

(2003) 02 MAD CK 0125
In the Madras High Court
Case No : L.P.A. No.16 of 2001

Employees State Insurance Corporation	APPELLANT
Vs	
Shri M. Ganesan	RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Employees State Insurance (Central) Rules, 1950 — Rule 2(2A)
Employees State Insurance (General) Regulations, 1950 — Regulation 4
Employees State Insurance Act, 1948 — Section 2(14), 2(9), 28, 28(1), 46

Citation : (2003) 2 LLJ 895 : (2003) 2 LW 509 : (2003) 2 MLJ 494

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : G. Desappan, for the Appellant; K.M. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

R. Jayasimha Babu, J.—Section 46 of the Employees' State Insurance Act (hereinafter referred to as "the Act") sets out the benefits available to the persons covered by that Act. That Section provides, inter alia, that subject to the provisions of the Act, the insured persons --- an "insured person" is defined in Section 2(14) of the Act as a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act --- shall be entitled to, as provided in sub-clause (c) "periodical payments" if " . . . suffering from disablement as a result of an employment injury sustained as an employee under this Act, and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit)".

2. Thus, for the purpose of claiming the benefit of periodical payment, the insured person must have incurred the disability as a result of an employment injury sustained as an employee. Employee is defined in Section 2(9) of the Act as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies. It is not necessary to refer to the

other parts of the definition except to the Proviso which reads thus:

"Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period."

3. Contribution period is not defined in the Act, but is defined in the Rules in Rule 2(2A) as meaning the period not exceeding six consecutive months, as may be specified in the Regulations. Regulation 4 sets out the contribution periods and the corresponding benefit periods. Contribution periods are from 1st April to 30th September and from 1st October to 31st March of the year following. The corresponding benefit period for the contribution period of 1st April to 30th September, is from 1st January of the following year up to 30th June. For the contribution period from 1st October to 31st March of the year following, the corresponding benefit period is 1st July to 31st December.

4. Section 46 which deals with the benefits that the insured persons can avail of, in sub-clauses (a), (b), (d), (e) and (f) refer to the insured person, while it is only in sub-clause (c) that the reference to the insured person is further qualified by the requirement that the benefit of periodical payment to the insured person would be available only if such insured person was an employee at the time he sustained the employment injury which caused the disablement. The other benefits provided u/s 46 in the other sub-clauses would be available during the benefit period corresponding to the contribution period even to persons who have crossed the prescribed wage limit if they had made contributions in the contribution period. For claiming the benefits provided under sub-clauses (a), (b), (d), (e) and (f) of Section 46(1), it is not necessary that the person claiming that benefit be in employment or be receiving a salary lesser than the prescribed limit, provided such person had made contribution during the contribution period and the claim for the benefit is limited to the benefit period corresponding to the contribution period for which the contribution had been made.

5. The claimant in this case was admittedly a person who had crossed the prescribed wage limit and who had ceased to be an employee for the purposes of this Act as on the date he suffered employment injury which was on 21.9.1988. His claims that he should be regarded as being entitled to the benefit u/s 46(1) (c) solely on the ground that he had made contributions during the preceding contribution period and the injury had occurred at a time when the corresponding benefit period had not ended has been accepted by the E.S.I Court as also by the learned Single Judge of this Court, by placing reliance on Regulation 4 and the definition of the term "employee" in Section 2(9).

6. Learned counsel for the workman sought to sustain the order under appeal by placing reliance on the recent judgment of the Apex court in the case of M/s. Bharaqgath Engineering -vs- R. Ranganayaki reported in 2003 (1) Supreme 470. In that case, an employee had suffered a fatal employment injury in an

establishment which was required to be, but had not been registered under the Act but was subsequently registered. The Court held that a claim for benefits under this Act would lie as the payment or non-payment of contribution and action or non-action prior to or subsequent to the date of accident was really inconsequential and the deceased employee was an insured person. In that case, there was no dispute about the fact that the deceased was in fact an employee at the time he sustained the employment injury. That decision is not of any assistance to the workman in this case.

7. The view taken by the learned Single Judge in the judgment under appeal had also been taken by another learned Single Judge of this court in the case of Tirupur Textiles (P) Ltd. -vs- E.S.I Corporation reported in 1988 (1) LLN 688, in which case also it was held that despite the insured having ceased to be an employee for the purposes of this Act by reason of having crossed the prescribed wage limit, such a person would still be entitled to disablement benefit.

8. Having regard to the clear language of the provisions of the Act, Rules and Regulations to which we have referred, it is not possible to sustain the view taken in the judgment under appeal as also in the judgment referred to by the learned Single Judge.

9. Though the E.S.I Act is a piece of beneficial legislation and is required to be construed in a manner which would promote its proclaimed object, nevertheless, the clear language of the enactment which is not in any way ambiguous and which does not admit of any doubt as to what it seeks to convey, cannot be construed to provide a benefit which is not intended to be provided.

10. For claiming the disability benefit, it is a pre-condition 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.

11. Section 28 of the Act makes it abundantly clear that the funds of the

Corporation are to be utilised only for the purpose set out thereunder. Section 28(1) provides such funds may be used for the "payment of benefits and provision of medical treatment and attendance to insured persons ... in accordance with the provisions of this Act." It is therefore not permissible to utilise the fund for the purpose of paying a benefit, payment of which is not authorised under the provisions of the Act and Rules and Regulations made thereunder.

12. The appeal therefore has to be and is allowed.

13. Counsel for the workman submitted that the workman had applied to the Workmen's Compensation Commissioner and that the Commissioner had declined to entertain the application in view of the bar contained in Section 83 of the E.S.I Act. We make it clear that the workman, if he is able to make out a case under the Workmen's Compensation Act would be entitled to make such a claim, as he had ceased to be an employee for the purposes of the E.S.I Act and the employment injury that he sustained was at a time when he had so ceased to be an employee. The bar u/s 83 of the E.S.I Act therefore will not operate in this case and will not come in the way of his making a claim before the Workmen's Compensation Commissioner.

14. As the workman had been litigating bonafide his claim under the E.S.I Act, if the workman seeks condonation of delay in filing application before the Workmen's Compensation Commissioner, the Commissioner shall consider such application in the light of what has been stated in this order.