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W.A.No.2530 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A.No.2530 of 2023

1. The Director,
Regional Office (Tamilnadu),
Panchdeep Bhawan,
Employees State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai-34

2. The Joint Director,
Regional Office (Tamilnadu),
Panchdeep Bhawan,
Employees State Insurance Corporation,
No.143, Sterling Road, Nungambakkam,
Chennai-34.

... Appellants/ Respondents 1 & 2

Vs.

1. Lord Shoe Makers P. Ltd.
Rep. by Its Managing Director,
Mr.S.B.P.Madan Mohan,
No.49/2, Gandhi Nagar, 3rd Main Road,
Adyar, Chennai-20.

2. Mr.S.B.P.Madan Mohan

... Respondents/Petitioners

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to
set aside the order dated 03.07.2023 passed in W.P.No. 16984/2013.



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For Appellants : Mrs.G.Narmadha,
for Mr.G.Bharadwaj.

For Respondents : Mr.N.Kumar Rajan, Senior Counsel for
Mr.V.Stalin (for R1);

No Appearance (for R2).

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The order dated 03.07.2023 passed in W.P.No.16984 of 2013 is under challenge in the present writ appeal.

2. The Director ESI Corporation and the Joint Director ESI Corporation are the appellants before us. The second appellant, invoking Section 85(B) of the Employees State Insurance Act, 1948, issued proceeding dated 03.06.2013, ordering damages, totalling Rs.4,78,901/-. The said order came to be challenged by way of writ proceedings in W.P.No. 16984 of 2013 by the respondents. The Writ Court considered the ground raised by the respondents that there is no *mens rea* on the part of the respondents for paying the contributions belatedly. That apart, there is no reasonableness in quantifying the damages and also the order under



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Section 85(B) was passed beyond the reasonable period. Based on these grounds, the writ petition was allowed by setting aside the order dated 03.06.2013. Thus, the present writ appeal came to be instituted by ESI Corporation.

3. The learned counsel for the appellant Mrs.Narmadha would submit that the question of *mens rea* would not arise in the present case since it is the statutory obligation on the part of the respondents to contribute within the time limit. The order of damages was also issued within a reasonable period of time, after assessing the damages by verification of records and by providing opportunity to the respondents. The damages are ordered for the belated payment of the contributions from April 1996 to January 1998, as detailed below:

“As for contention at (a), records available show that the sum of Rs.8,39,000/- recovered by this office on 27.08.2009 (DD No.386792 dated 27.08.2009) covers the following certified arrears:

(i)Contribution (4/96 – 6/97) :	Rs.318923(Form C19 dated 11.9.97)	
Contribution (8/97 – 10/97) :	Rs.79627 (Form C19 dated 16.04.98)	
Contribution (11/97 – 12/97) :	Rs.52834 (Form C19 dated 9.4.99)	
Contribution (1/98)	: <u>Rs.27517</u> (Form C19 dated 7.4.99)	
Total	: Rs.478901	Rs.4,78,901-00



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(ii) Interest upto drawal of
Form C19 (Recovery Certificate)

Rs.54,258-00

(iii) Further interest due thereafter upto date of
payment of contributions and costs.

Rs.3,05,315-00

Grand Total

Rs.8,38,474-00

(Sum actually paid Rs.8,38,474-00) ”

4. Admittedly, the respondents paid contributions on 27.08.2009, after a lapse of about 11 years. Thereafter, the Corporation initiated recovery proceedings and ordered damages, totalling to a sum of Rs.4,78,901/- (Rupees Four Lakhs, Seventy Eight Thousand, Nine Hundred and One Only). The action of the Corporation cannot be construed as unreasonable, but within the powers conferred under Section 85(B) of the ESI Act. When the statute provides that the contributions have to be paid in a particular manner, the said contributions are to be paid in the manner contemplated. In the event of any default, the authorities competent are empowered to initiate action contemplated under the Act. The contributions, as per the statement enclosed, reveals that it was paid after a lapse of about 11 to 13 years. That being so, the order of the Writ Court is not in consonance with the provisions or spirit of Section 85(B)



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of the Act and thus, we are inclined to interfere.

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5. Accordingly, the order dated 03.07.2023, passed in W.P.No.16984 of 2013 is set aside and the writ appeal stands allowed.

No costs.

(S.M.S.J.,)

(K.R.S.J.,)

26.03.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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