

(2011) 07 KAR CK 0164
In the Karnataka High Court
Case No : M.F.A.No.9415 of 2010 (ESI)

M/S. Ballal Motor Service

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Employees State Insurance Act, 1948 — Section 75

Citation : (2011) 07 KAR CK 0164

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : K. Anandarama, for the Appellant; M/S. M.P. Associates, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice A.N. Venugopala Gowda

1. Appellant is a covered establishment. Respondents issued a show cause notice to the appellant on 15.09/10.1987 proposing; to determine Rs. 44.820/- as the contribution on "omitted wages", that is for the period 31.01.1986 to 31.03.1987. The appellant submitted a reply dated 07.11.1987, wherein it denied any liability to pay the contribution as demanded. A further representation was submitted by the appellant to the respondent on 07.04.1988. The respondent-Corporation passed an order dated 13/19.04.1988, determining that the appellant is liable to pay Rs.44.820/- towards the contribution on omitted wages". Being aggrieved, the appellant filed an application u/s 75 of the ESI Act, 1948, which was registered as application No. 7/1988. After enquiry the application was allowed and the matter was remitted to the respondent-Corporation which was questioned in M.F.A.No.26S2/2003 by the ESI Corporation. The appeal was allowed and the impugned order was set aside and the ESI Court was directed to reconsider the case on all aspects. The application was re-numbered as 35/1994. After the remand, no further evidence was adduced. Parties have addressed the arguments. The ESI Court has passed an

order dated 18.01.2010, whereby, it allowed the application in part only to the extent of compensation paid to the legal heirs of the deceased employees. The application filed against other claims made by the respondent-Corporation was rejected. The corporation was set at liberty to recover the contribution from the applicant as demanded in Ex.A.2. excluding the compensation paid to the legal heirs of the deceased employees to the tune of Rs.4,704/-. Aggrieved, the applicant has filed this appeal.

2. Sri. K. Anandarama, learned counsel appearing for the appellant contended that, the ESI Court has erred in rejecting the application in part. According to the learned counsel, there is wrong casting of burden on proof and the findings recorded are without any evidentiary support and hence is perverse. Learned counsel submits that the impugned order is unsustainable.

3. Smt. Geetha Devi. M.P., learned counsel appearing for the respondent, on the other hand submitted that, the ESI Court having considered the case of both the parties was justified in passing the impugned order. Learned counsel attempted to support the findings and conclusion recorded by the ESI Court in the impugned order.

4. I have perused the record.

5. The question for determination is:

Whether the findings recorded by the ESI Court in the impugned order is perverse.

6. Indisputably, after M.F.A. 2662/2003 was allowed and the matter was remitted to the ESI Court, both the parties have not adduced any evidence. The ESI Court, without referring to either oral or documentary evidence, has passed the impugned order. In para 13 of the impugned order, it has recorded a finding that, "in the annual returns submitted to the department of the Government, common account pertaining to Ballal Motor Services and Ballal Motor Works is being maintained and submitted to the departments". No such record has been placed on record of ESI Court by the respondent-Corporation. The appellant/establishment has not admitted the maintenance of common account pertaining to Ballal Motor Services and Ballal Motor Works. The ESI Court apparently has recorded a finding without evidentiary support and the finding is perverse. In para 14 of the impugned order, ESI Court has recorded a finding that, there is an admission with regard to security guards being appointed in the establishment of the applicant by paying wages. Neither in the pleadings nor in the evidence, any such admission appears. Thus, the perverse approach to the matter is apparent.

7. In the circumstances, the impugned order cannot be sustained. The matter requires reconsideration by the ESI Court.

In the result, the appeal is allowed and the impugned order is set aside. ESI Court, Mangalore, to reconsider the ESI Application No. 35/1994 in accordance with law and decide the same expeditiously and at any event, within six months

from the date of first appearance of the parties.

The parties are directed to appear before the ESI Court on 06.08.2011 and receive further orders.

Contentions of both the parties are kept open for consideration.

It is open to the parties to adduce further evidence, in case they desire to place any additional evidence.

No costs. LCR be returned to the ESI Court forthwith without any delay.