



C.M.A(MD)No.164 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 08.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.164 of 2012

and

M.P(MD)No.1 of 2012

M/s.Muruga Home Industries,
20/8, M.H.Complex,
S.N. High Road,
Tirunelveli-627 001,
Represented by its Managing Partner,
Radhakrishnan.

... Appellant/Petitioner

Vs.

Employees State Insurance Corporation,
Sub Regional Office (Tirunelveli),
Tirunelveli-1,
Represented by its Joint Director.

... Respondent/Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 82 (2) of the Employees' State Insurance Act, 1948, to set aside the order, dated 24.11.2011 and made ready on 17.12.2011 passed by the Hon'ble Labour Court, Tirunelveli in E.S.I.O.P.No.4 of 2011 and allow the petition filed by the appellant as prayed for.

For Appellant : Mr.M.Jerin Mathew
for Mr.M.E.Ilango



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For Respondent : Mr.C.Karthik

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in E.S.I.O.P.No.4 of 2011 on the file of the Labour Court, Tirunelveli, wherein, the appellant herein has filed a petition to set aside the order passed by the respondent ESI Corporation under Section 85-B of the ESI Act. The Labour Court has dismissed the petition. Aggrieved by the order of the Labour Court, the present Civil Miscellaneous Appeal has been preferred by the appellant / petitioner.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

3. According to the petitioner, the petitioner is partnership Company and doing Beedi works. Already the petitioner and others have filed E.S.I.O.P.No.4 of 1986 and the same was dismissed and thereafter, they filed appeal in C.M.A.No.1 of 1990 and the same was also dismissed on 21.12.1998. Thereafter, the respondent sent a form No.C 11, dated 17.06.1985 and thereafter, the petitioner filed a petition for exemption.



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The personal hearing was also fixed and thereafter, the respondent passed order under Section 45-A of the ESI Act and the said amount were also paid from 01.04.2000. Till date the ESI contribution was being paid by the petitioner. On 04.05.2001, the respondent has issued form No.18 for the period of January 1995 to September 1999 and fixed 25% of damages for a sum of Rs.1,87,741/- and also fixed date for personal enquiry on 13.06.2001. The petitioner appeared before the authorities and explained that there is no delay on their side and also gave a written explanation, dated 11.06.2001 and he was under the impression that the said proceedings were abandoned. While so, on 06.11.2009 issued form No.18, dated 28.02.2001 demanding a sum of Rs.1,87,441/- and also fixed personal enquiry on 17.11.2009. The said notice was suitably replied by the petitioner and also requested to set aside the said order. Thereafter, on 08.12.2009, the respondent has sent Form D-18, demanding a sum of Rs. 85,320/- for the period from January 1995 to September 1999 by fixing damages of 25%. For that also the petitioner has given detailed reply. Thereafter, the respondent passed final order under Section 85-B, dated 19.01.2010 by demanding a sum of Rs.85,320/-. For that also suitable reply was given and the number of days delay is not correct. Therefore, the



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order, dated 19.01.2010 passed under Section 85-B of ESI Act by the respondent authorities is liable to be set aside by allowing this petition.

4. The gist of the counter filed by the respondent are as follows:

Already the petitioner has filed E.S.I.O.P petition in E.S.I.O.P.No.4 of 1986 and the same was dismissed on 30.08.1989. As against the same, Civil Miscellaneous Appeal was filed in C.M.A.No.1 of 1999 and the same was also dismissed on 21.12.1999. After the judgment passed by this Court, within 21 days, the petitioner ought to have paid the said amount but he failed to do so. Hence, Form No.C-18 was issued on 17.01.2000 and the petitioner also paid ESI contribution on 20.03.2000. Therefore, the petitioner is liable to pay damages from 10.01.1999 to 19.03.2000. Therefore, Form No.C-18, dated 08.12.2009 was issued by fixing personal enquiry on 29.12.2009. On that day, on behalf of the petitioner, the representatives were appeared and sought for adjournment to file written statement. On 29.12.2009, they filed written reply. After perusing his reply, the damages were reduced from Rs.1,87,741/- to Rs.85,320/-. Though the administrators were changed, the Company was running in the same name by doing the same business. Therefore, the petitioner Company



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is not sick company and exemption cannot be granted. As per Section 39 and 40 of the ESI Act, the petitioner is liable to pay contribution amount within time. But they have not done so. Therefore, they issued the impugned order.

5. Before the Tribunal, on the side of the petitioner, no-one was examined as witnesses and only marked Exhibits P.1 to P.9. On the side of the respondent also, no witnesses were examined and only marked Exhibits R.1 to R.7.

6. After considering the documents produced by both the sides, the ESI Court / Labour Court has dismissed the petition. As against the dismissal order, the present Civil Miscellaneous Appeal has been preferred by the appellant / petitioner on various grounds.

7. The learned Counsel appearing for the appellant / petitioner filed written arguments and would contend that the petitioner Company has challenged the subject matter before the competent Courts and they also had the benefit of interim stay and the issue attained finality on



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21.12.1998. Therefore, there is no question of damages would arise. The delay has to be reckoned only with reference to the passing of order under Section 45-A and not prior to that. Already the appellant had paid the contribution amount immediately after the order passed by the authority. Therefore, the demand of damages is illegal. There is no *mens rea* on the part of the appellant for the delay. Therefore, the damages cannot be awarded. But the Court below has failed to consider the above said aspects and erroneously dismissed the petition filed by the appellant.

8. The learned Counsel appearing for the respondent would contend that already the appellant has filed a petition in E.S.I.O.P.No.4 of 1986 and thereafter, C.M.A was filed in C.M.A.No.1 of 1990 and the same was dismissed on 21.12.1998. Immediately, the appellant / petitioner has to pay the contribution amount but he paid the amount belatedly and thereafter, the petitioner has issued proceedings under Section 45-A of the Act and thereafter, they paid the contribution amount. The said amount was paid belatedly and thereby, the authority passed order for a sum of Rs.1,87,741/- and fixed the personal hearing on 13.06.2001. After hearing the appellant / petitioner, they reduced the amount from Rs.1,87,741/- to



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Rs.85,320/-. The authorities have passed order after providing opportunity to the appellant and the appellant have also admitted the delay. The Labour Court also after elaborate discussion, taken into consideration that already sufficient opportunity given to the appellant / petitioner and after hearing the appellant only the authorities have passed order and there is a delay in remitting the contribution amount and thereby, dismissed the petition. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

9. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

i) Whether any substantial question of law involved in this case?

10. In this case, it is admitted fact that the appellant / petitioner Company covered under the ESI Act and contribution also paid to the ESI Corporation. The main contention of the appellant / petitioner is that there are so many litigations were pending on various Courts and thereby, there is a delay in paying the contribution and after passing orders under Section



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45-A of the ESI Act, the appellant / petitioner has remitted the amount immediately and thereby, there is no any delay on the part of the appellant / petitioner. According to the respondent Corporation, the petitioner has paid the amount belatedly and after dismissal of the C.M.A filed by the appellant / petitioner, which was dismissed on 21.12.1998, the appellant / petitioner ought to have paid the amount within 21 days, but the said contribution amount was paid only on 20.03.2000 after the Form C-18 form, dated 17.01.2000 was issued. Therefore, the appellant / petitioner is liable to pay damages from 10.01.1999 to 19.03.2000. Already the personal hearing also provided and thereafter only, the respondent passed the order.

11. On careful perusal of the records, it is observed that the appellant / petitioner admitted that immediately after the order passed by this Court in C.M.A.No.1 of 1990, within 21 days (i.e.,) on 10.01.1999, the appellant Company has not paid the amount. The Form C-18 notice was issued on 17.01.2000 and thereafter only, the appellant / petitioner paid the contribution amount on 20.03.2000. Therefore, the respondent Corporation has calculated the amount from 10.01.1999 to 19.03.2000.



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Further it is admitted fact that, the appellant / petitioner will not come under the exemption of sick industry and thereby, they have to pay the amount. As per Section 39 and 40 of ESI Act, the contribution amount have to be paid within the statutory period. Thereafter, due to non payment by the appellant / petitioner, the authorities have passed orders after affording opportunity to the appellant / petitioner. There is no dispute that the authorities have passed order after giving opportunity to the appellant / petitioner. The appellant / petitioner also admitted that they appeared and filed written reply. After considering the reply, the authority have passed the order. Therefore, the order passed by the Tribunal is correct and no infirmity or perversity and warrants no interference.

12. The learned Counsel appearing for the appellant has argued that there is no *mens rea* delay in payment of contributions and thereby, damages cannot be levied. To support the contention of the learned Counsel appearing for the appellant, he produced judgments reported in **2008 (1) L.L.N 491 [Employees' State Insurance Corporation Vs. H.M.T Limited and another]** and **E.S.I Corporation Vs. Kajah Enterprises Private Limited reported in MANU/TN/3116/2023.**



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13. On careful perusal of the above said judgments, it is clear that without *mens rea*, the damages cannot be levied and the liability to pay contribution arises within 21 days from the date of disposal of the petition.

14. Per contra, the learned Counsel for the respondent has contended that the Hon'ble Supreme Court in *Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Organization reported in 2022 (4) SCC 516*, wherein, the Hon'ble Supreme Court after relying judgment of the *E.S.I Corporation Vs. H.M.T Limited* has held paragraph Nos.16 to 19:

*"16. The judgment on which the learned Counsel for the appellant has placed reliance i.e. **ESI Corporation**, the Division Bench in ignorance of the settled judicial binding precedent of which a detailed reference has been made, while examining the scope and ambit of Section 85-B of the Employees State Insurance Corporation Act, 1948 which is in pari materia with Section 14-B of the 1952 Act placing reliance on the judgment of Division Bench of this Court in **Dilip N.Shroff** held that for the breach of civil obligations / liabilities, existence of mens rea or actus reus to be a*



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necessary ingredient for levy of damages and / or the quantum thereof.

*17. It may be noticed that **Dilip N. Shroff** on which reliance was placed has been overruled by this Court in **Union of India Vs. Dharamendra Textile Processors**. For the aforesaid reasons, the view expressed by this Court in **ESI Corporation** may not be of binding precedent on the subject and of no assistance to the appellant.*

*18. The learned Counsel for the appellant further placed reliance on the judgment of this Court in **McLeod Russel (India) Limited**, wherein the question emerged for consideration was as to whether the damages which had been charged under Section 14-B of the 1952 Act would be recoverable jointly or severally from the erstwhile as well as the current managements. At the same time, the judgment relied upon in **Provident Fund Commissioner** was decided placing reliance on the judgment of this Court in **McLeod Russel (India) Limited**, which may not be of any assistance to the appellants.*

*19. Taking note of the three-Judge Bench judgment of this Court in **Union of India Vs. Dharamendra***



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Textile Processors, 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 levy of damages under Section 14-B of the 1952 Act and *mens rea* or *actus reus* is not an essential element for imposing penalty / damages for breach of civil obligations / liabilities."

15. On perusal of the above said judgment, it is clear that any default or delay in payment of contribution by the employer under the Act is a *sine qua non* for imposition of levy of damages under Section 14-B of the 1952 Act and *mens rea* or *actus reus* is not an essential element for imposing penalty or damages for breach of civil obligations / liabilities.

16. In view of the above said judgment, it is clear that to award damages *mens rea* is not an essential element and thereby, the judgment filed by the appellant are noway helpful to decide the case in his favour. As per the judgment of *Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Organization reported in 2022 (4) SCC 516*, *mens rea* is not an essential element to impose damages. In the



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case on hand also, though the petitioner has pleaded that there is no *mens rea* for the delay they have not paid the amount within time and then only, the authority have calculated the delay.

17. The Court below after taken into consideration of the delay and the opportunity given by the respondent for personal hearing, correctly dismissed the petition. Therefore, this Court has no warrant to interfere with the order passed by the Trial Court.

18. In this case, there is no substantial question of law involved and all the grounds raised by the appellant are factual aspects and thereby, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed. Accordingly, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.02.2024

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



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To

- 1.The Labour Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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