

(1989) 08 GAU CK 0005
In the Gauhati High Court

Employees State Insurance Corporation	APPELLANT
Vs	
Welford Transport (Eastern India) Ltd.	RESPONDENT

Date of Decision : 17-08-1989

Acts Referred:

Employees State Insurance Act, 1948 — Section 16, 4, 85B

Citation : (1990) 1 ACC 134

Hon'ble Judges : J.M. Srivastava, J

Bench : Single Bench

Judgement

J.M. Srivastava, J.—This appeal by the Employees' State Insurance Corporation is directed against the judgment and order dated 17.2.82 passed by the Judge, Employees' Insurance Court, Gauhati.

2. The respondent in this appeal who was the petitioner before the Employees' Insurance Court, hereafter referred as the "Court" had challenged the order dated 26.6.79 passed by the Regional Director, Employees State Insurance Corporation, hereafter the "Corporation" whereby recovery of damages for delay in payment of contribution by the employer petitioner had been ordered. The petition was opposed by the Corporation and its Regional Director. The Court had framed necessary issues and after consideration of the evidence-produced, the court held by the impugned judgment and order that the Regional Director who made the impugned order dated 26.6.79 had no power under the provisions of Section 85-B of the Employees State Insurance Act 1948, hereafter the Act to impose damages. The court also held that the insertion of Section 85-B by the amending Act of 1975 also was not available after the Repealing and Amending Act of 1978 whereby the Employees' State Insurance (Amendment) Act 1975 had been repealed. In the result, the petition was allowed and the impugned order dated 26.6.79 was set aside.

3. Aggrieved, the Corporation has come in appeal, and Shri S.N. Chetia, learned Counsel appearing on its behalf has submitted that the view taken by the court below that the provision of Section 85-B was not available in view of the

Repealing and Amending Act of 1978, was not correct and further that the Regional Director had been delegated the powers of the Director General of the Corporation who was the principal officer u/s 16 of the Act and accordingly had the necessary competence to impose damages.

4. Shri P.C. Deka, learned Counsel appearing for the respondent, on the other hand, has urged that the decision of the court below on the question of the competency of the Regional Director to impose damages, was correct.

5. I have considered the submissions for the parties.

6. In so far as the finding by the court below that the provision of Section 85-B was not available because of the Repealing and Amending Act of 1978, is concerned, the learned court below was clearly in error. It is settled law that immediately on coming into force of an Amending Act, the provision amended (in the main Act) becomes part of the main Act so that when the Repealing and Amending Act repeals the "Amending Act" for the purpose of scavenging the "Statute book" of Acts not required any more. The amendments effected in the main Act are not affected. The provision of Section 85-B which had been inserted by the Employees' State Insurance (Amendment) Act, 1975 had become part of the "Act" and was therefore not affected by the Repealing and Amending Act 1978 which had repealed the Amendment Act of 1975. The finding of the court below to the contrary is erroneous, cannot be sustained and is hereby set aside.

7. In so far as the next submission for the appellant that the Regional Director had the authority u/s 85-B said above to impose damages is concerned, Section 85-B reads as under:

85-B. Power to recover damages (1) Where an employer fails to pay the amount due in respect of any contribution or any other amount payable under this Act, the Corporation may recover from the employer such damages not exceeding the amount of arrears as it may think fit to impose:

Provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.

(2) Any damages recoverable under Sub-section (1) may be recovered as an " arrear of land revenue.

The above provision clearly shows that the power to recover from the employer damages is with the "Corporation". The opposite party, the appellant herein had not produced before the court below any evidence that the Regional Director had been authorised by the Corporation to exercise its power under said Section 85-B.

8. Shri Chetia has submitted that in the written statement, plea was taken that in pursuance of resolution of the Corporation, the Regional Director had the power u/s 85-B. An averment in the pleading is not evidence and proof of the fact stated. An issue had been framed that whether or not the Regional Director had the authority to make the impugned order and accordingly it was necessary

for the Corporation, the opposite party, to prove by evidence that the Regional Director had the authority to impose damages as provided in Section 85-B above.

9. Shri Chetia has submitted that the Corporation had been constituted u/s 4 of the Act and u/s 16 its Principal Officer had been designated that the Director General was one of the Principal Officer and he had delegated the powers to the Regional Director. The above submission do not in any manner prove that the Regional Director had the necessary authority to exercise the power u/s 85-B. Shri Chetia, learned Counsel for the appellant, wanted to show a paper from his record which, he submitted was the authority to the Regional Director. However, the document had not been duly filed in appeal and was not on record and hence has not been taken into consideration.

10. For the aforesaid reasons, in the absence of any evidence for the Corporation opposite party, that the Regional Director had any authority from the Corporation to exercise the power u/s 85-B for imposition of damages, it should follow that the impugned order dated 26.6.79 imposing damages on the petitioner respondent was without authority and cannot be sustained. The finding of the court below is sound and correct. This appeal is dismissed. No order as to costs is made.