



CMA(MD).No.489 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.06.2024

PRONOUNCED ON : 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.489 of 2018

1.The Employees State Insurance Corporation
Sub Regional Office
4th Main Road, K.K.Nagar
Madurai 625 020
Through its Joint Director

2.The Assistant Director
The Employees State Insurance Corporation
Sub Regional Office
4th Main Road, K.K.Nagar
Madurai 625 020

.....Appellants/Respondents

Vs.

Pepsi Fire Works Industries
30A, Mani Nagar
Sivakasi
Represented through its
Managing Director

....Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 82(2) of the Employees' State Insurance Act, 1948, to set aside the fair and decreetal order dated 19.06.2017 in ESIOP.No.57 of 2007 on the file of ESI Court (Labour Court) Madurai by allowing this appeal.



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For Appellants : Mr.N.Dilipkumar

For Respondent : No appearance

J U D G M E N T

The instant appeal has been filed by ESI Corporation challenging the order passed in ESIOP No.57 of 2007 on the file of the E.S.I.Court (Labour Court), Madurai.

(A)Factual Matrix:

2.A fire accident took place in the respondent's factory on 22.02.2006 resulting in the death of 12 workers and injury to 12 other workers. It is a factory covered under ESI Act. However, out of 12 deceased workers, only 3 were found to be registered under E.S.I.Act. Out of 12 injured workers, only 5 have been registered. After the accident, the employer had submitted application forms for registration of the workers those who had passed away and those who have injured for the accident. The declaration form was entertained by the Corporation and the benefits were disbursed to the beneficiary. The value of the said benefit works out to Rs.2,85,285/-.

3.A show cause notice was issued to the employer on 21.12.2006 for initiating proceedings under Section 68 of E.S.I.Act. After considering the explanation submitted by the employer, an order came to be passed on



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17.04.2007 determining the amount recoverable as Rs.2,85,287/-.

Challenging the said order, the respondent herein had filed E.S.I.O.P.No.57 of 2007.

4.The E.S.I.Court was of the view that any recovery under Section 68 of the E.S.I.Act could be decided only by E.S.I.Court and not by E.S.I.Corporation itself. According to E.S.I.Court, the E.S.I.Corporation should have approached the E.S.I.Court in respect of a dispute for recovering of the capitalized value for the benefit that was released to the beneficiary.

5.Based upon the said finding, the E.S.I.Court proceeded to allow the petition on the ground that the order dated 17.04.2007 is without jurisdiction. Challenging the same, the present appeal has been filed by the E.S.I.Corporation.

(B)Contention of the learned counsel appearing for the appellants:

6.The learned counsel for the appellants had relied upon Section 68(2) of E.S.I.Act and also Section 75(2)(d) of the Act to impress upon the Court that E.S.I.Corporation alone is the original authority to determine the contribution amount and to recover the same from the concerned employer. The E.S.I.Court is only an appellate authority to adjudicate upon the dispute, in case if the employer chooses to challenge it.



7.The learned counsel had further relied upon a judgment of the Hon'ble Supreme Court in a reported in **(2007) 1 SCC 584 (ESI Corporation Vs. C.C.Santhakumar)** to impress upon the Court that E.S.I.Corporation alone is the competent authority to initiate recovery proceedings under Section 68 of E.S.I.Act.

8.Though the respondent has been served and his name is printed in the cause list, there is no representation either in person or through his counsel. Therefore, this Court proceeds to pass orders based upon the submissions made by the learned counsel for the appellants.

(C)Discussion:

9. Section 68 of E.S.I.Act is extracted as follows:

“68. Corporation?'s rights where a principal employer fails or neglects to pay any contribution.? (1) If any principal employer fails or neglects to pay any contribution which under this Act he is liable to pay in respect of any employee and by reason thereof such person becomes disentitled to any benefit or entitled to a benefit on a lower scale, the Corporation may, on being satisfied that the contribution should have been paid by the principal employer, pay to the person the benefit at the rate to which he would have been entitled, if the failure or neglect had not occurred and the Corporation shall be entitled to recover from the principal employer either

? (i) the difference between the amount of benefit which is paid by the Corporation to the said person and the amount of the



benefit which would have been payable on the basis of the contributions which were in fact paid by the employer; or

(ii) twice the amount of the contribution which the employer failed or neglected to pay, whichever is greater.

(2) The amount recoverable under this section may be recovered as if it were an arrear of land-revenue (or under section 45C to section 45-I.)”

10. A perusal of Section 68(2) clearly reveals that the recovery under Section 68 has to be undertaken by the Corporation as if it were an arrear of land-revenue or under Section 45-C to Section 45-I relating to power of the authorised officer of E.S.I. Corporation and the powers of recovery officer designated under Section ESI Corporation. Therefore, it is clear that the Corporation is the original authority for initiating recovery proceedings under Section 68 of the Act.

11. Section 75(2) is extracted as follows:

(2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely:--

(a) claim for the recovery of contributions from the principal employer;

(b) claim by a principal employer to recover contributions from any immediate employer;

*(***)*

(d) claim against a principal employer under section 68;

(e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and



(f) *any claim for the recovery of any benefit admissible under this Act “*

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12. Section 75(2) of the Employees' State Insurance Act, 1948 deals with the power of E.S.I.Court to deal with certain claims. Section 75(2)(d) deals with claims against the principal employer under Section 68 of the Act. When Section 75(2)(d) is read with Section 68(2), it is clear that any aggrieved employer could approach E.S.I Court as an appellate authority challenging an order passed by E.S.I.Corporation under Section 68 of the E.S.I.Act. Section 75(2)(d) of the Act can never be interpreted to mean that E.S.I.Corporation has to approach the E.S.I.Court for recovery under Section 68 of the E.S.I.Act. Section 75(2)(a) of E.S.I.Act deals with powers of E.S.I.Court to decide the claim for recovery of contribution from the principal employer. If Section 75(2)(a) of the Act is interpreted in such a manner has been interpreted by the E.S.I.Court, then even for recovery of the contribution, the authorities under E.S.I.Act have to approach only E.S.I.Court. The E.S.I.Court has clearly misdirected itself in passing such an order.

13. The Hon'ble Supreme Court in a judgment reported in **(2007) 1 SCC 584 (ESI Corporation Vs. C.C.Santhakumar)** in paragraph No.19 has held as follows:



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“19. Section 68 of the Act in Chapter V deals with the Corporation's rights, where an employer fails to pay any contribution. Sub-section (2) to Section 68 provides that the amount recoverable under this Section may be recovered as if it were an arrear of land revenue or under Sections 45-C to 45-I. The said Chapter does not impose any fetter or limitation for the Corporation to recover the amounts by coercive process. In view of the addition of the words in Section 68 "or under Section 45-C to 45-I" to sub-section (2) of Section 68 by Act 29 of 1989 with effect from 20.10.1989, the said claim could be recovered under Section 45-C to 45-I of the Act. There is no limitation prescribed in the language of Section 68. Section 60 prescribes that the benefits are not assignable to anyone else. Section 71 provides that the benefits under the Act are payable to the employee up to the date of his death. Thus, the Legislature, in its wisdom, did not want to impose by fetter or limitation on the Corporation to recover the amounts by coercive process under Chapter V. “

14. In view of the above said deliberations, it is clear that the order of E.S.I. Court is not legally sustainable and the same is liable to be set aside and accordingly, it is set aside. This Civil Miscellaneous Appeal stands allowed.

No costs.

02.07.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Judge (ESI Court),
Labour Court,
Madurai

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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