



C.M.A.(MD)No.125 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **10.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 125 of 2022

1.The Employees State Insurance Corporation (SRO),
4th Main Road, K.K.Nagar,
Madurai – 20,
Rep. By its Director & Additional Commissioner

2.The Recovery Officer,
The Employees State Insurance Corporation (SRO),
4th Main Road,
K.K.Nagar, Madurai – 20. ... Appellants/Respondents 1 & 2

Vs.

M/s.Chellasons Packaging (P) Ltd.,
Represented through its
Managing Director,
32/3, Velayutham Road,
Sivakasi. ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 82(2) of the Employees State Insurance Act, 1948, against the order dated 11.03.2019 passed by the ESI Court (Labour Court), Madurai, in E.S.I.O.P.No.62 of 2011.

For Appellants : Mr.N.Dilip Kumar

For Respondent : Mr.M.E.Ilango



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there was no intention for the delayed payment; that due to a mistaken understanding, the contribution was paid belatedly; and that it is an inadvertent omission and therefore, they would not be liable to pay damages.

e) The appellants thereafter passed an order under Section 85(B) of the ESI Act, 1948 stating that the reasons for non-payment of contribution within the stipulated time are not acceptable, and therefore. the 1st respondent is liable to pay a sum of Rs.2,99,635/- towards damages.

f) The E.S.I Court held that the motive cannot be attributed to the 1st respondent for the delayed payment and hence, the levy of damages was unwarranted and set aside the order passed by the appellants.

3. The learned counsel for the appellants submitted that the damages under Section 85(B) of the E.S.I Act would not depend on whether there was a motive for the delayed payment; that the Hon'ble Supreme Court in **Horticulture Experiment Station Gonikoppal, Coorg Vs. Regional Provident Fund Organization** reported in (2022) 4



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SCC 516 held that *mens rea* is not essential for imposing damages for breach of the obligation to pay the contribution. The learned counsel for the appellants fairly submitted that Regulation 31(C) of the Employees State Insurance Regulation, 1950, provides for the guidelines as to how the damages can be demanded depending on the delay in payment of the contribution and that as per the said Regulation, the 1st respondent would be liable to pay 25% of the contribution as the period of delay exceeds six months.

4. The learned counsel for the respondent, per contra, submitted that the contribution itself was paid under coercion by the appellant and it is not the case of deliberate non-payment and therefore, the 1st respondent would not be liable to pay any damages and submitted that the order of the E.S.I Court has to be confirmed.

5. The instant appeal raises from the following substantial question of law:

'Whether *mens rea* is required to be established for recovery of damages for the delayed payment of contribution?



6. On a perusal of the impugned order, it is seen that though the ES.I Court had not accepted the case of the 1st respondent that the contribution was made under coercion and had observed that there was no motive for the delayed payment of the contribution based on the decision of the Hon'ble Supreme Court in **Insurance Corporation Vs. H M T Ltd and another** reported in **2008(3) SCC 35** and the subsequent judgments of this Court and hence the 1st respondent is not liable to pay contribution.

7. However, the Hon'ble Supreme Court in **Horticulture's** case, in the judgment cited supra, had settled the legal position and held that *mens rea* is not essential for recovering damages. It is useful to extract the relevant portions in the judgment of the Hon'ble Supreme Court of India:

"15. Taking note of the exposition of law on the subject, it is well- settled that mens rea or actus reus is not an essential element for imposing penalty or damages for breach of civil obligations and liabilities.

17. Taking note of three-Judge Bench judgment of this Court in Union of India and Others v. 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 levy of damages under Section 14B of the Act 1952 Act and mens rea or actus reus is not an element for imposing penalty/damages for breach of civil obligations/ liabilities".

8. In view of the above settled position of law, the finding of the E.S.I Act that since no *mens rea* is attributed for delayed payment, the 1st respondent is not liable to pay compensation is liable to be set aside and the same is set aside. The substantial question of law is answered accordingly.

9. As regards the quantum of damages that can be levied, though Section 85(B) of the E.S.I. Act confers power on the appellant to recover the damages to the maximum extent equivalent to the contribution payable by the 1st respondent, it is seen that Regulation 31(C) of the Employees State Insurance Corporation, 1950, prescribes the maximum rate of damages that can be recovered by the Corporation, which would depend on the period of delay in payment of the contribution. As per the



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said Regulation, if the period of delay exceeds six months, 25% of the contribution can be levied. Since the 1st respondent had not established that there are circumstances which warrant recovery of lesser damages, this Court is of the view that the appellant would be entitled to recover the damages at the rate of 25%, which would come to Rs. 1,39,860/-. However, this Court is specifically exonerating the 1st respondent from paying interest since they have paid the contribution immediately on receipt of the notice by the appellant. Therefore, this Court directs the 1st respondent to pay Rs. 1,39,860/-, without interest, within a period of eight weeks from the date of receipt of a copy of this judgment.

10. In fine, this appeal is partly allowed. No costs.

Index : Yes/No

Neutral Citation: Yes/No

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1. The ESI Court (Labour Court), Madurai,
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No. 125 of 2022

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