

(1981) 04 MP CK 0021

In the Madhya Pradesh High Court

Case No : Civil Revision No. 162 of 1972

Indore Malwa United Mills Ltd.

APPELLANT

Vs

Employees' State Insurance Corp.

RESPONDENT

Date of Decision : 29-04-1981

Acts Referred:

Employees State Insurance (Amendment) Act, 1966 — Section 43
Employees State Insurance Act, 1948 — Section 66, 75(2), 75(3)
General Clauses Act, 1897 — Section 6, 6

Citation : (1982) ACJ 172 : (1981) JLJ 784

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.N. Shukla, J.—These revisions which raise a common question of law will be disposed of by this order.

2. Civil Revision No. 162 of 1972, arises out of Civil Suit No. 48 of 1970, instituted by the Employees' State Insurance Corporation (E.S.I. Corporation hereafter) for reimbursement of the amount of compensation paid by it to one Morulai employed as a Doffer Boy in the Indore Malwa United Mills Ltd., Indore. The worker had met with an accident in the course of his employment while on duty.

3. The employer, namely, the Indore Malwa United Mills Ltd. raised a preliminary objection to the effect that the suit was not maintainable nor the Civil Court had jurisdiction to try it because of the amendment of the E.S.I. Act by Act No. 44 of 1966, which came into force with effect from 17.6.1967.

4. The trial Court framed preliminary issues and after hearing counsel, overruled the objection raised by the employer and held that the civil Court had jurisdiction to try the suit.

5. Civil Revision No. 164 of 1972, arises out of similar order passed by the Civil

Court Civil Suit No. 765 of 1969, wherein the employer the Hukumchand Mills Ltd. had raised the question of jurisdiction which the civil Court overruled.

6. Civil Revision Nos. 125 of 1974 and 126 of 1974, have been filed by the E.S.I. Corporation. Both these revisions arise out of Civil Suit Nos. 200-B of 1972 and 199-B of 1972, respectively wherein claims for reimbursement for employment injuries, sustained by the employees of the Respondents were laid by the Corporation. In these suits the civil Court took a diametrically opposite view and held that it had no jurisdiction to entertain the suits and consequently plaints were directed to be returned for presentation to the proper Court. Appeals filed by the Corporation against these orders were dismissed by the Additional District Judge, Ujjain.

7. In all the four cases the common question which arose for consideration was whether in respect of employment injuries sustained before the amendment of the E.S.I. Act by Act No. 44 of 1966, which came into force on 17.6.1967, the Corporation was entitled to seek reimbursement of compensation and if so which was the competent forum for granting the necessary relief. The matter came before a Single Bench of this Court (Shukla, J.). In view of the importance of the question and divergence of judicial opinion, he referred the case to a larger Bench for deciding these revision petitions.

8. There is no dispute about the factual position. Injuries in all the four cases had been sustained by the employees during the course of their employment and the E.S.I. Corporation awarded compensation under the E.S.I. Act to the said employees. The suits were filed u/s 66 of the E.S.I. Act of 1948. The suits were filed after the Act was amended by Act No. 44 of 1966 but cause of action had arisen before the said amendment.

9. In *S.P. Nanawati and Anr. v. Employees' State Insurance Corporation, Jabalpur 1971 J.L.J. 800*, it was held by this Court that:

In view of Section 43 of the amending Act of 1966 the jurisdiction of the Tribunal was retained. Section 66 authorises the Corporation to reimburse itself from the employer in respect of the payment which it has to make on account of an employment injury. When the Corporation has a right to recover some amount from the employer because it has to make some payment with regard to the employment injury, then this right is related to the payment. Section 66 gives a right in respect of such payment which has to be made or which has been made by the Corporation and it cannot be said that this section is entirely unconnected with such payment.

When a repealed enactment gave a right in respect of which some proceeding is necessary, it is preserved even if process of quantification is necessary. There is a distinction between investigation in respect of existence of a right and investigation which is to decide whether the right should or should not be given. In the latter case the right is not preserved, but it is preserved in the former case.

10. This decision was followed subsequently by another Division Bench of this Court in M.P. No. 103 of 1973 decided on 3.5.1980 M.P. Electricity Board, Jabalpur and others Vs. Employees" State Insurance Corporation, Indore, . These decisions make it clear that notwithstanding the coming into force of the amending Act of 44 of 1966, the Corporation is entitled to lay a claim for reimbursement u/s 66 of the E.S.I. Act in respect of employment injuries sustained by an employee prior to amendment of the Act.

11. Section 43 of Act No. 44 may be reproduced:

Act not to apply to certain cases : No provision of this Act shall apply to and in relation to any payment which has been, or is being, or is required to be, made under the principal Act in respect of any employment injury sustained by an employee in any State or part thereof at any time before the date of the coming into operation of that provision and any such payment and any application, appeal or other proceeding for or relating to such payment pending before any authority immediately before such date shall continue to be governed by the provisions of the principal Act as they stood immediately before that date.

12. It is manifest from the language of Section 43 of the amending Act that the amendment will not apply in relation to any payment which "has been or is being, or is required to be made under the principal Act in respect of any employment injury sustained by an employee in any state or part thereof at any time before the date of the coming into operation of that provision".

13. Reference may also be made to Section 6 of the General Clauses Act, for considering the effect of a repeal of an Act. Section 6(e) makes it clear that unless a different intention appears, the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty forfeiture or punishment may be imposed "as if the repealing Act or Regulation had not been passed".

14. Thus in view of Section 43 of amending Act No. 44 of 1966 and Section 6(e) of the General Clauses Act, E.S.I. Corporation was entitled to lay a claim for reimbursement u/s 66 of the E.S.I. Act, as it stood on the statute book prior to its omission by the Amending Act. This legal position is well settled by the two Division Bench decisions of this Court.

15. Learned counsel for the Defendants-employers, however, invited our attention to an unreported decision of a learned single Judge of this Court in E.S.I. Corporation v. Vinod Mills Co. Ltd. and Ors. S.A. No. 125/74; decided on 3.12.1977. On the basis of this judgment, it was argued that even though the right of the E.S.I. Corporation u/s 66 of the unamended Act was preserved, the forum before which the claim could be laid, namely, the E.S.I. Court was divested of this jurisdiction after the coming into force of Act No. 44 of 1966, Civil Court, it was contended, had no jurisdiction to decide or deal with any such question in

view of the bar contained u/s 75(3) of the E.S.I. Act.

16. We have already considered the effect of Section 43 of Act No. 44 of 1966, i.e., the amending Act and of Section 6 of the General Clauses Act, which deal with such a situation. The clear language of these two provisions leaves no room for doubt that in respect of claims which had arisen before the coming into force of Act No. 44 of 1966, the proceedings could be instituted and disposed of as if the amending Act had not come into force. This being the legal positron, Section 66 of the E.S.I. Act, which entitled the E.S.I. Corporation to claim reimbursement remained unaffected and by the same logic Section 75(2)(c) of the unamended Act also remained in force. Section 75(2)(c) as it stood before the coming into force of Act No. 44 of 1966, empowered the E.S.I. Court to decide claims u/s 66 of the Act made by the Corporation against the employer. We, therefore, hold that the E.S.I. Court had the requisite jurisdiction to decide the claims made by the E.S.I. Corporation for reimbursement u/s 66 of the E.S.I. Act, 1948, as it stood before the coming into force of the amending Act No. 44 of 1966.

17. Accordingly, Civil Revision Nos. 162 of 1972 and 164 of 1972, filed by the employers life partly allowed and it is held that the E.S.I. Corporation could claim reimbursement u/s 66 of the E.S.I. Act, as it stood before its repeal by Act No. 44 of 1966, but the civil Court had no jurisdiction to decide the suits. The E.S.I. Corporation is, therefore directed to present the plaints, before the appropriate Court.

18. Civil Revision Nos. 125 of 1974 and 126 of 1974, filed by the E.S.I. Corporation are dismissed and the orders of the learned Additional District Judge directing return of the plaints for presentation to the proper Court are upheld.

19. There will be no order as to costs.