Sri Ganapathy Roadways whose proprietor is Mrs.Lakshmi for the period between April 2010 and January 2011. A perusal of the 45-A order, dated 23.07.2012 indicates that it was passed against Sri Gnapathy whose proprietor is Mrs.Gandhimathi for the period between April 2010 and October 2011. Only this order, namely, dated 23.07.2012 was challenged in E.S.I.O.P.No.8 of 2014 and only this order, dated 23.07.2012 was set aside and remitted back to the E.S.I corporation. However, the E.S.I Court has wrongly understood that the order, dated 19.02.2013 has already been set aside in E.S.I.O.P.No.8 of 2014. The Labour Court has also arrived at a finding that for the same establishment and for covering the same period having the same E.S.I code, two different orders have been passed and they are sought to be implemented.

7. The following documents were referred to by the learned counsel appearing for the appellant:

(i) The order, dated 29.06.2016 passed in E.S.I.O.P.No.8 of 2014



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(ii) A letter, dated 19.10.2016 said to have been sent by V.Lakshmi along with wage register.

(iii) The order, dated 23.07.2012 under Section 45-A passed by the E.S.I corporation.

8. These three documents have not been placed by the E.S.I corporation before the Labour Court. The learned counsel appearing for the respondent brought to the notice of the Court that there is no reference about these documents in the counter filed by the E.S.I corporation. Therefore, this Court is of the view that there is a confusion relating to the buses that were originally owned by Sri Ganapathy Roadways and the additional buses that were inherited by Lakshmi after the death of her father Kuppusamy. These factual disputes have to be settled only by the E.S.I Court. Therefore, the order passed by the E.S.I Court is hereby set aside and the matter is remitted back to the file of the Labour Court, Tirunelveli. The employer as well as the corporation shall be entitled to file additional documents. The corporation, if they are so advised, they are entitled to file an additional counter.



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**WEB COPY** 9. With the above said observations, the Civil Miscellaneous

Appeal stands allowed. No costs.

**21.06.2023**

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

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To

- 1.The Employee's State Insurance  
cum Labourer Court,  
Tirunelveli.
- 2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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Judgment made in  
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