
(2013) 11 CHH CK 0014
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 35 of 2001

Regional Director, Employees State Insurance Corporation	APPELLANT
Vs	
M/s. Bhilal Structurals and Another	RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 1 CGLJ 553 : (2014) LabIC 1227

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—This appeal has been preferred by appellant-Regional Director Employees State Insurance Corporation u/s 82(2) of the Employees State Insurance Act, 1948 (hereinafter referred to as "The E.S.I. Act, 1948") challenging the order elated 26.8.2000 passed by State Employees" Insurance Court, Durg in Case No. 8/E.S.I./91 by which the application filed by the respondent No. 1 has been allowed holding that the number of employees are only six to seven in number and the notice has not been issued by the authorized officer under the Act, therefore, provisions of E.S.I. Act, 1948 would not be applicable as on 16.9.1989 to the Establishment of respondent No. 1. Shri Azad Siddiqui, learned counsel appearing for the appellant would submit that as on 16.9.1989, 32 to 35 employees were working in the Bhilai Structural Industrial Estate, Bhilai and, therefore, the appeal involves substantial question of law as the court below has committed illegality in allowing the respondent's No. 1 application holding that the number of employees are only 6 to 7 in number and the notice has not been issued by the authorized officer under the Act, therefore, the order of State Employees" Insurance Court deserves to be set aside.

2. I have heard learned counsel for the appellant and perused the impugned order.

3. A bare perusal of the impugned order would show that no evidence has been

led by the appellant herein before the said court to prove the fact that 32 to 35 employees were working in the establishment of respondent No. 1 as on 16.09.1989, therefore, the provisions of E.S.I. Act, 1948 would be applicable.

4. Section 82 of the Employees' State Insurance Act, 1948 reads as under:--

52 Anceal.--(1).....

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

5. Thus, the appeal shall lie to this Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

6. Now, the question for determination before the this Court is whether substantial question of law is involved in this appeal or not. Employees' Insurance Court recorded a categorical finding that number of employees, who were working on 16.9.1989 was only six to seven in number and appellant/ Employees State Insurance Corporation has not led any evidence on the issue of number of employees working with the establishment of respondent No. 1 as on 16.09.1989. Therefore, the finding recorded by the Employees Insurance Court with regard to number of employees and thereby holding that E.S.I., Act 1948 would not be applicable is finding of fact based on appreciation of evidence available on record.

7. Now this takes me to the next question as to whether finding of fact as recorded is a substantial question of law within the meaning of Section 82(2) of the Employees State Insurance Act, 1948.

8. The High Court of Madhya Pradesh in case of Employees' State Insurance Corporation, Indore Vs. Shantilal Nemichand Jain, has held that finding of fact is not a substantial question of law within the meaning of Section 82(2) of the Employees State Insurance Act, 1948 and held as under:--

6. Placing reliance on Alkali Metals (P.) Ltd. Vs. E.S.I. Corpn. 1976 Lab IC 186 and P.D. Vidwarka and another Vs. Regional Director, E.S.I. Corpn 1977 Lab IC (NOC) 115, the learned counsel contends that in view of the fact that the Table referred to above has not been followed by the Insurance Court and this appeal raised an arguable point and, therefore, deserves to be admitted. There can be no quarrel with the citations submitted by the learned counsel. Construction of a statutory provision of law is no doubt a question of law, but in order to attract a particular provision it is necessary that there should be some factual material on record and on this aspect of the matter the present appeal is miserably lacking in some such facts which would attract either the Table, which the learned counsel has very emphatically laced reliance on or Regulation No. 51 of the Regulations. Section 82 of the Act is in pari materia with Section 100 of the CPC and even if the finding of the Insurance Company be an erroneous finding arrived at on facts based on misappreciation of evidence, in could not be said that any substantial question of law is involved in this appeal. The actual position in this case is not of

law is involved in this appeal. The actual position in this case is not of any erroneous finding or erroneous appreciation or misappreciation of evidence. The Insurance Court on a consideration of the evidence on record arrived at a finding that the respondent-claimant is entitled to an amount of Rs. 1,665/- as benefit from the corporation. This finding itself being based on appreciation of evidence, cannot be legally challenged u/s 82(2) of the Act. The finding of fact and the order of the Court does not involve any question of law, not to speak of a substantial question of law, as required u/s 82(2) of the Act, in order to make an appeal competent. As such, an appeal against such order of the Insurance Court is not maintainable.

9. Further, the High Court of Madhya Pradesh in case of Employees' State Insurance Corporation, Indore Vs. Baboolal and another, has held as under:

8. Having gone through the evidence also, I see no error in the conclusions arrived at by the learned Court below. Admittedly, this is an appeal u/s 82 of the Employees' State Insurance Act, 1948. Section 82 reads:--

82. Appeal.--(1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this section shall be sixty days.

(4) The provisions of Sections 5 and 12 of the Indian Limitation Act, 1908 (XL of 1908) shall apply to appeals under this section.

Sub-clause (2) of this section clearly provides that an appeal shall lie to this Court only if it involves a substantial question of law. It is, therefore, clear that while hearing an appeal u/s 82, it is not possible for this Court to interfere with the findings of fact arrived at by the Court below, only on appreciation of evidence and, therefore, the first contention advanced by the learned counsel for the appellant could not be accepted.

10. In view of above settled legal position, the finding recorded by the State Employee's Insurance Court with regard to applicability of E.S.I. Act, 1948 is finding of fact based on evidence available on record and appeal does not involve any substantial question of law for determination and as such appeal deserves to be dismissed. For the foregoing, the appeal fails and is accordingly dismissed as not maintainable. No order as to costs.