

(2000) 09 MAD CK 0048
In the Madras High Court
Case No : A.A.O. No. 571 of 1994

Regional Director, Employees' State Insurance Corporation
Vs
M. Ganesan

APPELLANT

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Employees State Insurance (Central) Rules, 1950 — Rule 57(2)
Employees State Insurance (General) Regulations, 1950 — Regulation 4
Employees State Insurance Act, 1948 — Section 2(9), 46

Citation : (2001) 1 LLJ 1662 : (2003) 2 LW 509 : (2001) 2 LW 161

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant; K.M. Ramesh, for the Respondent

Final Decision : Dismissed

Judgement

Sivasubramaniam, J.—This appeal is directed against the judgment of the Employees' State Insurance Court (City Civil Court), Madras, in EIOP No. 84 of 1989. The Employees' State Insurance Corporation is the appellant before this Court.

2. EIOP No. 84 of 1989 was filed by the respondent herein, an employee, u/s 75 of the Employees' State Insurance Act (hereinafter called the Act). According to him he was employed from April 14, 1969, as a worker in the factory of Nojes Woodhead and Sons (India) Ltd., which was covered by the provisions of the Act. He was an employee within the meaning of Section 2(9) of the Act and his wages did not exceed Rs. 1,600 per month till January 1988. He met with an accident in the course of his employment on September 21, 1988, which resulted in the crushing of his right hand index finger resulting in the loss of two phalanges on the right hand index finger. Contribution was paid in respect of the petitioner in the EIOP till March 31, 1988 and the said petitioner having sustained an accident during the said period, he was entitled to claim benefits under the Act.

3. In this context, the claimant relied on Section 4 of the General Regulations,

1950, framed under the Act. However, by letter, dated October 3, 1988, wrote to the employer that during the date of the accident, the petitioner was not an employee and hence in the accident report, necessary endorsement should have been made indicating that the claimant was not an employee. The claimant would further rely on the judgment of this Court in *Tirupur Textiles (Private), Ltd. v. Employees' State Insurance Corporation* 1988 (1) LLN 688 in support of his contention that he would be entitled to the benefits, of the Act.

4. In the counter-filed by the Corporation, it was contended that the employment injury was sustained on September 21, 1988. As provided u/s 2(9) of the Act he should have been employed for wages not exceeding Rs. 1,600 per month. When he met with an accident, in September 1988, the wages of the petitioner have exceeded Rs. 1,600 and therefore, he was not an employee within the meaning of Section 2(9) of the Act. It was further contended that the payments on account of sickness benefit and temporary disablement benefit were governed by the Act and Regulations. Since the petitioner had crossed the wages of Rs. 1,600 from the very beginning of the first wage period, he was not entitled to the benefit having regard to the date of accident.

5. The Employees' State Insurance Court on consideration of the mutual contentions held that the disablement was the result of the claimant having sustained employment injury. The Employees' State Insurance Court applied Regulation 4 of the General Regulations and held that since the contribution and held that since the contribution period was from October 1, 1987 to March 31, 1988 and the corresponding benefit period was July 1, 1988 to December 31, 1988, the claimant was entitled to the benefits of the Act.

6. Sri G. Desappan, learned counsel for the Corporation, contends that EI Court had not properly interpreted the provisions of the Act and that on a proper reading of the provisions, it would be clear that it was never intended to extend the benefit to persons who had ceased to be eligible to the benefits of the Act. In particular, learned counsel refers to Section 46 of the Act which deals with the benefits available under the Act and that Section 46(c) in particular, emphasises that periodical payments be made to the insured person suffering from disablement as a result of "an employment injury sustained as an employee under this Act." Therefore a person who had ceased to be governed by the provisions of the Act cannot claim the benefits when admittedly the injury was sustained by him only when he had ceased to be governed by the Act. He would also refer to the similar expression in Rule 57 of the Employees' State Insurance (Central) Rules, 1950, dealing with disablement benefits. Rule 57(2) also lays down the very same requirement namely "disablement sustained as an employee under the Act." Therefore, according to learned counsel the expression "corresponding benefit period" should be understood and interpreted in the context of the main provisions of the Act and the regulations cannot ever-reach the statutory provisions. He would fairly concede that the decision of this Court in *Tirupur Textiles (Pvt.) Ltd. v. E.S.I. Corporation* (supra), held the view against

the Corporation. But he would further contend that the said interpretation was not consistent with the statutory provisions and the learned Judge did not consider the expressions contained in Section 46(c) of the Act and Rule 57(2). .

7. Learned counsel for the respondent however, seeks to sustain the interpretation as made in the above decision and contends that the objects of the Act was to benefit the employees and interpretation of Regulation 4 should be construed in favour of the employee. He would also submit that the respondent/employee had in fact chosen to file a petition before the Commissioner for workmen compensation. But the employer had taken the stand that the provisions of the Workmen's Compensation Act will not apply to the claimant. Therefore, the employee was being driven from pillar to post and in the event of this Court holding that the provisions of the El Court will not apply, this Court may direct the Commissioner for workmen compensation to deal with the claim petition under the Workmen's Compensation Act.

8. I have considered the mutual submissions. It will be useful to extract Regulation 4 of the General Regulations, 1950, herein after called "the Regulations."

"Contribution and benefit period. - (1) Contribution periods and the corresponding benefit periods shall be as under:

Contribution Period Corresponding benefit period

April 1 to September 30 January 1 of the year following, to June 30.

October 1 to March 31 of the year following July 1 to December 31

Provided that in the case of a person who becomes an employee within the meaning of the Act for the first time, the first contribution period shall commence from the date of each employment in the contribution period current on that:

"day and the corresponding benefit period from him shall commence on the expiry of the period of 9 months from the date of such employment."

9. There is no definition in the Act as regards expression "contribution periods" or "Benefit period", Section 2(23) of the Act defines the expression "wage period" as the period in respect of which wages are ordinarily payable. Section 39(4) of the Act dealing with contributions stipulates that contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. It is true that the above provisions implies that the contribution is a subsequent event from the past period of duty. But the Legislature was equally alive to the plight of the employees who by implication ceased to be an employee within the meaning of the Act, though in fact they continued to be employees under the establishment. This is due to the situation that an employee reaches a higher scale of pay above the maximum limit provided under the Act and thereby becomes disentitled to the benefits of the Act. The benefits of the Act are intended to the employees in the lower strata of the establishment. But the

transition period when the employee would cease to be governed by the provisions of the Act is bound to cause certain difficulties to the employees in being suddenly deprived of the benefits of the Act and hence the Legislature in its wisdom has added a proviso to Section 2(9), which mandate, that the expression "employee" will not include any person whose wages exceed the prescribed limit. The proviso states that the employee whose wages would exceed the prescribed limit at any time after the beginning of the contribution period, he shall continue to be an employee until the end of the contribution period. In other words, a fiction is created whereby an individual who ceased to be an employee within the meaning of the Act is deemed to be an employee for an extended period.

10. Therefore, the submission of learned counsel for the Corporation that the benefit conferred under the Act cannot be with reference to any person who does not satisfy the definition "employee", on the basis of his reference to Section 46(c) and Rule 57(2) of the Central Rules, can be accepted only with certain limitations. The Legislature has certainly intended to confer certain benefits to the employees during the transitional period when they cross over the stage of coverage of the Act to the stage of being placed outside the scope of the Act, as a result of the increase in the wages.

11. It is in this background, Regulation 4 has to be viewed. The regulations are framed under the rule-making power as contained in Section 97 of the Act.

12. Rule 2(1C) of the Central Rules, 1950, defines "benefit period" as a period not exceeding six consecutive months corresponding to the contribution period as may be specified in the regulations. The expression "contribution period" is defined u/s 2(2A) as the period not exceeding six consecutive months as may be specified in the regulations.

13. It is in this context, Regulation 4 has been framed as extracted above. The proviso to Regulation 4 clearly indicates that the contribution period shall commence from the date of employment and the corresponding benefit period shall commence on the expiry of the period of 9 months from the date of such employment. Therefore, on a plain reading of Regulation 4 along with its proviso, would indicate that there can be no doubt over the outcome namely, while the contribution period is anterior, the benefit period relates to the subsequent period. It is not pleaded before me that there is any inconsistency between the provisions of the Act on the one hand and the Rules and Regulations on the other hand. The Rules and Regulations are issued under Sections 95 and 97 of the Act respectively. When the power to issue Rules and Regulations touching the matter in respect of which they are required or permitted, under the Act and when such Rules and Regulations have been validly formulated and published, there is no reason why Regulation 4 should not be given its full effect. The validity of Regulation 4 is not called in question. Therefore, on a bare reading of Regulation 4, it is clear and that notwithstanding the termination of the contribution period, the provisions of the Act continue to be enforceable till the end of the benefit

period.

14. The reason for such extended period of benefits is not difficult to be seen. The Employees' State Insurance Act is a piece of beneficial legislation which is intended to serve the interest of the employees belonging to the lower strata. When such a worker passes from that stage to the next higher stage, thus resulting in the provisions of the Act becoming not applicable to him, some relief should be granted to him under the Act for a limited period as a transitional measure. As already stated this approach finds support even in the context of the definition "employee" as envisaged under the proviso to Section 2(9) of the Act.

15. It is also useful to bear in mind that in the present case, even though the employee had crossed the stage of his salary exceeding Rs. 1000 per month, even in the month of January 1988, contribution was paid till March 1988. Therefore, the idea of the benefit period being available till the end of December 1988, consistent with the policy envisaged under the Act, Rules and Regulations.

16. Therefore, I do not find any reason to differ from the views expressed by P.K. SETHURAMAN, J. in *Tirupur Textiles (Pvt.) Ltd. v. E. S. I. Corporation* (supra), though I have given different reasons for sustaining the same view.

17. It is however, made clear that the advantage of extended period of benefit would be available only in the case of employees who continued to be in service in the establishment who had ceased to be an employee within the meaning of the Act only due to the reason of receiving more wages than the prescribed limit. The benefit of Regulation 4 will not be available to a person who retires or ceases to be an employee of the establishment for any other reason.

18. In the result, there are no merits in the above appeal and the same is dismissed. No costs.