
(1975) 07 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil First Appeal No. 137 of 1973

Rajasthan State Electricity Board

APPELLANT

Vs

Employees' State Insurance Corp. and Others

RESPONDENT

Date of Decision : 04-07-1975

Acts Referred:

Employees Compensation Act, 1923 — Section 12
Employees State Insurance Act, 1948 — Section 66

Citation : (1975) WLN 261

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Judgement

V.P. Tyagi, J.—This appeal of the Rajasthan State Electricity Board raises a small question of law whether the Employees' State Insurance Corporation (hereinafter referred to as the Corporation) is entitled to recover the entire amount of compensation which the Corporation is paying in monthly instalments to the wife of Shri K.H. Muniswami who was an employee of the appellant at the time when the fatal accident took place while Shri Muniswami was working on the electricity line in the course of his employment with the appellant.

2. Shri K.H. Muniswami was a holder of insurance policy No. 15 312588 under the Employees State Insurance Scheme. Shri Muniswami was in the employment of the Rajasthan State Electricity Board and on the day when he met with a fatal accident, that is on 6-11-66 he was working on the 33 K.V. Line Jumper of R.A.P.P. to change the phase sequence. While discharging his duties under his employment he met with the accident resulting in his instantaneous death. Thereafter Muniswami's wife Smt. Dhanalakshmi claimed compensation from the respondent. The Corporation fixed the compensation at Rs. 10,080/- and it is being paid to the widow of Muniswami Smt. Dhanalakshmi on a monthly instalment basis. According to the statement filed before this Court on 2nd July, 1975, the Corporation has paid up till now Rs. 2,140/60 paise. The Corporation claimed the entire amount of compensation from the Rajasthan State Electricity Board under the provisions of Section 66 of the Employees' State Insurance Act,

1948 (here in after called the Act). A suit was filed in the court of the District Judge by the Corporation against the Board which was decreed and it is against this decree that the present appeal has been preferred by it.

3. The only argument raised by Mr. Gupta, appearing on behalf of the Board is that at the time when the suit was instituted, Section 66 of the Act was deleted and, therefore, no liability could be fastened on the Board for the payment of compensation money to the Corporation under repealed provision of the law.

4. It is admitted by learned counsel for the parties that at the time when the accident had taken place and the workman died on account of that accident, Section 66 of the Act was very much in vogue. This section deals with the Corporation's right to recover damages from the employer. It is not disputed that under the provisions of Section 66 of the Act the Corporation could have realized the amount of damages from the Rajasthan State Electricity Board if this provision had not been repealed when the Corporation went to the court of law to seek relief in these proceedings. It is, therefore, urged by Mr. Gupta that the cause of action for reimbursement in this case accrued to the Corporation when the claim of the widow of the appellant's employee was determined on 23rd of December, 1967, the damages became payable to the employee's wife only when they were determined & at the time of the determination of the damages, Section 66 was not in vogue as it had been repealed on 17th June, 1967. Learned Counsel for the Corporation, on the other hand, argues that the liability to pay the damages by the employer to the Corporation is a statutory one and the employer becomes liable to reimburse to the Corporation the damages paid by it, and that liability starts on the day when the accident had taken place as it is the law that fixes the liability and not the determination of the quantum of damages by the Corporation.

5. In order to resolve this controversy, it would be relevant to look into the provisions of Section 66 of the Act. Section 66 reads as follows:

66(1) Where any employment injury is sustained by an insured person as an employee under this Act by reason of the negligence of the employer to observe any of the safety rules laid down by or under any enactment applicable to a factory or establishment or by reason of any wrongful act of the employer or his agent, the Corporation shall notwithstanding the fact that the employer has paid the weekly contributions due under this Act in respect of such insured person be entitled to be reimbursed by the employer or the principal who is liable to pay compensation u/s 12 of the Workmen's Compensation Act, 1923 (VIII of 1923), the actuarial present value of the periodical payments which the Corporation is liable to make under this Act.

6. The language of this section clearly indicates that the liability to reimburse the Corporation equal to the amount of damages periodically paid by the Corporation to the insured person starts on the very day when the injury is sustained by an injured person as an employee under the Act, notwithstanding the fact that the

damages to be paid to such a person be determined after some date and paid to him periodically in accordance with the scheme of the Act. In this case the accident took place on 6.11.1966 and the death of the employee occurred on that very day. Under the scheme of the Act, the liability of the Corporation to pay periodically the amount of damages to be determined by it starts and, therefore, the corresponding liability of the employer to reimburse the Corporation also starts from that very day. In my opinion if the damages were fixed by the Corporation at some later day when Section 66 of the Act had been deleted from the statute book, it is not open for the appellant to say that the liability which had started on the day of the accident ceased to exist because later on the section was deleted. In this view, the Rajasthan State Electricity Board is liable to reimburse the periodical payments made by the Corporation to the dependent of the employee of the Board under the scheme of the Act.

7. The next question that arises for determination is whether the amount of damages decreed can be realised by the Corporation from the Board in a lump sum. The scheme of Section 66 provides the reimbursement by the employer the actuarial present value of the periodical payments which the Corporation is liable to make under this Act. The answer to this question depends upon the interpretation that can be put on the term "reimbursement" as used by the Legislature in this section. The dictionary meaning of the word "reimburse" is to repay; to pay an equivalent to for loss or expense." This meaning presupposes that the person who is to be reimbursed must have made payment and it is only thereafter that he is to be recompensed by the person on whom the responsibility to reimburse lies. Mr. Gupta is right in his submission that the Corporation can demand the reimbursement of the actuarial value of the periodical payments from the Board only after the payment has been made by it. In the present case, it is not denied by Mr. Gupta that the Corporation has paid till now a sum of Rs. 2140,60 and that the Corporation is paying to the widow of the employee on the monthly basis. In view of the aforesaid discussion, the Board is immediately liable to pay to the Corporation a sum of Rs. 2140.60 which the Corporation has already paid to the employee's widow. In future Mr. Gupta has no objection to make payment to the Corporation as and when the Corporation certifies to the Board that a particular amount has been paid to the widow of the employee.

8. The appeal of the Rajasthan State Electricity Board is, therefore, partly allowed and it is directed that the appellant shall pay immediately to the respondent Corporation sum of Rs. 2140. 60 and shall in future be paying every six months the amount which the Corporation pays to the widow and certified by the Corporation as having been paid to the employee's widow.

9. An amount of Rs. 10,080/- has been deposited by the Board in the court below. That amount can be withdrawn by the Board after deducting Rs. 2140.60 with an additional amount of payment made by the Corporation upto-date for which a certificate shall be issued on the Corporation before the court below

within one month.

10. No order as to costs.