
(2008) 04 DEL CK 0134
In the Delhi High Court
Case No : F.A.O. No. 355 of 1999

Employees" State Insurance Corporation	APPELLANT
Vs	
Om Shiv Dye and Leaf Printers	RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 77(1)

Citation : (2008) 118 FLR 484 : (2008) 3 LLJ 619

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : K.P. Mavi, for the Appellant;

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the appellant.

2. It is urged by learned Counsel for the appellant that it is settled law that best evidence against a party is the admission of the party concerned, more so when the admission remains unexplained or/and un rebutted.

3. It all started when vide letter dated March 12, 1993 the appellant allotted Code No. II-20775-83 to Om Shiv Dye and Leaf Printers. The code was allotted by the appellant to the respondent pursuant to an inspection of the unit of the respondent carried out on January 27, 1993, record of which inspection was reduced into writing vide survey report of even date, Exhibit P.W.1/DA. The same records 10 persons employed and working in the unit. The names of the 10 persons stand duly noted in the report. Parmanand a partner of the unit who was present at the time of the inspection signed the inspection report.

4. Dev Anand Sharma, son of Parmanand challenged the coverage of the firm under the ESIC Act and filed a petition u/s 75(g) read with Section 77(1-a) of the ESI Act. The same was registered as ESIC Case No. 3/1994. He stated in his petition that as on the date of inspection the respondent was a partnership firm and that it was subsequently dissolved and taken over by him as a sole

proprietor firm of his. He denied that at any point of time more than 10 workers were engaged. He stated that depending upon work requirement sometimes casual and sometimes seasonal workmen were engaged. As an alternative defence he pleaded that even including the seasonal or casual employees the number did not exceed 10. He appended, as Annexure-B, to his petition, a purported statement of employees engaged by the unit in the preceding 4 years.

5. Matter proceeded to trial. Dev Anand Sharma who appeared as P.W.1 reiterated in his evidence what was pleaded by him in his petition. In cross-examination he admitted that at the point mark "X" on Exhibit P.W.1/DA there existed the signatures of his father. He however denied that the persons named in the survey report Exhibit P.W.1/DA were employed on the date of the survey.

6. The department examined Mr. T.D. Malhotra as R.W. 1 who led the inspection team, consisting of besides self, Mr. K.N. Chawla and Mr. K.C. Arya inspectors. R.W.1 deposed that at the time of inspection 10 workmen were found operating various machines and conducting work related to the factory and that their names were duly noted in the survey report Exhibit P.W.1/DA. He stated that 3 more persons were present but they stated to be friends of the employees and hence their names were not noted. The witness further stated that Parmanand signed the survey report at the point mark "X".

7. The learned Judge ESIC Court has allowed the petition filed by the respondent.

8. Reasons given by the learned Judge, ESIC Court are that the inspecting team did not record the parentage of the so-called 10 employees nor noted their designations, much less obtained their signatures or thumb impressions on the report.

9. It is unfortunate that the learned Judge, ESIC Court has not considered the survey report Exhibit P.W.1/DA with reference to the signatures of Parmanand, admittedly a partner of the firm at the time of the survey. The learned Judge ESIC Court has failed to note that while appending his signatures on the report Parmanand did not record a dissent that what was being noted in the report was incorrect. Further, learned Judge failed to note that Parmanand was not produced as a witness by his son who claimed to have taken over the business as the sole proprietor thereof on dissolution of the partnership firm. Further, the learned Judge failed to note that the sole proprietor of the respondent admitted that his, father had signed on the survey report when it was prepared at site and that he did not even attempt to explain the circumstances under which his father signed the report without demur or protest.

10. It would also not be out of place to mention that in cross-examination, R.W. 1, was given a suggestion that the survey report Exhibit P.W.1/DA was prepared by them in their office. What I intend to convey is that the Respondent attempted to totally disown the survey report probably forgetting that in his evidence, P.W.1 admitted his father's signatures at point "X" on the survey report, meaning thereby, that the report was indeed prepared at the factory

premises of the respondent contemporaneous with the survey. The survey reports stands fully established.

11. Since material evidence and circumstances have been ignored by the learned Judge, ESIC Court, the appeal is allowed.

12. Impugned judgment and order dated May 3, 1999 in ESIC Case No. 3/1994 titled Om Shiv Dye and Leaf Printers v. ESIC is set aside.

13. The petition filed by the respondent is dismissed.

14. No costs.

15. TCR be returned forthwith.