IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2024

PRONOUNCED ON : 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3478 of 2021
and
C.M.P.No.20092 of 2021

The Employees State Insurance Corporation,
Regional Office Puducherry,
Represented by its Regional Director,
No.178, 100, Mudaliyarpert,
Pondicherry 605 004. ..Appellant/Respondent

Vs.

The Pondicherry Engineering College
Hostels Management,
represented by its Assistant Manager,
Mr.A.Saravanan. .. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees State Insurance Act, against the Fair Order passed in ESIOP No.04 of 2017 dated 08.03.2021, on the file of the Employees State Insurance (Industrial Tribunal cum Labour Court) at Puducherry.

For Appellant : Mr.S.P.Srinivasan

For Respondent : Mr.Tamil Nidhi
Additional Government Pleader

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Employees State Insurance Corporation, challenging the order passed in E.S.I.O.P. No.04 of 2017, dated 08.03.2021, by the Presiding Officer, Employees State Insurance Court, Puducherry.

2. The parties are referred to hereunder according to their litigative status and ranking before the Employees State Insurance Court.

3. The facts leading to filing of this appeal is as follows:

The respondent herein is an Establishment situated at Pondicherry and it is covered under the Employees State Insurance Act, 1948 ['ESI Act' in short] required to pay contributions in accordance with Section 40 of the ESI Act. On 30.06.2010, a show Cause Notice in Form C-18 Adhoc was issued to the respondent to pay contributions and they did not pay the contributions required by law. On receipt of the notice, the employer appeared before the appellant-Corporation and reported their inability to pay the contributions. After due enquiry, an Order under Section 45-A of the ESI Act, 1948 was issued on 20.06.2013 for demanding the respondent herein to pay omitted wages for a sum of Rs.18,590/- for the period from June 2008 to July 2008. Thereafter, payment was made belatedly by the respondent on 18.07.2013. Since belated payments have been made, the appellant initiated proceedings for imposing damages as per Section 85-B of the ESI Act, 1948. For this purpose, notice dated 12.05.2015 was issued for the appearance and accordingly, the official from the respondent appeared and pleaded for waiver of damages. Terming that such a request made is not sustainable, the appellant proceeded to impose damages. After due enquiry, considering the extent of delay in remittance of omitted wages, the appellant levied damages of Rs.11,606.02/- for the wage period of June 2008 and Rs.11,408.66/- for the wage period of July 2008, totally Rs.23,015/-.

4. Aggrieved over the damages levied on the respondent, they approached the ESI Court, by invoking Section 75 (1) (g) of the ESI Act, to set aside the Order passed by the appellant herein, imposing damages. After recording the evidence of both sides, the ESI Court, in its Order, has held

that since there was a delay in remitting the omitted wages, the authority has right in imposing damages. However, the ESI Court has held that imposing damages of more than 25% of the contribution amount, i.e., omitted wages is not proper. Accordingly, it has reworked and made calculations of 25% of the total contributions to be paid and directed the respondent herein to pay a sum of Rs.4603/- towards damages for the delayed payment of ESI.

5. Aggrieved over the modification of the quantum of damages, the appellant herein has approached this Court on the ground that the ESI Court has failed to note Section 85-B of the ESI Act, which empowers the appellant to impose compensation to the maximum of contribution amount to be paid by the respondent herein. Therefore, it was contended that the ESI Court erred in holding that only 25% contribution amount shall be levied as damages.

6. Heard the submissions made on both sides and perused the materials available on record.

7. Section 85-B of the Employees' State Insurance Act, 1950, empowers the ESI authorities to impose damages, which shall not exceed the

total contribution amount. Regulation 31-C of the Employees' State Insurance (General) Regulations, 1950, prescribes the manner in which the percentage of damages to be imposed on the establishments. For better appreciation, Section 85-B of the ESI Act and Regulation 31-C of the ESI (General) Regulations are given below:

"Section 85-B of the ESI Act:

Power to recover damages.-

(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations:

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard:

Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in regulations.

(2) Any damages recoverable under sub-section (1) may be recovered as an arrear of land revenue 4 or under section 45-C to section 45-I".

" Regulation 31-C of the ESI (General) Regulations:

31-C. Damages or contributions or any other amount due, but not paid in time.-

— If an employer fails to pay contribution within the periods specified under Regulations 31, or any other amount payable under the Act, the Corporation may recover damages, not exceeding the rates mentioned below, by way of penalty : —

Period of delay	*Rate of damages in % per annum of the amount due.*
(i) less than 2 months	*5%*
(ii) 2 months and above but less than 4 months	*10%*
(iii) 4 months and above but less than 6 months	*15%*
(iv) 6 months and above	*25%*

Provided that the Corporation in relating to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency & Bankruptcy Code, 2016 may :

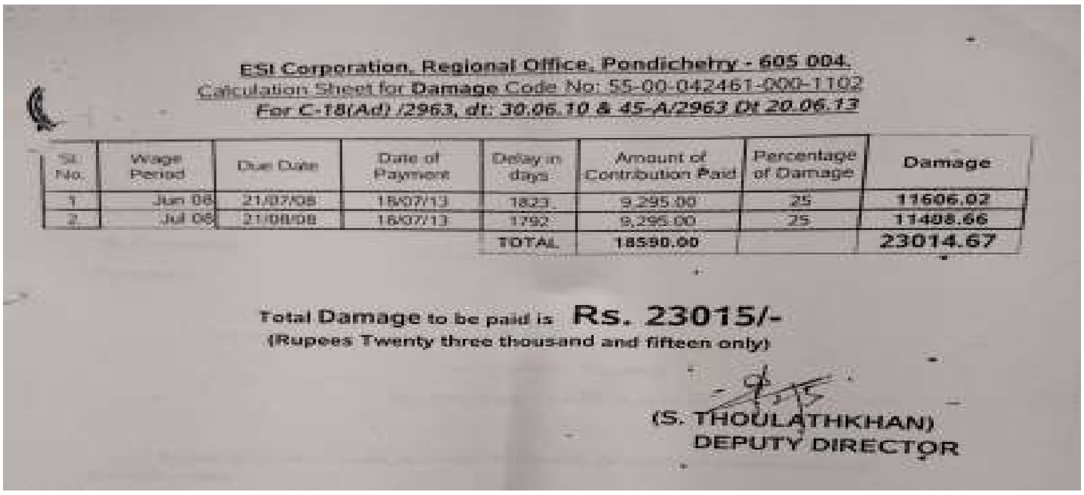
(a) Waive up to 50 percent of the damages levied or leviable depending upon merits of the case.

(b) In exceptional hard cases, waive either totally or partially the damages levied or leviable."

8. The ESI Court, after due enquiry, accepted the case of the appellant herein that there is a delay in remitting the contribution amount and that the

respondent has to pay the damages for the delay period, however, held that maximum damages levied by the appellant herein can be only to the extent of 25% of the total contribution. The rates mentioned in Regulation 31-C of the ESI (General) Regulations, 1950 shows that the maximum damages of 25% to be imposed, if the delay is more than 6 months and percentage is to be calculated per annum.

9. In this case, the number of days delay in paying the contribution has been listed in the Calculation Sheet for Damage, Code No:55-00-042461-000-1102 for C-18(Ad)/2963, dt: 30.06.10 & 45-A/2963 dt: 20.06.13 issued by ESI Corporation, Regional Office, Pondicherry – 605 004, which is extracted hereunder:


ESI Corporation, Regional Office, Pondicherry - 605 004.
Calculation Sheet for Damage Code No: 55-00-042461-000-1102
For C-18(Ad) /2963, dt: 30.06.10 & 45-A/2963 Dt 20.06.13

Sl. No.	Wage Period	Due Date	Date of Payment	Delay in days	Amount of Contribution Paid	Percentage of Damage	Damage
1	Jun 08	21/07/08	18/07/13	1823	9,295.00	25	11606.02
2	Jul 08	21/08/08	18/07/13	1792	9,295.00	25	11408.66
				TOTAL	18590.00		23014.67

Total Damage to be paid is Rs. 23015/-
(Rupees Twenty three thousand and fifteen only)

(S. THOULATHKHAN)
DEPUTY DIRECTOR

A corrigendum to the order under Section 85-B dated 05.11.2015 was also issued on 07.11.2017, stating that the total damages imposed for the delayed payment of contribution for the wage periods from 6/08 to 7/08 may be read as Rs.18,590/- instead of Rs.23,015/-.

10. The calculation sheet of damages shows that admittedly the number of delay starts from 1823 for the wage period of June 2008 and comes down till 1792 for the month of July 2008. Accordingly, the calculations have been made and this Court is of the view that as per the statement of calculations made by the appellant herein, the respondent is liable to pay the damages.

11. The respondent herein has not challenged the Order passed against them by the ESI Court regarding payment of 25% liability. Section 85-B of the ESI Act states that the maximum damages to be imposed shall not exceed the amount of arrears, i.e., the total contribution amount. But Section 85-B shall not be interpreted that the maximum damages to be paid by the establishment only to the extent of 25% based on Regulation 31-C.

Regulation 31-C only states that the rate of damages of 25% to be imposed, if the delay is more than six months and above and this 25% is calculated per annum. The ESI Court has failed to note down the maximum limit fixed under Section 85-B of the Act and proceeded based on Regulation 31-C, which has also not been properly interpreted. This Court is of the view that the Employees State Insurance Corporation is entitled to recover the damages as per the rates prescribed under Regulation 31-C, i.e., 25% per annum on the contribution amount, if the delay exceeds more than six months. These rates of damages calculated shall be in compliance with Section 85-B, which states that it shall not exceed the total contribution amount. Accordingly, the appeal filed by the Employees State Insurance Corporation is liable to be allowed and the respondent Establishment shall pay the total contribution amount of Rs.18,590/- as damages to the Employees State Insurance Corporation immediately.

12. The ESI Court has already observed that while granting interim stay in the Original Proceedings, the amount was already deposited and directed it to be adjusted for the damages against by them. This Court is of

the view that as far as damages to be paid, if any, the appellant is entitled to proceed further for recovering the damages.

13. In the result, this Civil Miscellaneous Appeal filed by the Employees State Insurance Corporation is allowed. The Order passed by the Employees State Insurance Court in E.S.I.O.P. No. 04 of 2017, dated 08.03.2021, by the Presiding Officer, Employees State Insurance Court, Puducherry is hereby set aside. The respondent shall pay a sum of Rs.18,590/- as damages to the Employees State Insurance Corporation within a period of two (2) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To
1.The Employees State Insurance Court,
Industrial Tribunal cum Labour Court,
Puducherry.

2.The Section Officer,
V.R. Section,
High Court, Chennai.

K.RAJASEKAR,J.

Lm

Pre-Delivery Judgment made in
C.M.A.No.3478 of 2021

.04.2024