
(2005) 01 BOM CK 0079
In the Bombay High Court

Employees State Insurance Corporation	APPELLANT
Vs	
Laxmibai Balram and Another	RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

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

Citation : (2007) 2 ACC 308

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Judgement

Nishita Mhatre, J.—The short question involved in the present appeal is whether the deceased could be considered an employee as defined u/s 2(9) of the Employees' State Insurance Act and, whether dependant's benefit is payable to the heirs of the deceased.

2. The undisputed facts are as follows: One Balram Pachayya was employed as a weaver in respondent No. 2, Mill. He was covered under the provisions of the Employees' State Insurance Act (for short "E.S.I. Act") from the day he joined employment. It appears that on 24.11.1984, Balram complained of a pain in his neck during the course of his employment. He was, therefore, admitted to MGM Hospital. He expired in the hospital on 4.12.1984. The wages paid to Balram for working for 21 days in November 1984 were Rs. 814.73 at the rate of Rs. 40.22 per day. Respondent No. 1, who is the wife of Balram claimed dependant's benefit from the appellant. This claim was denied by the appellant Corporation by its letter dated 6.4.1985 since Balram was not an employee as defined u/s 2(9) of the E.S.I. Act. The appellant Corporation was of the view that since the wages of Balram exceeded Rs. 1,000 (which was the limit for coverage under the E.S.I. Act at the relevant point of time) his dependants were not entitled to any benefit.

3. Being aggrieved by this denial, respondent No. 1 filed a claim under the E.S.I. Act before the E.I. Court being Application (ESI) No. 75 of 1985. The E.I. Court held, by relying on the judgment of the Division Bench of this Court in case of Mohamad Ismail Ansari Vs. E.S.I.C. Bombay, , that the deceased Balram was an

employee within the meaning of Section 2(9) of the Act and, therefore, his dependants were entitled to benefit under the provisions of the Act and the regulations framed there under w.e.f. 4.12.1984.

4. Mr. Mehta, learned Advocate appearing for the appellant, has raised several contentions to impugn the judgment and order of the E.I. Court. He submits that an employee who is drawing more than Rs. 1,000 per month is not entitled to any benefits under the Act since he is not an employee u/s 2(9) of the Act. He submits that the deceased was drawing more than Rs. 1,000 per month since September 1984 despite which the employer deducted contributions from his wages.

5. Mr. Mehta submits that what is to be considered as wages for bringing a person within the purview of Section 2(9) of the Act is not confined to the amount which he actually earned but the wages which an employee would have been entitled to had he worked for all the days of the month.

6. Admittedly, the employee had worked for only 21 days in November 1984, before his death. The learned Advocate submits that if the reasoning of the E.I. Court is accepted, then hypothetically, the dependants of an employee who draws an amount exceeding Rs. 1,000 per month, would be entitled to dependant's benefit, if he had worked only for a couple of days in the month. Such an employee according to the learned Advocate, would admittedly be out of the purview of the E.S.I. Act despite which his heirs would be entitled to the benefit under the Act. The learned Advocate submits that this could not be the object of the Act to pay benefits to persons who are not employees u/s 2(9) of the Act and, therefore, not covered by the Act.

7. This question agitated by Mr. Mehta for the appellants is no longer *res integra* by virtue of the judgment of the Division Bench of this Court in the case of Mohammed Ismail Ansari (*supra*). The Division Bench has considered the provisions of the Act and has held that the wages actually earned by an employee are to be considered. After examining the provisions of the Act and the relevant definitions, the Divisions Bench has observed thus:

(7)...The year is divided into two "contribution" and "benefit" periods, and each period consisting of six such months, as are indicated in regulation No. 3 against each group of workers. The appellant belongs to "B" set, his first period covers March to September, while second period covers October to February. The combined effect of Section 2(9) and Section 2(22) is that his wages in a month go to determine if he was an "employee" in that month. This firstly takes notice of the fact that the wages of the employee fluctuate from month-to-month depending on the fluctuating price index and further assumes that, a person can be an employee within the meaning of the Act during one month and ceases to be such an employee in the next month depending on his total wages earned by him in each month. Wording of Section 46(1)(c) suggests that his wages during the month of the accident is determinative of his being entitled to the

disablement benefit. This may result in depriving him of his right there under if his wages in the month of the accident exceeds Rs. 500 and consequently make him not an employee. The above proviso to Section 2(9)(b) comes to his rescue in such a case in a limited manner. It enables him to continue to be employee during the other five months of any contribution period, even if his actual wages, whether paid or payable in the first month of that period, did exceed Rs. 500 within the meaning of the Act. The proviso carves out an exception to benefit the workman. The vexed phraseology of the proviso "a month at any time after (and not before) the beginning of the contribution period", in our opinion, is intended to make the wages of the first of the concerned contribution period, determinative of his claim to be an employee within the meaning of the Act. This, no doubt, is a fiction introduced in the proviso to protect the workmen to enable them to reap the benefits of the contributions made by them in earlier periods....

8. Similarly, in First Appeal Nos. 20 and 83 of 1990, a learned Single Judge of this Court held after relying on the judgment in the case of Mohammed Ismail Ansari (*supra*), that the wages actually drawn per month are to be considered to determine whether an employee falls within the definition of Section 2(9) of the E.S.I. Act.

9. Mr. Mehta relies on the judgment of the Division Bench of Madras High Court in the case of Employees" State Insurance Corporation v. M. Ganesan 2003 (98) FLR 354, Madras High Court, however, has taken a contrary view and has held thus:

(10) For claiming the disability benefit, it is a precondition that the employment injury should have been sustained at a time when the person was an employee. The fact that such an employee had made contribution during the preceding contribution period and would be entitled to the sickness, maternity and other benefits provided under the other sub clauses of Section 46(1) would not on that score enable that employee to claim the disability benefit as well for an employment injury sustained during the benefit period. To hold otherwise would do violence to the clear language employed in Section 46(1)(c). A person who crosses the prescribed wage limit after the commencement of a contribution period is deemed to be an employee till the end of that contribution period and not beyond. Though he is allowed to enjoy certain benefits during the corresponding benefit period he does so not as an "employee", but as a person who was an employee during the relevant contribution period. An employment injury sustained during such benefit period, when he had ceased to be an employee on account of crossing the prescribed wage limit and the contribution period during which he crossed the wage limit also having ended, will not be an injury sustained by him as an "employee". Disability benefit would not become payable to such a person.

10. I am bound by the judgment of our Court in Mohammed Ismail Ansari (*supra*). There is no dispute that the deceased was paid an amount less than Rs. 1,000 for the days he had actually worked in the month of November 1984. This

is the amount which has to be taken into consideration while deciding whether the dependant's benefit should be paid. In any event the wages of the deceased exceeded Rs. 1,000 only from September 1984. Deceased had already contributed towards the E.S.I. Scheme and, therefore, his dependants were entitled to the benefit under the Act, for the corresponding benefit period. The E.I. Court has rightly found that dependant's benefit is payable to the respondent No. 1.

11. In the result, first appeal is dismissed. No costs.