BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2023

PRONOUNCED ON : 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.68 of 2017

E.S.I.Corporation
Sub Regional Office (Tirunelveli)
Salai Street, Vannarpettai
Tirunelveli 627 003
Represented by its Joint Director ... Appellant

vs.

Arul Industries
3/171 Ideal Nagar
Tenkasi Road
Tirunelveli 627 012 ...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of the E.S.I.Act 1948, to set aside the order dated 12.07.2016 passed by the Labour Court, Tirunelveli in ESI O.P.No.26 of 2015 uphold the claim of the ESI Corporation with necessary directions in favour of the appellant.

For Appellant : Mr.P.Ganapathisamy

For Respondent : Mr.G.Arunachalam

JUDGMENT

The present appeal has been filed by the E.S.I Corporation challenging an order passed by the Labour Court, Tirunelveli setting aside the order of the Corporation passed under Section 68 of the E.S.I.Act.

2.The respondent in the appeal is an industry covered under the E.S.I.Act. One Thirupathy Venkatachalapathy joined the petitioner industry on 01.09.2012. The said employee sustained an occupational injury on 15.09.2012 and his fingers were crushed. On 17.09.2012, his name was registered under E.S.I.Act in Forum-12. The E.S.I Corporation had disbursed benefits to the said employee and thereafter, passed the impugned order on 20.04.2015 sanctioning to recover a sum of Rs.4,22,242/- as capitalized value given to the employee.

3.The said order under Section 68 of the E.S.I.Act was challenged by the Management in E.S.I.O.P.No.26 of 2015 on the ground that there was a delay on the side of the employee in furnishing the particulars about his family so as to register his name under E.S.I.Act. The contribution have to be deducted from the employee only by end of the calender month namely on 30th September 2012 and accordingly, the same were deducted. As per Regulation 31, the contribution amount has to be deposited within a period of 21 days from the last day of calender month in which the contribution held due. In the present case, the contribution amount was deposited within the said period of 21 days. Therefore, when the employer was not in default with regard to registration of the employee under E.S.I.Act, the question of recovery of the capitalized value of the benefit given to the employees cannot be recovered from the employers.

4.Per contra, the ESI Corporation had contended that the employer has to register the employee within a period of 10 days from the date of employment under E.S.I.Act. The first subscription amount has been paid only after the date of accident. There is a malafide act on the part of the employer and hence, the Corporation is empowered to collect the capitalized value from the management as per Section 68 of the E.S.I.Act.

5.The Tribunal after oral and documentary evidence came to a conclusion that the subscription had been deposited with the Corporation within a period of 21 days from 30.09.2012 and hence, there is no delay in payment of subscription. When there is no delay in payment of subscription, malafides could not be attributed to the employer. The employee should be considered to be an insured person under the E.S.I.Act. The Tribunal further found that the right of the Corporation to recover the capitalized value arises only when the employer fails or neglects to pay any contribution within the time specified. But in the present case, the subscription amount has been paid within the prescribed time as contemplated under Regulation 31 and therefore, Section 68 of the E.S.I.Act cannot be invoked for recovering the capitalized value. Challenging the said order, the present appeal has been filed by the Corporation.

6.The learned counsel appearing for the appellant had contended that though the employee had joined service on 01.09.2012, his name was not registered immediately with the E.S.I.Corporation. The learned counsel had relied upon Regulation 14 to contend that the declaration form shall be sent by the employers to the appropriate office in Form-III within a period of 10 days from the date on which the particulars of declaration form were furnished. But in the present case, the declaration form has not been submitted by the employer within a period of 10 days from 01.09.2012, but the accident has taken place on 15.09.2012.

7.The learned counsel for the appellant had further contended that the employee was sought to be registered under E.S.I.Act only 2 days after the accident has taken place. The post accident registration can confer certain benefits only upon the employee and hence, the same is recoverable from the employer as contemplated under Section 68 of the E.S.I.Act. He had further relied upon a letter said to have been addressed by the employer on 28.02.2013 that so far as the benefits that are conferred upon the injured employee by E.S.I.Corporation that would be reimbursed by the employer. Therefore, it is the contention of the learned counsel for the appellant that the post accident registration would only benefit the employee and not the employer who had not registered the employee under E.S.I.Act with a malafide intention of avoiding payment of contribution.

8.The learned counsel for the appellant had further contended that the Tribunal has not properly appreciated the judgements of the Hon'ble Supreme Court which were rendered vis-a-vis an injured/deceased employee and not in consideration of the liability of the employer and the right of the Coporation to recover the same under Section 68 of the

E.S.I.Act. Therefore, he prayed for allowing the appeal.

9.Per contra, the learned counsel appearing for the Management pointed out that a circular has been issued by the Assistant Director of E.S.I.Corporation on 21.10.2010. As per the said circular, the Regional Directors were empowered to relax the provisions of Regulations 12 and 14 for accepting the declaration forms, if they are satisfied that the employees of the concerned establishment were coverable under E.S.I.Act were not submitted in time or submitted without signature or thumb impression or due to delay on the part of employers. However, the acceptance of the said declaration form should be with a rider to use the provision of Section 68 of E.S.I.Act. 1948 to recover the amount from the principal employer or immediate employer, as the case may be, besides prosecution action for non-submission of declaration form. Relying upon the said circular, the learned counsel for the respondent had contended that the insured employee was registered under the E.S.I.Act on 17.09.2012. The said declaration form was accepted without any rider to the effect that the amount would be recovered under Section 68 of the E.S.I.Act. He had further contended that the employee had joined duty on 01.09.2012 and the contribution could be deducted from the salary only on 30.09.2012. Accordingly, the deduction were made on the said date.

10. The learned counsel for the Management had further pointed out that as per Regulation 31, the contribution amount has to deposit with the Corporation within a period of 21 days from the last date of the calender month in which the contribution has become due. In the present case, the contribution amount was deposited on 16.10.2012 well within the period. Therefore, the employer cannot found fault with. Hence, he prayed for sustaining the order passed by the E.S.I.Act.

11.I have considered the submissions made on either side and perused the materials available on record.

12.The present dispute has arisen between the employer and the E.S.I.Corporation in view of invocation of Section 68 of the E.S.I.Act. A perusal of the said section would clearly indicate that if the employer fails or neglects to pay any contribution under the Act, then the Corporation, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled, if the failure or neglect had not occurred. Thereafter, the Corporation will be entitled to recover the same from the principal employer. Therefore, it is clear that Section 68 of the E.S.I.Act can be invoked only if the principal employer fails or neglects to pay any contribution under the Act.

13.As per Regulation 14, the employer has to send declaration form of a new employee with a return in duplicate in Form 3 within a period of 10 days from the date on which the particulars of the declaration form were furnished. In the present case, according to the employer, the employee has not furnished any details of the family members in time and hence, there was a delay in submitting the declaration form. As per Regulation 14, only after filling up of the declaration form, the same has to be communicated to the Corporation. The period of 10 days has to be calculated not from the date of joining of the service but from the date on which the employee has provided the details of his family members which are relevant for filling up the declaration form. Therefore, the contention of the learned counsel for the appellant that within 10 days from the date of joining of service, the declaration form ought to have been sent to the Corporation is not legally sustainable. Even though regulation 12 mandates an employee to collect all the particulars from the employee for filling up the declaration form, unless the correct details are furnished by the employee, the employer will not be in a position to fill up the declaration form and remit the same to the Corporation.

14.As per Section 39(4), the contribution payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. Therefore, the employee having joined on 01.09.2012, the contribution payable in respect of the said period falls on 30.09.2012. As per Regulation 31, contribution have to be paid to the Corporation within a period of 21 days of the last day of the calender month in which the contribution falls due. Therefore, contribution has to reach the corporation on or before 21.10.2012. In the present case, admittedly the contribution amount has been received by the Corporation on 16.10.2012 itself. Therefore, there was no failure or negligence on the part of the principal employer in payment of contribution. Only when there is a failure or negligence on the part of the employer in payment of contribution, the question of invoking Section 68 of the E.S.I.Act for recovering capitalized value will arise. Therefore, the contention of the learned counsel for the appellant that Section 68 of the E.S.I.Act can be invoked in the present case is not legally sustainable.

15.In view of the above deliberations, the substantial questions of law are answered as against the appellant and this Civil Miscellaneous Appeal stands dismissed. No costs.

13.03.2023

Index : Yes/No
Internet : Yes/No
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1.The Labour Court,
Tirunelveli

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

R.VIJAYAKUMAR,J.

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Pre-delivery order made in
C.M.A(MD)No.68 of 2017

13.03.2023