

(2011) 01 MAD CK 0185

In the Madras High Court

Case No : Writ Petition No. 21622 of 2009 and M.P. No. 1 of 2009

Hallmark Industries

APPELLANT

Vs

Tahsildar, Tambaram and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Employees State Insurance (Central) Rules, 1950 — Rule 2(1C), 2(2A), 58(2)

Employees State Insurance Act, 1948 — Section 2(14), 38, 53

Workmens Compensation Act, 1923 — Section 2(23), 30

Citation : (2011) 01 MAD CK 0185

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Balan Haridas, for the Appellant; R. Murali, for R1 and R2, S. Jothivani, for R3 and V. Subburayan, for R4 and R5, for the Respondent

Judgement

K. Chandru, J.—Heard Mr. Balan Haridas, learned Counsel for the Petitioner, Mr. R. Murali, learned Government Advocate for the

Respondents 1 and 2, Mrs.S. Jothivani, learned Counsel for the 3rd Respondent and Mr. V. Subburayan, learned Counsel for the 4th and 5th

Respondents.

2. The Petitioner is an employer. They have filed the present Writ Petition seeking to challenge the order dated 29.9.2009 passed by the 1st

Respondent Tahsildar, Tambaram, Kancheepuram District. By the impugned order, the Tahsildar, Tambaram gave a distraint order against the

Petitioner Company for recovering a sum of Rs. 2,15,280/together with interest on account of their liability arising out of the order passed by the

Workmen's Compensation Commissioner. However, at the time when the Writ Petition was filed, the Petitioner did not challenge the order passed

by the 2nd Respondent Deputy Commissioner of Labor-cum-Workmen

Compensation made in W.C. No. 80 of 2001 dated 3.8.2004.

3. The Writ Petition was admitted on 23.10.2009. Pending the Writ Petition, this Court granted an interim stay. Prima facie this Court observed

that Section 53 of the ESI Act bars any proceedings by any insured person instituted under the Workmen's Compensation Act. Subsequently,

when the matter came up on 21.1.2011, this Court directed the original records to be produced relating to the workmen compensation case from

the office of the 2nd Respondent. It was brought to the notice of this Court that pursuant to the Rule Nisi ordered, records were received by this

Court.

4. Since the contention raised by the Petitioner was the original order of the W.C. No. 80 of 2001 was not furnished to him and that was the

reason why they did not challenge the said order in accordance with law, this Court went through the original file and found that the order that was

dispatched to the Petitioner company had come back undelivered with an endorsement "left". Therefore, this Court directed a copy of the original

order to be served on the learned Counsel for the Petitioner with liberty to amend the prayer in the Writ Petition. Accordingly, M.P. No. 1 of 2011

was filed by the Petitioner after notice to the parties. In the normal circumstances, an order passed by the Workmen's Compensation

Commissioner has to be challenged only u/s 30 of the Workmen's Compensation Act before this Court in a regular appeal. In the present case,

the objection raised by the Petitioner was that Section 53 of the ESI Act is a bar against receiving money or recovery of compensation or damages

under any other law including the Workmen's Compensation Act. In the light of the statutory bar, this Court permitted the amendment petition and

Accordingly, M.P. No. 1 of 2011 was ordered.

5. The short question that arises for consideration is if the 4th and 5th Respondents, who have made a claim on behalf of their son as an insured

person in terms of Section 2(14) of the ESI Act, then certainly bar u/s 53 will come into operation. It is the case of the Petitioner that this issue was

specifically raised when a Notice by the 2nd Respondent was issued to them by the Workmen's Compensation Commissioner in the case in W.C.

No. 80 of 2001.

6. In the counter statement filed in W.C. No. 80 of 2001, they had specifically

stated that the employee Gurumurthy was covered by the ESI Act and therefore on account of his death, no compensation can be claimed under the Workmen's Compensation Act and the jurisdiction of the authority under the Workmen's Compensation Act is barred.

7. The Petitioner also filed an one unnumbered interim application dated 23.6.2003 asking the 2nd Respondent to call for records from the ESI

Corporation relating to ESI Code No. 51-5788-18 pertaining to late R. Gurumurthy to verify the contentions raised by the Petitioner. The ESI

Corporation, which was also imploded as a 2nd Respondent filed a counter statement dated 27.4.2004. in the counter statement in page No. 2, it

was averred as follows:

It is true that the Respondent M/s. Hallmark Industries is covered under the provisions of the ESI Act, 1948 and that the deceased R. Gurumurthy

was also insured as per provision u/s 38 of the Act. The Declaration Form (Form No. 1) duly filled in by the deceased and filed by the

Respondent with countersignature for obtaining the Insurance Number of the employee - herein deceased- have details as under:

Insurance No.12621189 Unmarried.

Year of birth 1972

Date of appointment Date of signing

the form -10.5.1997

Address of employer M/s.Hall Mark

Industries

Plot No.A 30 MEPZ

Tambaram,

Chennai 600 045

8. Similarly, the unit was covered with effect from 1.9.1993 on 13.10.1993 having its address for communication as mentioned above.

9. From the above, it could be seen that the Respondent Factory was covered with effect from 1.9.1993 and the deceased employee's date of

appointment was 2.5.1997 at his age of 25. However, the alleged accidental death was not informed by the 1st Respondent M/s. Hall Mark

Industries at any point of time, not by any other. The imploded Respondent was

aware of the facts only when served the summons to witness
dated 16.3.2004.

10. When the 2nd Respondent had taken a specific stand that the deceased Gurumurthy was covered by the ESI Act, they have also stated that the employer, namely the Petitioner is also covered by the Act and having specific Code number at the relevant time of accident, it is not clear as to how the 2nd Respondent clutched on to a jurisdiction which he does not have under the Workmen's Compensation Act. The authority in the impugned order while dealing with the said objection brushed aside the same by stating that the Petitioner did not produce any document in the enquiry and the proof that the deceased employee covered under the ESI Scheme was not furnished. If the workman died during the course of employment and if he was covered by the provisions of the ESI Act, then they ought to have sent a report to ESI Authority and should have filed those documents, but they did not do so. When the legal notice was issued on behalf of the deceased workman, in reply, they should have mentioned the family's entitlement under the ESI Scheme. Such a reply was not sent. Since the person who deposed even disputed an FIR filed in respect of the death, then their statement that the deceased workman comes under the ESI Scheme cannot be believable. After getting over the statutory bar, in this fashion the authority proceeded to deal with the merits of the case and fixed the compensation at Rs. 2,15,280/-.

11. In the light of these facts, the question arose for consideration is whether the 2nd Respondent was right in brushing aside the counter statement sworn to by the ESI Corporation giving a code number also stating that at the relevant time, the deceased Gurumurthy was covered by the provisions of the ESI Act and that he was an insured person. When the statutory Corporation files a counter statement giving details about the coverage, it is surprising that the 2nd Respondent proceeded to adjudicate the matter especially when there was a legal bar to do so in the context of Section 53 of the ESI Act.

12. It is seen from the records that the Workmen's Compensation Commissioner was satisfied that the Petitioner company is covered by the ESI Act. The only doubt raised by him was whether the deceased Gurumurthy was an "insured person" in terms of Section 2(14) of the ESI Act.

Assuming that at the time of his death, the said Gurumurthy was not actually covered, but he was liable to be insured, then under law, the position

is that there is no distinction between an insured person and a person who is liable to be insured.

13. Section 2(14) of the ESI Act reads as follows:

insured person"" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by

reason thereof, entitled to any of the benefits provided by this Act.

14. The said term came to be considered by the Supreme Court vide its judgment in Bharagath Engineering Vs. R. Ranganayaki and Another, .

The Supreme Court held that the provision u/s 2(14) of the Act cannot be compared with a normal insurance scheme and it is definite and different

from the contract of the insurers. u/s 38 of the ESI Act it is statutory obligation on the employer to insure their employee. Being a statutory

obligation, the date of commencement has to be from the date of employment of the employee concerned. In that context, the Supreme Court after

referring to the earlier judgments of the Supreme Court in Employees" State Insurance Corpn. Vs. M/s. Harrison Malayalam Pvt. Ltd., as well as

Employees State Insurance Corporation Vs. M/s. Hotel Kalpaka International, , in paragraphs 10 and 12 had observed as follows:

10. The Scheme of the Act, the Rules and the Regulations clearly spell out that the insurance covered under the Act is distinct and different from

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

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

under Regulation 17A, if medical care is needed before the issuance of temporary identification certificate, the employer is required to issue a

certificate of employment so that the employee can avail the facilities available.

""Wage period"", ""benefit period"" and ""contribution period"" are

defined in Section 2(23) of the Act, Rule 2(1-C) and Rule 2(2-A) of the Rules. Rule 58(2)(b) is a very significant provision. For a person who

becomes an employee for the first time within the meaning of the Act, the contribution period under Regulation 4 commences from the date of such

employment from the contribution period current on that day and the

corresponding benefit period shall commence on the expiry of the period of nine months from the date of such employment. Incases where employment injuries result in death before the commencement of the first benefit period, Rule 58(2)(b)(ii) provides the method of computation of dependant's benefits. It provides for computation of dependant's benefits in the case of an employee dying as a result of employment injuries sustained before the first benefit period and before the expiry of the first wage period.

15. When considered in the background of statutory provisions, noted above, the payment or non-payment of contributions and action or no

action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an ""insured person"" as defined in

the Act. As the deceased employee has suffered an employment injury as defined u/s 2(8) of the Act and there is no dispute that he was in

employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High

Court was not justified in holding otherwise. We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be

extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons.

16. Therefore, if only the authority had looked into the provisions of the Act, certainly he would not have got over the legal bar through a superficial finding as noted above.

17. In the light of the clear legal position and also the stand taken by the Respondents in their counterstatement before the Workmen's

Compensation Commissioner, the impugned order deserves to be set aside. Accordingly theWrit Petition stands allowed and the order passed by

the 2nd Respondent in W.C. No. 80 of 2001 dated 3.8.2004 will stand set aside.

18. But, however the matter cannot end with this. The 3rd Respondent ESI Corporation was very much party to this proceedings as well as in the

proceedings before the Deputy Commissioner of Labor. They have also in their counterstatement dated 27.4.2004 sworn to by one Mr.P.V.

Santhakumar, Manager Gr.I, ESI Corporation, taken a definite stand that the deceased Gurumurthy was working in the Petitioner employer

concern at the relevant point of time and both the Petitioner as well as the deceased Gurumurthy were covered by the ESI Act. In view of this

finding, the Workmen Compensation Commissioner's order is set aside and the liability of the ESI Corporation will get restored.

19. In the result, a direction will also be issued to the 3rd Respondent ESI Corporation to process the claim made by the 4th and 5th Respondents

on account of the death of their son Gurumurthy and settle the legal liability in favor of them within a period of eight weeks from the date of receipt

of a copy of this order. No costs. The Miscellaneous Petition is closed.