

(1998) 12 MAD CK 0100
In the Madras High Court
Case No : C.M.A. No. 420 of 1991

Pandy V.

APPELLANT

Vs

Deputy Commissioner of Labour and Another

RESPONDENT

Date of Decision : 17-12-1998

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9)

Citation : (2000) 3 LLJ 58

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Judgement

K. Gnanaprakasam, J.—This is an appeal directed against the order, dated February 2, 1990, passed by the Commissioner, Workmen's Compensation in W.C.No 112 of 1988.

2. The appellant was employed under the respondent. That on December 15, 1984, the appellant sustained injuries in the course of and during the employment under the respondent. The second respondent, establishment was covered under the E.S.I. Act. But, the appellant was not covered as he was drawing Rs. 1,000 at that time and, therefore, the benefits under E.S.I. Act were not available to him. The appellant wrote a letter to the respondent, E.S.I. Corporation on March 20, 1985 apprising of this said fact and requested them to make necessary arrangements to get sickness benefit and disablement benefit and he did not receive any reply. As the accident occurred on December 15, 1984 and on that day, the appellant was not eligible to any of the benefits under the E.S.I. Act, he, preferred his claim before the Commissioner, Workmen's Compensation at Madurai. The respondent resisted the said claim only on the ground that the appellant was entitled to the benefits under the Employees' State Insurance Act and not under Workmen's Compensation Act. The other aspects of the case were not in dispute.

3. The Commissioner, Workmen's Compensation has taken into consideration, the materials placed before it and came to the conclusion that the appellant is

not entitled to maintain his action under the Workmen's Compensation Act. Aggrieved by the same, the appellant has filed this appeal.

4. The appellant sustained employment injury and he was given treatment in the private hospital on December 15, 1984 are not in dispute. As the appellant was not entitled to the benefits under the E.S.I. Act, he was permitted to take treatment in the private hospital. Otherwise, he would have been given treatment or forced to take treatment in the E.S.I, hospital. While the appellant was taking treatment, the salary limit of Rs. 1,000 has been enhanced to Rs. 1,600 to get the E.S.I, benefit, on and from January 26, 1985 and, therefore, the appellant became entitled to get the benefits under the E.S.I. Act and he was given treatment in the E.S.I, hospital. That only in the said circumstances, the respondent also resisted the claim of the appellant before the Commissioner, Workmen s Compensation and the Commissioner Workmen's Compensation also came to the conclusion that the appellant falls within the definition of "employee" as defined u/s 2(9) of the E.S.I. Act and thereby, came to the conclusion that the appellant was not entitled to maintain the petition before the workmen compensation.

5. The learned advocate for the appellant has submitted that the appellant has sustained injury on December 15, 1984 and on that day, the appellant was not entitled to the benefits of the E.S.I. Act and, therefore he is entitled to invoke the provisions of the W.C. Act and hence, the petition filed before the Commissioner, Workmen's Compensation's Act is maintainable. Both the Workmen's Compensation Act and the Employees' State Insurance Act, are benevolent legislation. The employee under both the Acts are entitled to get medical benefit and also compensation for the disablement. Since the appellant sustained injuries on December 15, 1984 and on that day, the E.S.I. Act was not applicable to him, the appellant has chosen the forum of the Commissioner, Workmen's Compensation to get compensation. Though the appellant was taking treatment in the E.S.I, hospital on and from January 26, 1985, he has not claimed any compensation under the E.S.I. Act. He was made to take treatment in the E.S.I, hospital consequent to the eligibility acquired on and from January 26, 1985 The Commissioner, Workmen's Compensation took this aspect alone and came to the conclusion that the appellant comes within the definition of "employee" under the E.S.I. Act and, therefore, he cannot invoke the provisions of Workmen's Compensation Act to claim compensation. The question is, before which forum the appellant has to claim compensation that has got to be answered.

6. The fact that the appellant sustained injury on December 15, 1984, on which date, he was not eligible to the benefits of the E. S.I. Act, is not in dispute. Therefore, the primary or initial cause of action arose on December 15, 1984 or we may even call as a part of cause of action arose on December 15, 1984. As the primary or a part of cause of action arose on December 15, 1984, it is for the appellant to choose either of the fora to claim compensation. The appellant has chosen to claim compensation under the Workmen's Compensation Act and in

the given circumstances, it cannot be said that the petition filed by the appellant before the Workmen's Compensation Act is not sustainable. In the said view of the matter, I feel, that the order passed by the Commissioner, Workmen's Compensation is not correct and the same is liable to be set aside and the same is hereby set aside.

7. Since the matter relates to the year of 1984 and the matter should be sent back to the Commissioner, Workmen's Compensation, the Commissioner is also directed to dispose of the matter within three months from the date of receipt of the copy of this order and entire case papers.

8. In the result, the C.M.A. is allowed and the matter is remanded back to the Commissioner, Workmen's Compensation to decide the matter on merits by holding that the appellant is entitled to maintain his action under the Workmen's Compensation Act.