

---

**(2011) 04 AP CK 0012**

**In the Andhra Pradesh High Court**

**Case No : C. Miscellaneous A. No. 133 of 2006**

Asian Paints (India) Ltd.

APPELLANT

Vs

The Employees" State Insurance Corporation and Another

RESPONDENT

---

**Date of Decision : 01-04-2011**

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 2(22), 75(2B)  
Industrial Disputes Act, 1947 — Section 12(3)

**Citation : (2011) LLR 776**

**Hon'ble Judges : G. Krishna Mohan Reddy, J**

**Bench : Single Bench**

**Advocate : C. Niranjan Rao, for the Appellant; Pushpender Kaur, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

G. Krishna Mohan Reddy, J.—This appeal is directed against the dismissal order passed in E.I.C. No. 32 of 2003 dated 12-10-2006 on the file of Employees" Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, upholding the C-19 notice issued by the first Respondent dated 12-6-2003 vide AP-Ins/MEC/52-4919-34/14/MEC/52-2007/86 directing the Appellant/Petitioner to pay Rs. 46,628 for the period from April 2002 to January, 2003 towards contributions to the Respondent u/s 75(2B) of the ESI Act with reference to conveyance charges/traveling allowance paid to the employees of the Appellant/Petitioner.

2. Whereas the Appellant is the Petitioner and the Respondents are the Respondents in the said case accordingly, they will be referred to before this Court.

3. The Respondents contested the matter. The relevant facts of the case are clearly noted in the orders passed by the Tribunal and there is no need to reiterate the same.

4. The Tribunal dismissed the applications on the ground that by virtue of the

decisions reported in *Rajashree Cement and Ors. v. Deputy Director (I), Bangalore* and Ors. 2004 III LLJ 1039, rendered following the decisions of the Supreme Court in *Wellman (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation*, ; *Modella Woolens Ltd. v. Employees' State Insurance Corporation* and Anr. 2001 III LLJ (Supp) 1427, the travelling allowance would come within the purview of Section 2(22) of the ESI Act which defines what is meant by "wages" and held that the Appellant should pay necessary contributions for its employees to the Respondents. Hence, aggrieved by the same, the present Appeal has been preferred.

5. Therefore it is to be mainly examined as to:

Whether the travelling/conveyance allowance forms part of wages as defined u/s 2(22) of the ESI Act and correspondingly the Appellant should pay necessary contributions to the Respondents with regards to its employees concerned with?

6. Point Section 2(22) of the E.S.I Act contemplates:

"wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes [any payment to an employee in respect of any period of authorised leave, lock out, strike which is not illegal or layoff and] other additional remuneration, if any [paid at intervals not exceeding two months], but does not include--

(a) any contribution paid by the employer to any pension fund or provident fund or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (d) any gratuity payable on the discharge;

7. In *Wellman (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation*, the Supreme Court considered as to whether bonus payable to the employees of the Appellants therein under terms of settlement reached in conciliation u/s 12(3) of the Industrial Disputes Act, 1947 would form part of their wages within the meaning of Section 2(22) of the Act and observed:

The expression "other additional remuneration, if any, paid..." in the second part of definition of wages given in Section 2(22) implies that the said remuneration is not payable under any contract of employment, express or implied. This is so because while the first part of the definition refers to remuneration under the contract of employment, the second part does not refer to remuneration under any such contract. Secondly, the definition is inclusive and includes only such payments outside the contract as are mentioned in its second part and none other. Thirdly, the expression "if any paid" after the words "other additional remuneration" will be inconsistent if the remuneration is payable under the

contract of employment since such payment is not dependent on the Will of the employer but on the fulfilment of the terms of the contract. Lastly, the second part of the definition includes only such contractual payments as are specifically mentioned therein. Hence the expression "other additional remuneration, if any, paid" not only does not refer to remuneration payable under any contract but refers to such remuneration which is payable at the will of the employer. Every remuneration that is payable under the contract would, therefore, fall under the first part of the definition.

In *Modella Woollens Ltd. v. Employees' State Insurance Corporation and Anr.*, also similar view was taken with reference to the question of bonus forming part of wages.

8. In *Regional Director, ESI Corporation v. IT Solutions (India) Pvt. Limited* 2002 III LLJ 757 : 2002 LLR 1111 (Karn. HC) the Karnataka High Court held:

A careful reading of Section 2(22) of the Act would show that all remuneration paid or payable in cash to an employee in terms of the contract of employment whether it is express or implied are wages within the meaning of the said expression....That payments made by the management under a settlement with the employees would constitute payments made under the contract of employment is fairly well settled by the decisions of the Supreme court in *Wellman (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation*, and *Modella Woollens Ltd. v. Employees' State Insurance Corporation and Anr.* 1994 (suppl) (3) SCC 580; 2001 (3) LLJ (suppl) 1427. To the same effect is the decision of this Court in *Escorts Limited and Anr. v. Regional Director, ESI Corporation* M.F.A No. 5626/1998 cav 1339/1999 dated December 17, 2003. If that be so, as it indeed is the payment of conveyance allowance made in terms of the contract of employment or the settlement would be a wage u/s 2(22) of the Act especially when such payment is made to all the employees and regardless whether they are using any conveyance and if they are the type of conveyance which they are using. The corporation has in our opinion rightly came to the conclusion after review of the facts and a proper appreciation of the pronouncements of the Supreme Court and those of this Court that conveyance allowance is different from travelling allowance or travelling concession referred to in Clause (b) of Section 2(22) of the Act. Travelling allowance referred to in Clause (b) is a payment meant to defray specific expenses incurred by the employees by reason of the nature of employment and May include any allowance paid or reimbursed to any employee for specific duty related journey. It may also include reimbursement of actual cost of journey subject to proof of actual expenditure. Payment of conveyance allowance on a uniform basis regardless whether the employee concerned has or has not incurred any expenditure on his journey to a place of his work is not however synonymous to travelling allowances as is envisaged under Clause (b) of Section 2(22).

9. In the other decision rendered by the Karnataka High Court similar view was taken with reference to conveyance allowance.

10. Significantly the Karnataka High Court making a distinction between conveyance allowance and travelling allowance found that they are not synonymous to each other while bringing conveyance allowance within the ambit of the definition of wages as envisaged in Section 2(22) of the Act. It infers the assessment of Karnataka High Court that travelling allowance excluded from the definition of wages should not be taken as part of wages irrespective of whether it was paid under certain terms of settlement between the management and its employees. In any case, I am in disagreement with the distinction so made that conveyance allowance is not synonymous to traveling allowance because, both travelling allowance and conveyance allowance are with reference to mode of transportation only.

11. In *Management of Oriental Hotels, Ltd. v. Employees' State Insurance Corporation* 2001 LLR 489 : 2002 1 LLJ 14 (Mad DB) - a question arose as to whether conveyance allowance payable to employees under similar circumstances would form part of wages within the meaning of Section 2(22) of the act and it is rightly held therein.

Insofar as the conveyance allowance is concerned, even though it forms part of the wages being the amount payable in terms of the contract of employment, having regard to the settlement and even de hors the settlement, the payment of the amount would fall within the ambit of "additional remuneration". Nevertheless, that amount will have to be excluded having regard to the specific exclusion provided in the definition itself for travelling allowance or the value of any travelling concession. The conveyance allowance paid is in the nature of travelling allowance as the object of that payment is to enable the employee to reach his place of work and to defray a part of the cost incurred on the travel from his place of residence to the place of work. If instead of paying the conveyance allowance, the employer had provided free transport to the employees, the monetary value of that benefit of free travel from his residence to the place of work would not have been capable of being regarded as forming part of the wages. The conveyance allowance paid in cash for the purpose of being utilized on the travel from place of residence to the place of work, is of the same character and there is no reason why it should not be regarded as travelling allowance for the purpose of Section 2(22)(b) of the Employees' State Insurance Act.

12. Further the inclusion of bonus paid to such employees within the definition of wages by the Supreme Court of India is also quite different from bringing travelling allowance within its ambit whether it was made under any terms of settlement or not. Had the Supreme Court considered the question of including travelling allowance within the definition of wages paid to the employees under certain terms of settlement and answered it affirmatively then a different interpretation is possible. Further when the statute without any ambiguity and without any restrictions or limitations excludes travelling allowance from the definition of wages in other words, when the exclusion of it is complete any

attempt to draw different inference is not permissible.

13. For the foregoing reasons the Observations made by the Karnataka High Court are not applicable here. Therefore, the conveyance allowance payable to the employees of the Appellant should be excluded from the purview of "wages" as defined u/s 2(22) of the E.S.I Act, The Tribunal failed to appreciate the matter properly and arrived at incorrect conclusions and therefore its order is liable to be set aside.

In the result, the order passed by the Tribunal is set aside and the Civil Miscellaneous Appeal is allowed as prayed for declaring that the corresponding notices as invalid, with costs.