

(2009) 12 DEL CK 0226
In the Delhi High Court
Case No : FAO No. 217 of 2002

Employees State Insurance Corporation	APPELLANT
Vs	
Pahalwan Hotel	RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (2009) 12 DEL CK 0226

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—In this appeal there is a challenge to judgment dated 15th February, 2002 passed by Employees State Insurance Court.

2. Brief facts of this case are that respondent's firm is engaged in supply of food to its customers and never employed more than nine persons. Moreover, it does not prepare food, as the same is brought in cooked form from outside. Neither it is using electricity nor any gas cylinder for carrying out its work. It has been claimed by respondent that it has been wrongly covered under the provisions of the Act.

3. Vide impugned judgment, petition u/s 75 of Employees State Insurance Act, 1948 (for short as "Act") filed by respondent was allowed.

4. Notice of this appeal was duly served upon the respondent, but none appeared on its behalf.

5. It is contended by learned Counsel for appellant that on 16th May, 1995, appellant carried survey of respondent's hotel and found more than twelve employees working there. The factum of working of 12 employees was duly verified by respondent and survey report was duly signed by respondent.

Accordingly, the impugned judgment is liable to be set aside.

6. Appellant has solely based its case on survey report Mark "A". However, said survey report has not been proved at all in accordance with law. The executant of this document, has not been examined by the appellant. It is also not clear as to who has signed this survey report, on behalf of respondent.

7. Appellant's witness T.K. Ghosal (RW1), in his statement has stated that on the basis of survey report Mark "A", dated 16th May, 1995, submitted by Mr. K.L. Malhotra (the Area Inspector), he issued coverage letter Ex.RW1/1.

8. In cross-examination this witness stated that report Mark "A" was not prepared in his presence and he has not visited the spot where the respondent's firm is situated.

9. As per survey report Mark "A", 12 persons were working there. However, this survey report has not been proved at all since Sh. K.L. Malhotra, Area Inspector, who visited the spot and prepared the survey report, has not been examined.

10. On the other hand, respondent in his cross-examination categorically stated that on 16th May, 1995, no inspector from the appellant had inspected/surveyed his firm in his presence or in the presence of his partner. He also stated that the survey report mark "A" does not bear his signatures at point A.

11. The onus was upon appellant to prove survey report Mark "A". However, appellant has miserably failed to discharge that onus. Appellant cannot rely upon a document, which has not been proved at all, in accordance with law.

12. Trial court in this regard also observed;

However, the respondents have not examined their Inspector who conducted the survey. As such, the survey report has not been proved in the witness box nor it has come on record in the testimony that the Inspector has counted or seen the employees working with the petitioner and have noted their names, designations or addresses.

The petitioner has deposed in the witness box that he had employed at the maximum nine employees and has produced copies of his attendance register. There is no suggestion to this witness in the witness box that he was employing 12 persons. Furthermore, PW1 Sh. Kimiti Lal has further deposed that he does not use gas or electricity in the cooking of food and brings cooked food from outside for serving to its customers. In the cross examination, this has also gone unchallenged. As such, the evidence of the petitioner regarding the number of employees, preparation of food and use of power has gone unchallenged as the respondents have neither examined their Inspector nor have brought any other documentary or oral evidence on the record.

13. In Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and Others, Supreme Court observed;

It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law.

14. Since, appellant has neither proved the survey report nor the same has been admitted by respondent, under these circumstances there is no reason to disagree with the findings of the trial court. The present appeal is thus not maintainable.

15. Time and again, this Court and Supreme Court have made observations that Government Undertaking/Statutory Bodies should not pursue fruitless litigation in the appellate courts, when they know at the outset that there is no legal force in their appeal. These bodies should not squander public exchequer and waste their as well as courts. time. Here, in the trial court itself, when appellant miserably failed to prove its case as it did not produce the basic document, that is, the survey report, nor it examined the executant of this document, there was no ground for appellant to have filed the present appeal.

16. Under these circumstances, present appeal is dismissed with costs of Rs. 10,000/-.

17. Appellant is directed to deposit the costs with Registrar General of this Court within four weeks from today failing which the same shall be recovered in accordance with law.

18 List for compliance on 20th January, 2010.