

(2008) 01 MAD CK 0140
In the Madras High Court
Case No : C.M.A. No. 700 of 2000

Regional Director, E.S.I. Corporation

APPELLANT

Vs

Madhavi Enterprises

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 45A, 75(2B)

Citation : (2009) 120 FLR 997 : (2008) 2 LLJ 349

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—The Civil Miscellaneous Appeal is filed against the order of the learned Principal Judge, City Civil Court,

Chennai (The Employees' State Insurance Judge, Chennai) dated 19.3.1997 made in E.S.I.O.P. No. 55/89. This appeal came up for hearing and

this Court admitted the appeal on 09.06.2000 and formulated the following substantial questions of law:

(i) Whether the order of the lower court is not liable to be set aside on the short ground that issues as framed are not legally correct?

(2) Whether the finding of the lower court that there was cause of action for C.18 to question the same in ESI Court can be sustained in law?

(3) Whether the finding of the lower court as regards the contribution payable in respect of stitching charges, ironing charges and conveyance

charges can be sustained in law?

2. Background facts in a nutshell are as follows:

The respondent-factory has been engaged in the business of manufacturing garments for export. The respondent-factory is covered under the ESI

Act. The respondent has been complying with the provisions of the Act. The appellant issued C-18 notice dated 7.3.1989 for Rs. 20,909.35

towards contribution for the period from November 1987 to August 1988 relating to salaries and wages account, ironing charges, labour charges

and conveyance account. Due to unavoidable circumstances, the respondent had not sent reply to the said notice. Therefore the appellant passed

an order u/s 45A of the Act against the respondent for Rs. 20,909.35 towards contribution for the period November 1987 to August 1988 with

interest and also directed the respondent to pay the amount within 15 days. The appellant also issued another C-18 notice on 25.8.1988 for Rs.

24,137.10 in respect of seven items, viz. 1) Machinery Maintenance Account 2) Freight and Cooly Account 3) Salary, wages 4) Ironing charges

5) Labour charges 6) Labour charges & 7) Conveyance Account. Aggrieved by the order, the respondent filed a petition u/s 75(2B) of the ESI

Act before the City Civil Court at Madras. On pleadings, the Lower Court framed the following issues:

a) Whether the 45-A order dt. 24.5.89 and notice in Form C-18 dt. 25.5.89 for Rs. 20909.35 towards contribution for the period from 11/87 to

8/88 plus interest as claimed is liable to be set aside?

b) Whether the petitioner is not liable to pay contribution on machinery maintenance, freight and cooly, ironing charges, contractor's labour

charges, conveyance charges, as it is not wages?

c) To what relief?

After considering the oral and documentary evidence, the Lower Court allowed the petition in part holding that the respondent is liable to pay the

contribution only relating to two items viz. 1) Salaries and wages paid to the temporary packers and 2) Machinery Maintenance Account and that

the respondent is not liable to pay any contribution in respect of other items. Aggrieved by the order, the present CMA is filed by the appellant.

3. Learned Counsel appearing for the appellant submitted that the Lower Court ought to have held that the amounts paid under various heads are

only part of the salary or wages and that therefore it is covered by the ESI Act. Therefore, it is submitted that the order passed by the Lower

Court is perverse and not in accordance with law and hence the same has to be set aside.

4. In spite of notice, there is no representation on behalf of the respondent.

5. Heard the counsel. On behalf of the respondent, one Anantharaj was examined as P.W.1, who is one of the partners in the respondent

establishment and documents Ex.A1 to Ex.A3 were marked. On behalf of the ESI Corporation, one Ramachandran was examined as R.W.1, who

is working as Assistant Regional Director in the ESI Corporation and documents Ex.B1 and Ex.B2 were marked. Ex.A1 and Ex.A2 are C-18

notices. Ex.A3 is the 45-A order. Ex.B1 and Ex.B2 are the Inspection Reports. After considering these oral and documentary evidence, the

Lower Court had given a factual finding in Paragraphs 11 and 12 of its order as under:

11. It is seen from Ex.A1 & A2 that contribution has been claimed in respect of salaries and wages account to temporary packers, ironing charges,

labour charges, conveyance account, freight and cooly account. The order u/s 45A relates to the items covered under Ex.A2. It is therefore

necessary to find out whether the petitioner company is liable to pay contribution in respect of all these items. The machinery maintenance account

is also taken out from the ledgers by the inspector. PW1 stated in the course of evidence that mechanics would be brought from outside and the

repairs would be done and as such no contribution is payable. There is nothing in the evidence to show that the machinery has been taken out of

the establishment and the work was done by the mechanics in their own places without any supervision of the petitioner or its agents. If the

machinery is maintained in the premises of the petitioner through the mechanic then it is an incidental work connected with the business and as such

the petitioner is liable to pay contribution for the same. Similarly the item relating to salary and wages account for temporary packers, according to

P.W.1 the packing was done by outside agencies, but however in the course of cross examination admitted that in case of urgency, the persons

would be called on to the petitioner's premises and the packing would be done in the verandah. When once it is admitted that the packing work is

also done in the premises of the petitioner whatever payments made to them would attract the definition of wages and hence the petitioner is liable

to pay contribution in respect of this head also.

12. The Corporation claimed contribution relating to ironing charges, labour charges and conveyance allowances etc. PW1 categorically stated

that ironing work is entrusted to outside agencies and similarly the stitching work is also entrusted to outside agencies depending upon the work

and the petitioner or its agents have absolutely no supervision over them. As adverted to, the reports under Ex.B1 & B2 clearly indicated that the

stitching work was entrusted to many sub-contractors and they have also presented the bills and they were paid by the petitioner. Furthermore, the

full particulars of the sub-contractors are also extracted in the reports. They would only indicate that the stitching work was done outside the

establishment without any supervision by the petitioner and this being so, whatever amount paid by way of labour charges to outside persons

would not attract the definition of wages. Similarly even in respect of ironing charges, the work has been given to outside agencies and this being

so, the petitioner cannot be called upon to pay the contribution. So far as the conveyance allowances are concerned, they are paid by the company

only to meet the conveyance expenses and as a reimbursement for the season tickets. This is paid to the workers probably they may be coming

from a distance and only to compensate the same, the allowances are paid. When once the company reimburses the amounts to the employees it

cannot be called as wages and on this score also the Corporation is not entitled to claim any contribution. Under the circumstances, I am of the

view that the petitioner is liable to pay contribution only in respect of machinery maintenance and salaries and wages paid to the temporary packers

and in respect of other items the petitioner is not liable to pay any contribution. One more contention put forward by the respondent is that the

petitioner has rushed up to the court immediately on receipt of the C-18 notice and as such the present application is premature and liable to be

dismissed. When a notice is sent under C-18 it gives a cause of action to the aggrieved party to move this Court and it cannot be said that it is a

bar under law. No doubt the petitioner could have sent the objections before the competent authority and if the finding is received against them,

they can move the court of law. However in the present case, the Corporation has already passed an order u/s 45A in respect of one notice and as

such he has moved the court relating to the Section 45A order and also another notice under C-18. Hence I am of the view that the petition is not premature and the issues are answered accordingly.

In the result, the petition is allowed in part and the order passed by the Corporation is modified holding that the petitioner is liable to pay

contribution only relating to two items viz. 1) salaries and wages paid to the temporary packers and 2) machinery maintenance account. The

petitioner is not liable to pay any contribution in respect of other items.

From a reading of the above, it is clear that there is a factual finding given by the Lower Court that the respondent is not liable to pay any

contribution in respect of other items, viz., freight and cooly account, ironing charges, labour charges and conveyance account. The factual finding

given by the Lower Court is based on valid materials and evidence and I find no error or illegality in the order of the Lower Court so as to warrant

interference. Counsel for the appellant is also unable to furnish any documentary evidence or compelling reason to take a different view from the

Lower Court. It is a pure question of fact and the order of the Lower Court is not a perverse one. Therefore, the questions referred to above, are

answered in favour of the respondent.

6. Under the circumstances, the impugned order passed by the learned Principal Judge, City Civil Court, Chennai (The Employees' State

Insurance Judge, Chennai) dated 19.3.1997 made in E.S.I.O.P. No. 55/89, is confirmed. Accordingly, the Civil Miscellaneous Appeal is

dismissed. No costs.