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**(1999) 10 OHC CK 0020**  
**In the Orissa High Court**  
**Case No : M.A. No. 111 of 1997**

Regional Director, E.S.I.C.

APPELLANT

Vs

Indian Paints and Chemicals Pvt. Ltd. and Another

RESPONDENT

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**Date of Decision :** 28-10-1999

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 2(12), 2(22), 75(1)

**Citation :** (2000) 85 FLR 275 : (2000) 1 LLJ 770 : (1999) 2 OLR 635

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** Purnendu Prasad Ray, D.P. Ray, N.D. Tripathy and A.P. Ray, for the Appellant; B.K. Sahoo and K.C. Sahoo, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Misra, J.—The Regional Director, Employees' State Insurance Corporation, has filed this appeal u/s 82(2) of the Employees' State Insurance Act (in short, the "E.S.I Act"), against the decision of the District Judge-cum-E.S.I. Court, Cuttack in E.S.I. Misc. Case No. 2/92. The aforesaid case had been initiated on the basis of the application of present respondent No. 1 u/s 75(1)(c) of the E.S.I. Act. One of the questions raised was as to whether payments made to the workers for doing work overtime can be considered to be "wages" as per the definition contained in Section 2(22) of the E.S.I. Act. Issue No. 5 related to the aforesaid question. Relying upon the decision of the Orissa High Court reported in Regional Director, ESIC Vs. P.B. Gupta, it was held that the allowance paid towards overtime work cannot be considered to be "wages". On the basis of aforesaid finding, it was directed that the Corporation cannot recover a sum of Rs. 1,350/- as contribution for the period of 5/ 89 to 3/90 and consequently, the notice issued by the Corporation was quashed. Against the aforesaid portion of the order the present appeal has been filed.

2. Though the conclusion is supported by the decision of this Court, such conclusion cannot be affirmed in view of the subsequent decision of the Supreme

Court on the point. In the decision reported in *Indian Drugs and Pharmaceuticals Ltd. and Others Vs. Employees' State Insurance Corporation and Others*, it has been specifically held by the Supreme Court that payment made towards overtime work can also be considered to be coming within the term "wages" as defined in Section 2(22) of the E.S.I. Act. While arriving at this conclusion, though the Supreme Court has not specifically referred to the decision of the Orissa High Court, it has overruled other decisions of other High Courts taking similar view. In view of the aforesaid decision of the Supreme Court, it must be taken that the decision of Orissa High Court reported in *Regional Director, ESIC Vs. P.B. Gupta*, has been impliedly overruled and cannot be said to be good law. For the aforesaid reason, the appeal of the Corporation is allowed and respondent No. 1 is required to comply with the notice relating to payment of contribution for the period of 5/89 to 3/90. Such amount may be paid within a period of one month from today failing which it would be open to the appellant to proceed with the Certificate case already instituted in accordance with law. There would be no order as to costs.