

(2014) 01 KL CK 0070
In the High Court Of Kerala
Case No : Ins. A. No. 80 of 2011

Employees" State Insurance Corporation	APPELLANT
Vs	
Maria Tiles	RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(14) 2(8) 53 68

Citation : (2014) 141 FLR 347 : (2014) 1 ILR 661 : (2014) 1 KHC 166 : (2014) 1 KLJ 510 : (2014) 1 KLT 283 : (2014) 2 LLJ 70 : (2014) LLR 805

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : P. Sankarankutty Nair, for the Appellant; M.B. Prajith, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—Employees" State Insurance Corporation, for short the Corporation, is the appellant. Order passed by the Employees Insurance Court, for short the E.I. Court, Palakkad directing the appellant to reimburse the amount deposited by opposite party to satisfy the claim of its employee before the Commissioner for Workmen"s Compensation, is challenged in this appeal. Short facts necessary for disposal of the case can be summed up thus: Opposite party is a covered establishment under the Employees State Insurance Act, for short the Act. A claim for compensation before the Commissioner for Workmen"s Compensation, WCC 217/2000, was made by one of its employees, namely, Kalyani for alleged injuries sustained by her during the course of employment. Opposite party resisted the claim contending that the employee can seek compensation only under the Act. Commissioner after adjudging the claim directed the opposite party to pay compensation to the above employee a sum of Rs. 59,671/- with the interest fixed. Opposite party challenged the above Order before this Court filing a Writ Petition, WP (C) 38153/2007, in which Corporation was impleaded as additional respondent. This Court upheld the Order of the

Commissioner for Workmen's Compensation awarding compensation to the employee, but, reserved the right of opposite party to move the E.I. Court to consider whether the employee was an insured person. In case the employee was shown to be an insured person opposite party was allowed to have reimbursement of the sum of compensation, after its deposit. Opposite party was directed to deposit compensation before the Commissioner and move the E.I. Court within one month from the date of judgment. After depositing the compensation as directed, opposite party moved the application before the E.I. Court, and that has given rise to the order under challenge. Corporation while admitting that opposite party was a covered establishment under the Act with effect from 01/12/1992 contended that the employee, namely, Kalyani, who had moved for compensation before the Commissioner for Workmen's Compensation for injuries suffered, was not registered nor any contribution paid in respect of her at or before the accident, which took place on 30/12/1999. Opposite party remitted the contribution in respect of her for the month of December 1999 only on 23/05/2001. She was not an insured employee under the Act at the time of accident, was the case of Corporation. E.I. Court considering the question whether the above said Kalyani was an insured person under the Act as on 30/12/1999 answered it in affirmative and directed the Corporation to reimburse the amount deposited by opposite party to satisfy the claim of compensation of that employee before the Commissioner for Workmen's Compensation. Aggrieved by that order, Corporation has filed this appeal.

2. I heard the counsel on both sides.

3. Learned counsel for the Corporation raised two fold attack to challenge the order passed by E.I. Court. The employee V.K. Kalyani with respect to whom compensation was directed to be paid for injuries suffered by her was not an insured employee and opposite party, employer, moved for registering her as an insured employee much later to the accident, in fact one and half years later to the alleged accident, and, in such circumstances Corporation has no liability to pay the compensation, is the submission of counsel. Definition of "insured person" u/s 2(14) of the Act is canvassed by the counsel to contend that with respect to the employee, Kalyani, who was not having insurance coverage on the date of accident, Corporation has no liability to pay compensation for the injuries suffered by her. The next ground of attack is based on Section 68 of the Act which empower the Corporation to recover from an employer contribution payable with respect to his employee, which having been failed or neglected to be paid by him, disentitled the employee to any benefit under the Act. In such a case where such employee become disentitled to any benefit or entitlement of benefit on a lower scale, Corporation on paying the benefit due to such employee which he would have been entitled but for the fault or negligence of his employer, can recover the contribution from the defaulted employer. Statute vests authority on Corporation in such case to recover from the employer even twice the amount of contribution from the employer who had failed or neglected to pay contribution. When that be the case, whatever amount ordered to be reimbursed

to the respondent which he had paid as compensation to the employee could be recovered from him by Corporation u/s 68 of the Act since there was failure or negligence on his part to insure such employee as mandated under the Act, is the submission of counsel. Such recovery proceedings against respondent after reimbursing him the amount deposited by him, in terms of the judgment passed in the writ petition, are to be avoided relieving the Corporation from reimbursing the sum, is the submission of counsel. When the Corporation has right to recover the amount reimbursed to opposite party u/s 68 of the Act the Order passed by the E.I. Court directing for reimbursement has to be set aside, according to counsel.

4. Section 2(14) of the Act defines "insured person" which reads thus:

"insured person" means a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided by the Act.

The definition includes a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided by the Act. Scheme of the Act, Rules and Regulations thereunder, indicate that the insurance covered under the Act is distinct and different from the contract of insurance in general. Payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential in considering the entitlement of benefits by an injured employee in a covered establishment under the Act. Where the employee has suffered an employment injury as defined u/s 2(8) of the Act and there is no dispute that he was an employee of the employer and where there is a statutory interdiction u/s 53 of the Act barring the employee or dependent from claiming compensation or damages under any other law, he has to be treated as an insured person under the Act even where no application had been moved to register him or contribution was paid in respect of him by the employer. Apex Court analysing Section 2(14) of the Act in *Bharagath Engineering Vs. R. Ranganayaki and Another*, has held that the employer has not paid contribution to Corporation is not a ground to hold that he was not an insured person and thus deny benefits under the Act or to his dependants. Application filed and contribution paid with respect to the employee, was much later to the accident cannot be considered decisive to hold that the employee was not an "insured person". Section 2(14) clearly takes within its ambit an employee in respect of whom contribution is or was payable under the Act. That clearly would show that even when there was default or negligence on the part of employer to pay contribution with respect to an employee, but, it was required to be paid under the Act, that employee has to be treated as an insured person.

Section 68 of the Act enable the Corporation to initiate recovery proceedings against the opposite party after the Corporation providing benefits to the employee with respect to whom there was default or negligence on his part to pay contribution and even twice the amount of contribution can be recovered

from the employer in such case, has been canvassed by the counsel to impeach the order of E.I. Court. In the Writ Petition WP (C) 38153/2007 Corporation impleaded as additional respondent has not canvassed or raised such a contention. In the judgment rendered in the writ petition specific direction had been issued for deposit of compensation awarded by the Commissioner by the opposite party, providing him opportunity to claim reimbursement from Corporation proving that the employee was an "insured person" under the Act. In the light of such specific directions given under the judgment E.I. Court was bound to order reimbursement of the amount deposited by opposite party to satisfy the claim of the employee when such employee was proved to be an insured person under the Act. If the Corporation is having statutory empowerment u/s 68 of the Act to proceed against the opposite party for its failure or negligence to pay contribution under the Act with respect to the employee it can resort do so in accordance with law. Order of the E.I. Court does not reflect that Corporation has set forth its statutory entitlement to have recovery from the employer on a challenge referable to Section 68 of the Act. Further more any recovery proceeding thereunder can arise only after providing benefits to employer by Corporation and that too for realisation of defaulted contribution, even of twice the sum due, from employer. There is no merit in the challenges raised to impeach the order of E.I. Court.

Appeal is dismissed directing both parties to suffer their respective costs.