

(2004) 01 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 88 of 1987

Gupta Brothers Conduit Pipe Manufacturing Co. (P) Ltd.	APPELLANT
Vs	
Regional Director, Employees' State Insurance Corporation	RESPONDENT

Date of Decision : 19-01-2004

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75

Citation : (2005) 1 LLJ 419

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : D.R. Mahajan, for the Appellant; B.S. Bhatia, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—Appellant is aggrieved against the order passed by the Employees' Insurance Court, Gurdaspur dated October 4, 1986 whereby the application filed by the appellant u/s 75 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act") was dismissed.

2. The Employees' State Insurance Corporation issued notice requiring the appellant to pay a sum of Rs. 25,139.85 on account of contribution from June, 1976 to March, 1981. Such recovery notice was challenged by the appellant before the Civil Court as contemplated u/s 75 of the Act. It was found by the Court that the notice calling upon the appellant to make payment is illegal, null and void as the appellant was not given reasonable opportunity of being heard in accordance with principle of natural justice. However, the petition u/s 75 of the Act was dismissed for the reasons that the Employees' State Insurance Corporation is juristic person which has not been impleaded as party respondent. The application has been filed only against the Regional Director, Employees' State Insurance Corporation who is not a juristic entity.

3. In this appeal, the appellant has moved an application bearing C.M. No. 646-CII of 1987, for amendment of the petition u/s 75 of the Act. The said application

was ordered to be heard along with the present appeal.

4. Learned counsel for the appellant has pointed out that the mistake in not impleading the juristic entity is purely unintentional, inadvertent and, thus, the appellant should be allowed to amend the petition so as to implead the Employees" State Insurance Corporation through its Regional Director. Notice of the application was issued. However, no reply to such application has been filed. It is only an inadvertent mistake which is sought to be corrected by the present application. The Regional Director is a competent authority on behalf of the Corporation who has filed the written statement contesting the claim of the appellant. It is only misdescription of the parties which is sought to be corrected by the appellant.

5. In view of the above, application to implead proper parties u/s 75 of the Act, is allowed. The Employees" State Insurance Corporation is impleaded as respondent.

6. On merits of the controversy, the finding has been recorded that the appellant was not given any opportunity of being heard before the liability of the appellant was determined u/s 45-A of the Act.

7. Learned counsel for the respondents has not pointed out any material on record to prove that such opportunity of hearing was granted or that the proceedings u/s 45-A of the Act were finalised after associating the appellant.

8. In view of the above, the finding on issue No. 1 returned by the Employees" Insurance Court is affirmed.

9. In view of the above, the appeal is allowed. Order passed by the Employees" Insurance Court as well as that of the Regional Director, Employees" State Insurance Corporation, Sector 17, Chandigarh is set aside with liberty to the Regional Director to pass a reasoned speaking order after complying with the principles of natural justice in terms of Section 45-A of the Act within a period of three months from today.