
(2003) 04 MAD CK 0031

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 807 of 2003 and CMP. No. 5772 of 2003

Employees State Insurance Corporation, Local Office APPELLANT

Vs

S. Savithri and Others RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : (2003) 3 LLJ 250 : (2003) 4 LW 155 : (2003) 2 MLJ 521

Hon'ble Judges : S. Sardar Zackria Hussain, J;P. Sathasivam, J

Bench : Division Bench

Advocate : V.K. Vijayaraghavan, for the Appellant; N.G.R. Prasad, for Row and Reddy for R.1 to R.3 Caveator, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The Employees State Insurance Corporation, aggrieved by the order of the First Assistant Judge, City Civil Court

(Employees State Insurance Court), Chennai in ESIOP. No. 2 of 1992 dated 05.10.1999, has preferred the above appeal u/s 82 of the

Employees State Insurance Act, 1948 (in short "the Act").

2. In respect of death of one K. Sachithanandham on 28.11.1991 at about 7.00 p.m. while he was discharging his duties and operating the crane

in the 8th respondent Company, the respondents 1 to 7 herein filed a petition u/s 75 of the Act before the Employees State Insurance Court (in

short "E.S.I. Court"), seeking to determine their dependents benefit as per Rule 50 the Employees State Insurance (Central) Rules, 1950 (in short

the Rules"). The said application was resisted by the Employees State Insurance Corporation, by filing a counter statement. Before the E.S.I.

Court, the first applicant - S. Savithri was examined as P.W.1 and one

Karunakaran as P.W.2 and also marked Exs.P.1 to P.17 in support of their claim. On the side of the Employees State Insurance Corporation, one Ramanujam was examined as R.W.1. The E.S.I. Court, after considering the materials placed before it, accepted the case of the applicant and allowed their application on 05.10.1999. Questioning the said order, the Employees State Insurance Corporation has preferred the present appeal.

3. Heard, Mr. V.K. Vijayaraghavan, learned counsel for the appellant and Mr. N.G.R. Prasad, learned counsel for respondents 1 to 7.

4. The learned counsel for the appellant, after taking us through the petition, counter statement and the order impugned would contend that the

Court below has no jurisdiction to consider the claim of the petitioners. He also contended that in the light of the fact that the deceased was

drawing more than Rs. 1,000/- per month as wages on the date of accident, whether the E.S.I. Court is correct in arriving a conclusion that the

deceased Sachithanandham is an employee as defined u/s 2(9) of the Act.

5. On the other hand, Mr. N.G.R. Prasad, learned counsel appearing for the contesting respondents would contend that in the light of all the

materials, namely, the evidence of P.Ws.1 and 2 as well as Exs.P.1 to P.17, the Court below has jurisdiction to consider the claim of the

petitioners and rightly allowed their application, prayed for dismissal of the appeals.

6. We have carefully considered the rival contentions.

7. For convenience, we shall refer the parties as arrayed before the Court below.

8. The first petitioner is the wife, petitioners 2 to 6 are the daughters and the 7th petitioner is the father of late K. Sachithanandham. It is stated in

the petition that Late K. Sachidanandam (hereinafter referred as ("insured person")) was working in Binny Engineering Division, Meenambakkam,

Madras 600114 - second respondent therein, as Slinger, right from 1967. On 28.11.1991 at 7.00 p.m. while the insured person was discharging

his duties diligently and was operating a crane in the second respondent Company, he met with an accident and as a result died on 30.11.1991 at

Government Hospital, Madras 600 003. There is no dispute that he died in an accident arising out of and in the course of employment. The insured

person is survived by his wife, two major unmarried daughters, three minor

daughters and his father aged about 75 years, who are his dependents.

Though the petitioners made a claim for dependents benefit to the local office of the first respondent Corporation, the same was rejected summarily

on 05.03.1992, on the ground that no Employees State Insurance contribution was deducted from the wages of the insured person from

01.10.1991. It is stated that the insured person paid his contribution upto September, 1991. As per Regulation 4 of the Rules framed under the

Act for the contribution period running from October, 1990 to March, 1991, the benefit period is July, 1991 to December, 1991. As stated

above, the insured person paid the contribution from October, 1990 to March, 1991. Before the First Assistant Judge, City Civil Court (E.S.I.

Court), the first respondent - Employees State Insurance Corporation has filed a counter statement disputing the jurisdiction of the Court as well as

the eligibility of the insured person, in view of the fact that the deceased was drawing more than Rs. 1,000/- as wages per month, on the date of

incident.

9. In so far as the jurisdiction is concerned, it is seen that the First Assistant Judge, City Civil Court (E.S.I. Court) has been notified conferring the

jurisdiction to decide the cases relating to claim made under the provisions of the E.S.I. Act. In view of Section 75 of the Act, we hold that the

ESIOP. No. 2 of 1992 filed by the petitioners before the First Assistant Judge, City Civil Court is maintainable. Accordingly, we reject the first

contention. The same question relating to jurisdiction was already considered and rightly rejected by the E.S.I. Court.

10. Coming to the second contention, since the deceased Sachidanantham was drawing wages of more than Rs. 1,000/- per month (Rs. 1,600/-),

he was not an employee as defined u/s 2(9) of the Act. First of all, as rightly observed by the Court below that except the said objection in the

counter statement, the same has not been substantiated by placing any evidence. On the other hand, the dependents have examined two witnesses

and marked 17 documents in support of their petition filed u/s 75 of the Act. Ex.P.5 is a legal heirship certificate, which shows that the petitioners

are the legal heirs of deceased Sachdhanandam. Karunakaran, a co-employee was examined as P.W.2. In his evidence he deposed before the

Court that on 28.11.1991 at about 7.00 p.m. while the deceased attempted to

operate a crane, fell down and sustained injuries. Though he was admitted in the Government General Hospital, immediately after the accident, he died on 30.11.1991, due to injuries. Ex.P.1 is a certificate issued by E.1 Police Station (Meenambakkam); Ex.P.2 is the Corporation Receipt; Ex.P.3 is the death certificate issued by Chennai Corporation; Ex.P.4 is the postmortem certificate. On the side of the Employees State Insurance Corporation, one Ramanujam was examined as R.W.1. According to him, though the deceased Sachithanandham died due to the injuries in the course of employment, since on the date of incident he was drawing a sum of Rs. 1,600/- as wages, he is not an employee within the meaning of Section 2(9) of the Act. He deposed further that after 1.10.1991, no amount was deducted towards insurance by the management and inasmuch as the incident happened on 28.11.1991 and the deceased died on 30.11.1991, the dependents are not entitled any amount. Here again, as rightly observed by the Court below, except the oral evidence of R.W.1, the same has not been substantiated by placing documentary evidence. It is seen from the materials placed by the petitioners that as per Regulation 4 of the Rules, inasmuch as the contribution was made from 1.10.1990 to 31.03.1991, for which the corresponding benefit period is from 01.07.1991 to 31.12.1991. The particulars furnished coupled with Regulation 4 referred to above show that the benefit period extends upto 31.12.1991 and the same was correctly determined by the Court below. We have already referred to the fact that though an objection was taken that the insured person was an excluded employee on the date of the incident, because of his increased wages, the same has not been substantiated by placing any evidence. Though it is for the petitioners - dependents to allege and prove, in view of the fact that the objection had been raised by the Employees State Insurance Corporation, it is for them to place the relevant records to show that on the date of incident he was drawing wages at the rate of Rs. 1,600/- per month. The fact remains, neither the Employees State Insurance Corporation nor the employer - Binny Limited produced documents in support of their claim. Accordingly, we reject the second contention of the learned counsel for the appellant and we confirm the conclusion of the Court below.

11. Mr. N.G.R. Prasad, learned counsel for the petitioners / dependents very

much relied on the recent judgment of the Apex Court in the case of

Bharagath Engineering Vs. R. Ranganayaki and Another, . Their Lordships, considered Section 2(14), 38 and 53 of the Act and the relevant Rules

as well as the Regulations. After referring the relevant provisions and the earlier decisions, the Supreme Court has held,

...In fact, Section 38 of the Act casts a statutory obligation on the employer to insure its employees. That being a statutory obligation, the date of

commencement has to be from the date of employment of the concerned employee.

Again, after referring the relevant provisions with regard to ""wage period"" ""benefit period"", ""contribution period"" and ""dependents benefits"" their

Lordships have held,

11. When considered in the background of statutory provisions, noted above, the payment or non-payment of contributions and action or non-

action prior to or subsequent to the date of accident is really inconsequential. ..

12. In our case, we have already held that the materials placed by the petitioners show that the insured person had paid contribution from October,

1990 to March, 1991, for which corresponding benefit period is July, 1991 to December, 1991 and the date of accident and death fall within the

benefit period. In the light of the decision of the Supreme court and in view of the factual details, we are in agreement with the conclusion arrived at

by the Court below. Further, the Scheme of the Act, Rules and the Regulations spelled out that the insurance covered under the Act is distinct and

differ from the contract of insurance in general. Under the Act, the contributions go into a fund u/s 26 for disbursal benefits, in case of accident,

displacement, sickness, maternity etc., the contribution required to be made is not paid back even if an employee does not avail any benefit. It is

also relevant to note that the Employees State Insurance Act, 1948 is a piece of social welfare legislation enacted primarily with the object of

providing certain benefits to employees in a case of sickness, maternity and employment injury and also to make provisions for certain other

matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive Principles of State Policy

under Part IV of the Constitution, in particular articles, 41, 42 and 43 which enjoin the State to make effective provision for securing the right to

work, to education and public assistance in case of unemployment, old age, sickness and disablement, and in other cases of any under served want

to make provision for securing just and human conditions of work, and maternity relief and to secure by suitable legislation or economic

organisation or in any other way, to all workers, work, a living wage, decent standard of life and full enjoyment of leisure and social and cultural

activities. This Act covers a wider spectrum than the Factories Act. Extensive Regulations have been framed under the Act to identify the

employees who would be entitled to the benefits. An elaborate machinery is provided for the effective administration of the Act, the Apex body

being the ESI Corporation, subordinate to which are the Standing Committee and Medical Benefit Council. The Corporation is a public

corporation controlled and subsidised by the Government for the benefit of the employees, its object being rendering service to a weaker section

of the public.

In the light of the object of the enactment, various provisions inclusive of Rules and Regulations, elaborate machinery and the materials placed by

the petitioners before the E.S.I. Court, it is fully justified in holding that the petitioners are dependents and entitled to the benefits under Rule 58 of

ESI (Central Rules, 1950. We do not find any valid ground for interference. Accordingly, we dismiss the appeal. No costs. Consequently,

connected CMP, is also dismissed.