

(1986) 09 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeals No. 52, 58 and 64 of 1979

E.S.I. Corporation

APPELLANT

Vs

Universal Supply Corporation

RESPONDENT

Date of Decision : 22-09-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 85B

Citation : (1987) 2 WLN 577

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—These three appeal 52/1979, 58/1979, 64/1979 E.S.I. v. M/s Universal Supply raise a common question of law. In all these cases the E.S.I. Court has refused to allow the Corporation damages on the ground that the payment of the contribution was not a made in time.

2. Mr. Gupta's contention is that delayed payments and therefore the E.S.I. Corporation is entitled to charge damages u/s 85B of the Act. Mr. Saxena does not dispute this proposition of law but according to him merely late submission of the contribution card would not be analogous to delay in payment of the contribution.

3. Mr. Saxena submits that it was for the E.S.F. Corporation to prove (hat the contribution was not paid in time and merely proof of the fact that the contribution cards were submitted late is not enough because payment may be made earlier and cards may be submitted later on. Yet another submission of Mr. Sexena is that proviso to Regulation 31(A) came into force on 21-11-1977 precisely on account of which there is a deeming provision that unless the contribution cards were submitted it is to be deemed that the contribution was not paid.

4. Mr. Saxena's contention is that therefore failure to submit contribution cards

in time can result in levy of damages only after 23-11-1977 and not before. I find that in all these cases these factual aspects have not been adjudicated by the E.S.I. Court. Accordingly while holding that late delayed payment of contribution would tantamount to failure of payment warranting charges of damages but each case will have to be decided whether it is only on account of late submission of contribution cards and if so whether it is after 25-11-1977 or before it. The E S.I. court would now go into all these matters and decide on facts and if there is failure to submit contribution card by delay after 23-11-1977 than damages would be charged. Conversely if the failure of submission of contribution cards is, before 23-11-1977 then the E.S.I, court would first go into the matter whether the contribution was actually paid earlier or not or whether it is on account of only late submission of contribution cards. If it is found that the submission of cards was late but the payment was make earlier in time than no damages would be charged before 23-11-1977. On the above principles the E.S.I. Court after allowing opportunity to the respondents company for leading evidence am putting documents would adjudicate the matter afresh. All the three appeal are accepted as indicated above, without any order as to costs.