
(1971) 07 MP CK 0031
In the Madhya Pradesh High Court
Case No : L.P. A. No. 5 of 1969

S.P. Nanawaty, Factory Manager. Satna Cement Works, Satna
and another

APPELLANT

Vs

Employees State Insurance Corporation, Jabalpur

RESPONDENT

Date of Decision : 17-07-1971

Acts Referred:

Employees State Insurance Act, 1948 — Section 66, 67, 75
Workmens Compensation Act, 1923 — Section 12

Citation : (1971) JLJ 800

Hon'ble Judges : Bishambhar Dayal, C.J;S.P. Bahrgava, J

Bench : Division Bench

Advocate : J.S. Verma, for the Appellant; J.P. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

Bishambhar Dayal, C.J.—This is a Letters Patent Appeal against the decision of a learned Single Judge of this Court dated 25th March 1969 in Miscellaneous (First) Appeal No. 87 of 1968, holding that by virtue of section 43 of the Employees State Insurance Amendment Act, 1966 the provisions of the original Employees State Insurance Act, 1948 relating to the application by the Employees State Insurance Corporation for reimbursing itself with regard to the payment which it had to make to a workman in respect of an employment injury are saved.

2. The circumstances in which the question arose may be briefly stated. One Govindram was employed by Satna Cement Works (appellant No. 2). He sustained certain injuries on 16-10-63. The claim of the Employees State Insurance Corporation was that it was entitled to receive some amount in respect of this injury sustained by Govindram as it was employment injury. The Corporation filed an application u/s 75 read with section 66 of the Employees State Insurance Act, on 3-7-1967. This application was rejected by the Tribunal established under the Act on ground that section 66, which gave a right to the Corporation to reimburse itself from the employer, had been deleted by

notification under the Amending Act on 17-6-1967 and sub-sections 1 (f) and 2 (c) of section 75, which authorised the Tribunal to decide these matters, had been repealed with effect from 28th January 1968 and consequently the Tribunal had no further jurisdiction to hear the application on merits. Against that order an appeal was filed in this Court and the learned Single Judge on an interpretation of section 43 of the Employees State Insurance Amendment Act, 1966 came to the conclusion that the saving clause retained the Tribunal's jurisdiction. He accordingly directed that the Tribunal should proceed with the application. Against that order the present Letters Patent Appeal has been filed.

3. It is important to refer to the relevant part of section 43 of the Amendment Act which is as under : -

No provision of this Act shall apply... in relation to any payment which... is required to be made under the principal Act in respect of any employment injury sustained by any employee in any State or part thereof at anytime before the date of coming into operation of that provision and any such... application... relating to such payment pending before any authority immediately before such date shall continue to be governed by the provisions of the principal Act as they stood immediately before that date.

It is obvious that under this section it is intended to save the applicability of the provisions which have been repealed under the repealing Act if the repealed provisions have any relation to any payment in respect of an employment injury sustained before the repeal. The question for consideration, therefore, was whether sections 66 and 75 of the Employees State Insurance Act which had been repealed are such provisions which have any relation to the payment of that nature.

4. Section 66 is as follows : -

(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, the actuarial present value of the periodical payments which the Corporation is liable to make under this Act.

(2) For the purposes of this Act, the actuarial present value of the periodical payments shall be determined in such manner as may be specified in the regulations.

On a plain reading of this section it is apparent that it authorises the Corporation to reimburse itself from the employer in respect of the payment which it has to

make on account of an employment injury. When the Corporation has a right to recover some amount from the employer because it has to make some payment with regard to the employment injury, then certainly this right is related to the payment. Section 66 gives a right in respect of such payment which has to be made or which has been made by the Corporation and it cannot be said that this section is entirely unconnected with such payment.

5. The repealed parts of section 75 which are relevant for our purposes are as follows :-

(1) If any question or dispute arises as to (f)... the actuarial present value of the periodical payments referred to in section 66...

(2) The following claims shall be decided by the Employees' Insurance Court, namely:-

...

(c) claim u/s 66 or 67 made by the Corporation against the employer or other person liable thereunder;

These two repealed provisions are intimately connected with the claim u/s 66 and provide the jurisdiction to the Tribunal for going into these matters.

6. Learned Counsel appearing for the appellants contended that these proceedings cannot be said to have any relation with the payment which the Corporation has to make to the employee. According to the Learned Counsel this saving would only relate to those sections which directly deal with the payments to be made to the employees and they should not be extended to the provisions which authorise the Corporation to reimburse itself from the employer, although it may be on account of the payments made to the employee. We are unable to confine the provisions of section 43 quoted above to such a narrow limit. One of the obvious reasons for not accepting this contention is that the provisions of the Act which relate directly to the payment by the Corporation to the employee have not been repealed, and if those words were confined only to those provisions section 43 would be (sic)otiose and such an interpretation must avoided.

7. Learned Counsel for the appellants further contended that the right given to the Corporation u/s 66 to reimburse itself from the employer is not a vested right and since section 66 was repealed before the Corporation made the application, the right had been taken away and no application could be made by the Corporation to the Tribunal. The Learned Counsel contend that a right in respect of which an investigation has yet to be made and it ha; yet to be determined by the Tribunal is not a vested right. The contention is that because of the investigation it may be found that the Corporation had no right to recover the money and therefore it cannot be said that the right had vested in the Corporation. The Learned Counsel relied upon a statement made in Maxwell on the Interpretation of Statutes, 12th Edn., (by P. St. J. Langan), at page 18,

distinguishing between a right which had vested and a right which did not vest. The distinction was set forth in the following words :-

Lord Morris of...said :

"It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. Upon a repeal the former is preserved by the Interpretation Act. The latter is not."

The contention of the Learned Counsel is that the present right of the Corporation falls under the latter class. We are unable to agree with this contention. The right of the Corporation merely required an investigation to find whether in fact it existed or not. It was not a right in which enquiry was for the purposes whether this right should be given to the Corporation or not. The Tribunal had no jurisdiction to give the right to the Corporation. It had merely to investigate whether the circumstances existed which gave the right to the Corporation. We are therefore unable to agree with the contention of the Learned Counsel that in this case section 43 of the Employees State Insurance Amendment Act does not save either the right of the Corporation u/s 66 of the Employees State Insurance Act or the jurisdiction of the Tribunal to entertain the application.

8. We, therefore, see no force in this appeal and dismiss the same with costs. Counsel's fee Rs. 50 or according to the certificate whichever be less.