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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.270 of 2023
and
C.M.P(MD)No.3257 of 2023

The Employees State Insurance Corporation,
Sub-Regional Office,
Second West Street,
K.K.Nagar,
Madurai – 625 020.
through its Director.

:Appellant/Respondent

.VS.

M/s.Thiruvettai Ayyanar Spinners(P)Limited,
Plot No.B-4(D), B-5 Sidco Industrial Estate,
Kappalur, Madurai – 625 008,
through its Manager
Authorized Officer S.Manikandam. :Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, 1948 against the judgment made in E.S.I OP.No.58 of 2019, dated 26.12.2019, on the file of the Labour Court(Employees State Insurance Court or in short ESI Court), Madurai and to set aside the same.

For Appellant :Mr.I.Pinaygash

For Respondent :Mr.V.O.S.Kalaiselvam



JUDGMENT

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Challenging the order passed by the Labour Court reducing the damages to an extent of 25% of the amount as claimed by the respondent ie., Rs.1,87,344/-, the present Civil Miscellaneous Appeal came to be filed.

2.The Civil Miscellaneous Appeal was admitted on the following substantial question of law:

"Whether the Labour Court, Madurai is correct in allowing the respondent's case based on mere pleading of financial cruch suffice in law without producing the records of profit and loss account evidencing for financial crisis either before the ESI Authority or before the Court of Law?"

3.Challenge has been made before the Labour Court, Madurai to set aside the order under Section 85(B) of the ESI Act passed in No.57-00-038326-000-0101/INS-II/85-B/406/18, dated 14.3.2019.The proceedings have been passed claiming damages under Section 85-B of the ESI Act for violation. Challenge has been made on the ground that there is no mens rea and actus reus in the impugned order to claim damage.



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4.The learned Trial Court negated the contention of the respondent herein that there was no mens rea and actus reus, however, reduced the damage to an extent of 25% on the ground that there is financial crisis being suffered by the textile industry. Challenging the same, the present appeal came to be filed.

5.The learned counsel for the appellant would submit that without any materials to show that the respondent suffered from financial crisis, the Court itself has presumed such financial crisis on the part of the respondent and reduced the pay damages. Hence it is the contention that without establishing even the facts, reduction of the damages to an extent of 25% is not valid in the eye of law.

6.The learned counse for the respondent submit that taking judicial note, reduced the damages during the period of demonetization and GST Implementation that there was a financial crisis. Hence the Labour Court has correctly reduced the pay damages. He has also placed reliance in the decision reported in ***2006(3) LLN 122 in the case of Halwasia Vidya Senior Secondary School) Haryana .vs.The Regional Provident Fund Commissioner.***



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7. On a perusal of the records, the Labour Court having negatived the contention of the respondent that there was mens rea or actus reus on the part of the respondent, however, reduced the damages to the tune of 25% of the amount as claimed by the respondent ie., Rs.1,87,344/-. In fact, the trial Court has presumed financial crisis on the part of the respondent, without any evidence whatsoever produced. It is relevant to note that taking advantage of the financial crisis to seek for indulgence of the Court to use its discretion to reduce the damages and proper materials on record must be there to show that at the relevant point of time, the respondent had suffered financial crisis and that there is no intentional default, which warranted damages. On a perusal of the entire materials, no such materials whatsoever is placed to show the respondent suffered from financial crisis at the relevant point of time. In this regard, the learned counsel produced the judgment made in ***C.M.A(MD)No.974 of 2017, dated 10.3.2023 in the case of The Regional Director, Tirunelveli .vs. The Management, The Sree Sivakumar Spinning Mills, Sankar Nagar, Tirunelveli, represented through the Managing Director***, wherein, it is held that without any oral or documentary evidence, to prove that they were under the financial crisis during the relevant point of time, the Labour Court, Cannot



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exercise its discretion and reduce the quantum of damages, especially to an extent of 80%. Similarly the Honourable Apex Court in Civil Appeal NO.2137 of 2012 held that:

"17.Taking note of three Judges Bench judgment of this Court in Union of India and others .vs. Dharmendra Textile Processors and others(supra), which is indeed binding on us, we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non for imposition of levey of damages under Section 14B of the Act, 1952 and mens rea or actus reus is not an essential element for imposing penalty/damages for breach of civil obligations/liabilities."

8.Considering the above judgments, this Court is of the view that no materials whatsoever was produced to show that there is financial crisis on the part of the respondent. The discretion exercised by the Labour Court is without any jurisdiction. The Honourable Apex Court in the case reported in **2006(3) LLN 122** as cited supra, reduced the damages to an extent of 25% taking into consideration of the fact that there was no allegation against the appellant that there was delay in making deposit with State Government under the scheme which was being followed by the



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appellant and considering the special features of cases, damages restricted to 25% of the amount levied by the Commissioner. In the above scenario, the damages has been reduced in that case, whereas, the very damage itself is imposed for delayed payment in this case.

9. Such being the position, the discretion exercised by the Labour Court, Madurai is without any basis and accordingly, the Civil Miscellaneous Appeal is allowed and the order of the Labour Court, Madurai in E.S.I OP.No.58 of 2019, dated 26.12.2019 reducing the damages to the extent of 25% is set aside and the original order is restored to file. No costs.

05.06.2023

Index: Yes/No

Internet: Yes/No

NCC: Yes/No

vsn

To

1. The Labour Court
(Employees State Insurance Court or in
short ESI Court),
Madurai



2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN
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and
C.M.P(MD)No.3257 of 2023

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