(1985) 11 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 14, 15 and 56 of 1979

Employees State Insurance Corporation APPELLANT

Vs

Globe Transport Corporation RESPONDENT

Date of Decision : 29-11-1985

Acts Referred:
Employees State Insurance Act, 1948 — Section 40, 82, 85B

Citation : (1986) RLW 384 : (1986) 2 WLN 121

Hon'ble Judges : Surendra Nath Bhargava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surendra Nath Bhargava, J.—These three appeals u/s 82 of the Employees State Insurance Act, 1948 arise out of a common judgment dated 10-8-1978 by Employees Insurance Courts, Jaipur accepting the three petitions submitted by respondents and setting aside the order passed by Regional Director Employees State Insurance imposing damages u/s 85B of the Employees State Insurance Act on account of failure to pay amount due in respect to the contribution by Employer. Since it was paid late, notices were issued by the Regional Director to the respondent before passing the order for damages u/s 85B and an opportunity was given for hearing to the respondents before passing the order. Employees Insurance Courts has come to a finding that since the respondents have paid interest as provided, under Regulation 31A of the Employees State Insurance (General) Regulations. 1950 and, therefore, no damages could have been imposed u/s 85B of the Act. It is against this order that these appeals have been filed.

2. Learned Counsel for the appellant has placed reliance on 1981LaIC 658 Employees State Insurance Corporation v. Dhanda Engineers Pvt. Ltd. and 1981 L . I.C. 96 (Kar). The Regional Director Employees State Insurance Corporation v. Tungabhadra Steel Products Ltd. and has submitted that the judgment of the Learned Insurance Court is not correct and the appeals should be allowed.

3. On the other hand Learned Counsel for the respondents has vehemently argued that respondent cannot be punished twice for making late payment of his contribution once by paying interest as provided under Regulation 31A and again damages u/s 85B on account of failure to pay amount due. He has further submitted that Section 85B is punitive in character and, therefore, the Regional Director, Employees State Insurance Corporation should have passed a speaking order while imposing damages. He also placed reliance on Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, which had been relied on by Rajasthan High Court in Commissioner of Income Tax Vs. Rawat Singh and Sons, and since there is no mens-rea, the damages could not have been imposed. He has further submitted that unless there was finding that delay in payment was deliberate, the damages could not have been imposed.

4. I have carefully considered the submissions made at the bar and have also gone through the judgment of the Insurance Court. Section 40 of the Act provides for the payment of contribution by the employer and the time to make the contribution has been provided under Regulation 26 and 31. Regulation 31A was introduced by notification dated 23-11-1977 which provides as under:

31 A. Interest of contribution due but not paid in time--An employer who fails to pay contributions within the periods specified in Regulation 31 shall be liable to pay interest at rate of 6 per cent per annum in respect of each day of default or delay in payment of contribution:

Provided that where the contribution is paid by affixing the contribution stamps, the employer shall be deemed to have not paid the contributions in time if he fails to submit the contribution cards within the time prescribed under Regulation 26.

Whereas Section 85B was introduced by amending Act No. 35/75 with effect from 1-9-1975 and provides as under:

85B. Power to recover damages-(1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer such damages not exceeding the amount of arrears as it may think fit to impose ;

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard;

(2) Any damages recoverable under Sub-section (1) may be recovered as an arrear of land revenue.

5. Thus we find that Section 85B provides that the Corporation may recover damages from the employer if he fails to pay the amount due in respect of contribution or any other amount payable under this Act and it is necessary that the employer should be given reasonable opportunity of being heard before passing any order under this section. What is contemplated u/s 85B is exemplary and punitive damages, whereas Regulation 31A provides for payment of interest

by employer if he fails to pay contribution within the period specified under Regulation 31 at rate of 6 per cent per annum in respect to each date of default or delay in payment of contribution. Regulation 31A merely provides interest by way of compensation for little delay in payment and thus we find there is no conflict between Section 85B and Regulation 31A. Action u/s 85B can be taken even though employer has paid interest under Regulation 31A for making late payment. Action u/s 85B is for deterrent effect so that the employees pay the contribution within time otherwise they are liable both to pay interest under Regulation 31A as well as damages u/s 85B. It is true that action u/s 85B is punitive and, therefore, notice is given to employer to show cause as to why damages should not be imposed u/s 85B and the employer has ample opportunity to submit his reply to the notice and bring out circumstances and the reason for delay in payment and the authorities will consider their explanation and it is only thereafter that they will decide as to how much damages if at all has to be imposed u/s 85B. It is not necessary or incumbent upon authorities to impose damages u/s 85B in every case. It will depend on the fact of each case. Thus the view taken by the Employees Insurance Court that no damages could have been imposed u/s 85B is not correct. In the present case after disposing of issue No. 5 and deciding the same in favour of the respondent the Employees Insurance Court has observed in para 15 that "In view of my decision on issue No. 5, I think, there is no necessity for deciding these issues". However in paragraph 15 it has decided issue 1 to 3 in favour of the appellant. Learned Counsel for the respondent has submitted that Learned Employees Insurance Court has not applied its mind to the facts of the case since he had come to the conclusion that damages could not have been imposed u/s 85B. He accepted the application filed by respondents and set aside the order passed by the Regional Director imposing penalty u/s 85B.

6. In the result, these appeals are allowed, judgment of the Employees Insurance Court dated 10-8-1978 is set aside and the cases are remanded back to the Employees Insurance Courts for deciding Issue No. 1 to 3 in accordance with law and in the light of observations made here in above. Parties are left to bear their own cost.