

(2001) 02 KAR CK 0026

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2000 of 1997

Employees' State Insurance Corporation, Regional Office
(Karnataka), Bangalore

APPELLANT

Vs

V. Doddaiah and Another

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (9), 46

Citation : (2003) ACJ 577 : (2002) 92 FLR 1177 : (2002) ILR (Kar) 448 : (2002) 1 KarLJ 379 : (2002) 1 LLJ 979

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : V. Narasimha Holla, for the Appellant; T. Narayanaswamy and Bangalore Law Associates, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. This appeal is filed by the ESI Corporation to challenge the order dated 1-3-1997 in ESI Application No. 38 of 1995 passed by the ESI Court.
2. The appellant-Corporation is represented by the learned Counsel, Sri V. Narasimha Holla, whereas the respondent 1 is represented by the learned Counsel, Sri T. Narayanaswamy and the respondent 2 is represented by the learned Counsel, M/s. Bangalore Law Associates.
3. The learned Counsel for the appellant, Sri V. Narasimha Holla had taken me through the impugned order under challenge. He found fault with the impugned order passed by the ESI Court on the ground that as on the date of accident on 12-4-1990, the respondent 1-employee was not at all an employee within the meaning of Section 2(9) of the Employees' State Insurance Act, 1948 (for short the "ESI Act"). It was also argued by him that the wages of the respondent 1 came to be raised from Es. 1,600/- to Rs. 1,765.14 ps. and that raise came

exactly on 1-4-1990 and therefore, it is clear from the fact that as on the date of accident on 12-4-1990 resulting in loss of four fingers of the left hand, he was not at all an employee to be covered under the Act. Therefore, he submitted that the ESI Court had totally entered into an error in allowing the application of the respondent 1 and further directing the Corporation to refer the claim of the respondent 1 to the Medical Board. Hence, he prayed that the instant appeal filed by his party be allowed in setting aside the impugned order in question.

4. While referring to the appeal memorandum filed by his party, Sri Holla had also pointed out that the substantial question of law that was involved in the case was set out at page No. 6 of the appeal memorandum. He had also cited before me the reported decision of Bombay High Court in Mohamad Ismail Ansari Vs. E.S.I.C. Bombay, , in support of his argument.

5. The learned Counsel for the respondent 1-employee, Sri T. Narayanaswamy, on the other side, argued that no doubt the accident in question had taken place on 12-4-1990, when he could not be an employee, under the ESI Act; but his party had since paid the insurance contribution for the contribution period i.e., 1-4-1989 to 30-9-1989, his party was entitled to for the ESI benefit for the corresponding benefit period from 1-1-1990 to 30-6-1990. Therefore, he submitted that the ESI Court had rightly allowed the application filed by his party holding that the accident in question had taken place on 12-4-1990 within the said benefit period from 1-1-1990 to 30-6-1990.

6. In this context, Sri Narayanaswamy had also drawn my attention to Regulation 4 of the ESI (General) Regulations, 1950 (hereinafter referred to as "the Regulations"). It is set out therein that the contribution period starts from 1st April to 30th September and 1st October to 31st March, whereas the corresponding benefit periods are set out as from 1st January to 30th June and 1st July to 31st December respectively.

7. In this context, it is relevant to quote here Regulation 4 of the Regulations and the same reads as hereunder:

"4. Contribution and benefit period.--Contribution periods and the corresponding benefit periods shall be as under:

Contribution period	Corresponding benefit period
1st April to 30th September	1st January of the year following
1st October to 31st March	1st July to 31st December of the year following

Provided that in the case of a person who becomes an employee within the meaning of the Act for the first time, the contribution period shall commence from the date of such employment in the contribution period current on that day and the corresponding benefit period for him shall commence on the expiry of the period of nine months from the date of such employment".

8. It was also argued by him at the cost of repetition that his party since admittedly paid the ESI contribution from 1-4-1989 to 30-9-1989, he was

entitled to for corresponding benefit period from 1-1-1990 to 30-6-1990 as pointed above. Therefore, he prayed that the instant appeal be dismissed in confirmation of the order passed by the ESI Court.

9. I have carefully considered the arguments advanced by the learned Counsel for the parties. In this context, it is relevant to refer to Section 46 of the ESI Act. The said section had occurred in Chapter V under the head "Benefits". To quote the relevant provisions in said Section 46, the same reads as hereunder:

"46. Benefits.--(1) Subject to the provisions of this Act, the insured persons [their dependants or the persons hereinafter mentioned, as the case may be,] shall be entitled to the following benefits, namely:

(a) xxx

(b) xxx

(c) periodical payments to an insured 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);

(d) xxx

(e) xxx

(f) xxx:

Provided that the amount of such payment shall not exceed (such amount as may be prescribed by the Central Government) and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorised by it in this behalf may allow.

(2) The Corporation may, at the request of the appropriate Government, and subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person".

10. On a close reading of the above provision, it is clear therefrom that the benefits as set out in Section 46 is subject to the provisions of the ESI Act. It is in this context, Sri Holla had vehemently argued that the respondent 1 as on the date of accident was not an employee within the meaning of Section 2(9) of the ESI Act. I also feel it appropriate to quote here the said Section 2(9) of the said Act and the same reads as hereunder:

"2(9) "Employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and--

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or

establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

(and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment (or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include--)

(a) any member of (the Indian) naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) a month:

provided that an employee whose wages (excluding remuneration for overtime work) exceed (such wages as may be prescribed by the Central Government) a month 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)".

11. If we read proviso below Section 2(9)(ii)(b) of the Act, it is also clear therefrom that in case wages of an employee were to exceed at any time after the beginning of the contribution period, that contribution has to be continued till the end of that period. As a matter of fact with the assistance of the learned Counsel for the respondent 1, Sri T. Narayanaswamy, on the last occasion, I have read and re-read the provision to make out what actually the Act meant in the said proviso. I was also trying to find out whether the said proviso has got any application to the instant case in hand. On a careful reading of the said proviso, it appeared to me that the same has got no application in the instant case in hand for the reason that the wages of the respondent 1 (employee) had not exceeded any time during the contribution period in question i.e., contribution period from 1-10-1989 to 31-3-1990 (referrable to Regulation 4 of the Regulations). Admittedly, in the instant case in hand, the respondent 1 had paid the contribution till the end of the contribution period on 31-3-1990, since he was an employee within the meaning of Section 2(9) of the ESI Act, as his salary continued to be at the rate of Rs. 1,600/- per month, It is also not in dispute before me that the wage of the respondent 1 came to be raised only on the very

first day of the next period of contribution from 1-4-1990 to 30-9-1990 (with reference to Regulation 4 of the Regulations) i.e., on 1-4-1990.

12. As I see, it is on that date i.e., 1-4-1990, the respondent 1 ceased to be an employee in terms of Section 2(9) of the ESI Act. Therefore, it is obvious that the employee had suffered the above accident injury on 12-4-1990 when he had ceased to be an employee as defined u/s 2(9) of the ESI Act with effect from 1-4-1990.

13. Therefore, it appears to me that the accident had taken place only after the respondent 1-employee ceased to be an employee as on that date i.e., with effect from 1-4-1990. Hence, in my considered view, the Trial Court committed an error in allowing the application of the respondent 1 in passing the impugned order allowing his application and further directing the respondent 2-employer to refer the respondent 1-employee to the Medical Board to give effect to the Act. That I say, at the cost of repetition that as on the date of the accident on 12-4-1990, he ceased to be an employee within the meaning of Section 2(9) of the ESI Act.

14. As I see, if we read Section 46 of the Act quoted as above, it is clear therefrom that the benefits as set out therein is subject to the provisions of the ESI Act. If the benefits as set out in Section 46(1)(c) is subject to the provisions of the ESI Act, it is obvious that the respondent 1-employee was not coverable under the said Act, in view of the circumstances that his wage came to be raised from Rs. 1,600/- to Rs. 1,705.14 with effect from 1-4-1990 and as such ceased to be covered under the Act.

15. This view of mine is also supported by the earlier decision of the learned Single Judge of this Court in an unreported case in M.F.A. No. 393 of 1989 connected with M.F.A. No. 394 of 1989, DD: 10-8-1990. As I see, the set of facts in the instant case and the set of facts in the said unreported case are similarly placed. In both the cases, the workman had approached the Workmen's Compensation Commissioner (henceforth in brief referred to as "the WCC") at the first instance for awarding of compensation u/s 4 of the Workmen's Compensation Act and when the WCC had come to the conclusion that the workman had since been covered under the ESI Act, he could as well approach the ESI Court under the ESI Act and that thereafter, the workman accordingly had approached the ESI Court u/s 75 of the ESI Act with a prayer that the compensation be awarded to him under Chapter V of the ESI Act read with Regulation 4 of the Regulations. In the said unreported case, the employee had challenged both the orders passed by the WCC as well as the ESI Court and the learned Single Judge while dismissing the appeal filed as against the order passed by the ESI Court, he had allowed the appeal filed by him as against the order passed by the WCC and further remitted the matter to the WCC for a de novo enquiry and further to pass appropriate order thereon.

16. In para 7 of the above unreported case, the learned Single Judge of this

Court had observed as hereunder:

"7. The decision relied upon by the learned Counsel for the appellant, Sri M.P. Papanna deals with a case where from the beginning of the contribution period the employee was drawing more than Rs. 1,000/- wages. Therefore, this Court held in that case that as the employee ceases to be an employee at the beginning of the contribution period itself and he was not entitled for any benefit which would accrue to him in the corresponding benefit period".

(At that time the wage was fixed by the Central Government at Rs. 1,000/- p.m.)

17. It was also argued by the learned Counsel for the respondent, Sri Narayanaswamy that in the event the interpretation of Sections 46 and 2(9) of the Act were to be given as above, the Regulation 4 of the ESI Regulations, 1950 renders itself as redundant, for it is set out therein in unambiguous terms that for the contribution period commencing from 1st April to 30th September, the corresponding benefit period will be from 1st January to the following of 30th June and that for the contribution period from 1st October to 31st March of the year following, corresponding benefit period will be from 1st July to 31st December, more fully set out in para (6) supra. It was also pointed out by him with reference to the instant case in hand that the ESI contribution was admittedly paid by his party for the period from 1-4-1989 to 30-9-1989 and as such, the corresponding benefit period had to be 1-1-1990 to 30-6-1990 and that since the accident in question had taken place on 12-4-1990, his party was entitled to for the benefit as contemplated under the said Regulation 4 of the Regulations, 1950. It was also pointed out by him that u/s 46(1)(c), his party is entitled to for the compensation in the circumstances. To some extent, Sri Narayanaswamy was correct to argue so, for, if we view the claim of the respondents from the angle of the provision in Regulation 4 of the Regulations, 1950, the position is clear to say that his party was entitled to for the compensation in the hands of the ESI Court. But in my considered view, that is not an end of the matter, for Section 46(1) of the ESI Act has made crystal-clear quite the reverse that the benefit u/s 46(1)(c) is subject to the provisions under the Act. I should point out here that the Regulations 1950 came to be published by the ESI Corporation u/s 97 of the Act and that being the position, the Regulations 1950 has to be in aid and in consonance with the provisions of the main Act i.e., ESI Act and if it is not, the same cannot be read into the provisions in the ESI Act.

18. It is also not out of context to observe here that the Regulations 1950 framed by the ESI Corporation u/s 97 of the Act and further the rules framed by the Central Act u/s 95 of the Act are in aid to carry into effect the provisions of the very ESI Act. It is therefore obvious that the Regulations 1950 framed by the ESI Corporation and the ESI (Central) Rules framed by the Central Government u/s 95 of the Act cannot control the provisions in the ESI Act. whereas the Regulations 1950 as well as the Rules 1950 have to be read into the provisions in the Act and it cannot be other way about. As a matter of fact, the provisions in

Section 95 of the Act in the matter of making of rules by the Central Government as well as the provisions in Section 97 in the matter of making of regulations thereunder by the ESI Corporation have to be in consistence with the ESI Act for the administration of the affairs of the Corporation to give effect to the provisions of the ESI Act. Therefore, it appears to me that in the process of giving interpretation to the provisions in the ESI Act, insofar as the same related to Sections 46 and 2(9) of the Act, the same have to be in the scheme of the ESI Act and in that process, as argued by Sri Narayanaswamy, certain part in Regulation 4 of the ESI Regulations, 1950, stand negated. But, whatever be the circumstances, to me, it appears, none can help it, for what has to be done by the Court is the harmonious interpretation of the provisions in the main Act bearing in mind the whole scheme of the ESI Act.

19. In this context, I feel it appropriate to observe here that had there been second proviso below proviso to Section 2(9)(iii)(b) to say that an employee whose wages (excluding remuneration for overtime) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period next following, shall continue to be the employee until the end of corresponding benefit period, that would very well fit in the scheme in Regulation 4 of the Regulations 1950 and as such, there would not have been an anomaly of the kind in the case in hand at all.

20. The second proviso as above is suggested by me is in similar lines in the present proviso below Section 2(9)(iii)(b) to avoid and put an end to the anomaly in the Regulation 4 of the Regulations since I have noticed and further to result in perfect harmony in the said Regulation 4 of the Regulations 1950, and definition of the term "employee" as defined u/s 2(9) of the ESI Act and further with provisions in Section 46 in Chapter V of the said Act under the head "Benefits".

21. As a matter of fact, provision in Section 2(9)(iii)(b) below Section 2(9)(iii)(a) came to be brought to the Statute Book by Act 44 of 1966 with effect from 28-1-1968 to remove the difficulty in working the scheme of the Act in the event wages were to exceed such wages as prescribed by the Central Government at any time after the beginning of the contribution period.

22. In the like way in the instant case in hand too it is seen that with the enhancement of the wages from Rs. 1,600/- to Rs. 1,750/- as on 1-4-1990, the first day of next contribution period i.e., 1-4-1990 to 30-9-1990, the respondent ceased to be employee within the meaning of Section 2(9) of the Act (as it stood as on date), whereas on the other hand, he appeared to be eligible for the ESI benefit, viewed from the angle of the provisions made in Regulation 4 of the Regulations 1950, because in the case in hand, the contribution admittedly when made by the respondent for the period from 1-4-1989 to 30-9-1989, the corresponding benefit period for him is from 1-1-1990 to 30-6-1990 and therefore it is obvious that for the accident injuries suffered by him on 12-4-1990, he was entitled to for the ESI benefit or else it is as good as that

there was contribution by him but there was no corresponding ESI benefit to him opposed to the very principles of the insurance.

23. Therefore, in my considered view, it is need of the hour that second provision below proviso to Section 2(9)(iii)(b) be brought as pro-posed as above to remove difficulty in reconciling the two provisions in Sections 46 and 2(9) of the Act vis-a-vis the provision in Regulation 4 of the Regulations 1950, in the successful working of the scheme of the Act, admittedly a beneficial piece of legislation for the betterment of the working class as a whole.

24. Now I come back to the case in hand. The learned Counsel for the appellant-Insurance Corporation, Sri Holla had also cited before me a reported decision of the Division Bench of the Bombay High Court in Mohamad Ismail Ansari's case, supra. Having gone through the said decision, it appears to me that the ratio of the decision in the said case is equally applicable to the instant case in hand.

25. In para (7) of the said judgment, the Bombay Court had observed as hereunder:

"Wording of Section 46(1) suggests, that, his wages during the month of the accident is determinative of his being entitled to the disablement benefit. This may result in depriving him of his right thereunder if his wages in the month of the accident exceeds Rs. 500/- and consequently make him not an employee".

(At that time wage prescribed by the Government was Rs. 500/- p.m.)

26. Therefore, it appears to me that the ESI Court had not considered the statutory provisions in Section 46(1)(c) of the Act inasmuch as it had guided itself more by the provisions in Regulation 4 of the Regulations and it is because of that it had entered into an error in allowing the application and thus in allowing the application filed by the respondent 1 and further it had directed the appellant-ESI Corporation to refer the respondent 1 to the Medical Board.

27. I should also state here that the learned Counsel for the respondent 1, Sri Narayanaswamy had sought for leave of the Court to make submission to the effect that the respondent 1 herein be given liberty to recourse to an appeal before this Court to challenge the order passed by the WCC in the original claim case No. WCA:NFC:CR-3 of 1991. In the facts and circumstances of the instant case in hand, it also appears to me that the respondent 1 has to be given liberty to challenge the order of the WCC, for admittedly the WCC had rejected the claim of the respondent 1 on the ground that he was a workman within the meaning of Section 2(9) of the ESI Act. That I hold for the reason that no Court can do wrong to a party on the untenable ground that since he was covered under the ESI Act, the claim, one filed by the employer before the WCC was not maintainable. That I hold further for the reason that the respondent 1 came to be wrongly held as an employee coming under the ESI Act and as such, he was not entitled to claim compensation under the WC Act."

28. In the result, I pass the following:

Appeal, therefore succeeds and accordingly stands allowed.

The impugned order passed by the ESI Court in allowing the application of the respondent 1 stands set aside.

29. However, the respondent 1 is given liberty to recourse to law in the matter of claim now before the WCC, of course, by filing necessary application to condone the delay for, he was prosecuting his claim before the wrong forum in the ESI Court at the first instance and before this Court at the second to oppose this appeal filed by the appellant-ESI Corporation. He may as well seek liberty of the WCC to get his claim decided out of turn.

30. The Registry is directed to forward a copy of the order herein made, one to the Secretary to Government of India, Ministry of Labour, New Delhi and another to Director General, Employees' State Insurance Corporation, New Delhi. The copies are sent in view of certain observations that came to be made with regard to Section 2(9) of the Act and with regard to Regulation 4 of the Regulations 1950, so that authorities may apply their mind by examining the whole situation in the matter of ESI contribution as pointed out as above and remove the anomaly by taking necessary action in the matter.