
(1998) 11 MAD CK 0098
In the Madras High Court
Case No : A.A.O. No. 1009 of 1990

Ashok Leyland Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 2(9)

Citation : (2000) 1 LLJ 799

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : S. Ramasubramanian Associates, for the Appellant; Radha Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

K. Gnanaprakasam, J.—This civil miscellaneous appeal is directed against the order dated March 1, 1990, passed by the Employees' Insurance Court in E. S. I. O. P. No. 101 of 1987.

2. The respondent herein by its order dated September 10, 1987 passed u/s 45-A of the Employees' State Insurance Act, 1948, called upon the appellant to pay: contribution in respect of the amounts spent on several heads namely, wages paid for garden maintenance, building expenditure (repair and maintenance) from July, 1984 to December, 1984, addition and alteration of building works, building construction, conveyance allowance etc. As against the said order the appellant herein filed an application u/s 75 of the Employees' State Insurance Act before Employees' Insurance Court in E.S.I.O.P. No. 101 of 1987. That in the said petition, the appellant questioned the amount of contribution demanded on the heads of repair, maintenance, addition or alteration of building during the period from July, 1984, to December, 1985, and the conveyance allowance paid to the employees during the period August, 1985 to December, 1985. The said action was resisted by the respondent on the ground that the appellant was given enough opportunities and also personal hearing on June 10, 1987, and

June 29, 1987, and, thereafter only, the order u/s 45-A was passed with the available materials.

3. The Employees' Insurance Court after having taken into consideration all the materials placed before it, came to the conclusion that the amount spent by the appellant for repairs, maintenance, addition or alteration of building the appellant is liable to pay contribution. It is further held that the appellant is liable to pay contribution in respect of the amount spent on conveyance to the workers. Aggrieved by the same, the appellant has preferred this appeal.

4. The appellant in the appeal questioned the contribution demanded by the respondent on both the heads. But, however, at the time of argument, learned counsel for the appellant has conceded that he is not pressing his claim in respect of the contribution demanded by the respondent with regard to the amounts spent for conveyance.

5. The only question that remains to be answered in this appeal is whether the appellant is liable to pay contribution in respect of the amount spent for repair and maintenance, addition or alteration of the building? The learned advocate for the appellants has submitted that they have engaged private contractors for carrying out the repairs, maintenance, addition or alteration of the buildings and the workers engaged in the said work were under the control of the private contractors, and the appellant was not having any list of the employees employed and also the appellant was not having any control over the said employees except the fact that they have paid amounts to the contractors and, therefore, they cannot be construed as "employees" as defined u/s 2(9) of the Employees' State Insurance Act and the amounts paid to them would not come within the definition of "wages", as defined u/s 2(22) of the Employees' State Insurance Act. The appellant cannot also be expected to maintain a detailed account of the amount paid to the workers and the amounts spent for the materials and those workers have got to be construed as casuals as they were engaged for a particular job of work and they were not employed under the appellant's factory and, therefore, the appellant is not liable to pay contribution on the amounts spent on the abovesaid heads.

6. The appellant also relied upon the decision rendered by the Kerala High Court in the case of Employees' State Insurance Corporation v. P.R. Narahari Rao 1987 70 FJR 160 wherein the Kerala High Court had considered the case of hotelier who engaged casual workers for short periods of time when the employer had catering contracts through contractors, who employed the same workmen for works under other similar catering establishments on a contract basis, it is held that the effect of Section 2(9)(i) of the Act which defines an "employee", the essential question is whether there is a "contract of employment" between the casual workmen "engaged" by the contractor and the employer establishment. In this case, the employer was not aware of the number of workers engaged by the contractor and he did not know, the other details of such persons. He was not aware of the amount payable to each of the workmen and he could not have

insisted upon the attendance of these persons at any point of time. He had no control over the manner in which the work was performed by them. There was no evidence regarding the existence of master and servant relationship between the casual workmen and the employer-establishment. The nomenclature "casual" in describing the workmen did not determine their character and what was material was whether a person concerned was "employed" by the "employer" or whether he was only "engaged" for casual labour. Thereby, a distinction was made of the workers who are merely engaged for doing the work and they are not employed for the work to be carried out and thereby came to the conclusion that the persons merely engaged for specific items cannot be brought under the definition of "employees" and the Employees' State Insurance Corporation is not entitled to claim contribution in respect of the amounts paid to the said employees.

7. The learned advocate for the respondent-Employees' State Insurance Corporation has submitted that the view taken by the Kerala High Court is not correct and the same is also not applicable to our case. To sustain and support her submission, she relied upon the decision rendered by the Supreme Court in the case of Employees' State Insurance Corporation v. Harrison Malayalam Pvt. Ltd. 1994-I-LLJ-12 wherein the Apex Court in paragraph 3 observed as follows :

"Under the Act, it was the duty of the respondent-company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer. On the admitted fact that the respondent-company had engaged the contractor to execute the work, it was also the duty of the respondent-company to get the temporary identity certificates issued to the workmen, as per the provisions of Regulations 12,14, and 15 of: the Employees' State Insurance (General) Regulations, 1950, and to pay the contribution as required by Section 40 of the Act. Since the respondent-company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-company as to how many workers were employed by its contractor. If the respondent-company failed to get the details of the workmen employed by the contractor, it has only itself to thank for its default. Since the workmen in fact were engaged by the contractor to execute the work in question and the respondent-company had failed to pay the contribution, the appellant Corporation was entitled to demand the contribution although, both the contribution period and the corresponding benefit period, had expired. The scheme under the Act for insuring the workmen for conferring on them benefits in the case of accident, disablement, sickness, maternity, etc., is distinct from the contract of insurance, in general. Under the Act, the scheme is more akin to group insurance. The contribution paid, entitles the workmen insured to the benefit under the Act. However, he does not get any part of the contribution back if during the benefit period, he does not qualify for any of the benefits. The contribution made by him and by his employer is credited to the insurance fund created under the Act and it becomes available for

others or for himself, during other benefit periods, if he continues in employment."

8. The fact and principles dealt with by the Supreme Court are squarely applicable to our case and the decision of the Apex Court put an end to the controversy that has been raised by the appellant. In the said view of the matter, the appellant is liable to pay contribution and the claim made by the respondent cannot be assailed or set aside and hence the order passed by the Employees' Insurance Court is hereby confirmed. In the result, the C.M.A. is dismissed. No costs.