

(2017) 04 MAD CK 0012
In the Madras High Court
Case No : 300 of 2017

The Employees State Insurance Corporation,
Vs

APPELLANT

M/s.Chithranjandas Agencies,

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

Employees State Insurance Act, 1948, Section 85B - Power to recover damages

Citation : (2017) 04 MAD CK 0012

Hon'ble Judges : R.Subramanian

Bench : SINGLE BENCH

Advocate : R.Subramanian

Final Decision : Dismissed

Judgement

1. Challenging the order of the Employee's State Insurance cum Labour Court, Tirunelveli, dated 03.08.2016, in and by which, the Employee's

State Insurance cum Labour Court set aside the order dated 28.01.2014 passed by the appellant-Corporation levying damages of a sum of

Rs.34,976/- (Rupees Thirty Four Thousand Nine Hundred and Seventy Six only) for the delayed payment of contribution, the appellant-

Corporation is on appeal.

2. The respondent-employer was charged with deficiencies in contribution on the ground that he has not included certain amounts paid towards

wages while remitting the contribution. The contribution for the wages so omitted was worked out at Rs.64,895/- (Rupees Sixty Four Thousand

Eight Hundred and Ninety Five only). The said levy was challenged by the respondent-employer and the Employee's State Insurance cum Labour

Court set aside the order passed by the appellant-Corporation and remitted the

matter back to the appellant-Corporation.

3. Again, the appellant-Corporation raised a demand. The respondent- employer had admittedly paid a portion of the demand and has again filed

E.S.I.O.P.No.12 of 2015.

4. During the interregnum, an order dated 28.01.2014 came to be passed levying damages of Rs.34,976/- (Rupees Thirty Four Thousand Nine

Hundred and Seventy Six only) for the delayed payment of contribution for the period from April 1996 to March 2001.

5. It is not in dispute that the respondent-employer has paid the contribution as demanded. Thereafter, the respondent-employer came forward

with a petition seeking refund of the amount of interest and damages collected by the appellant-Corporation.

6. The Employee's State Insurance cum Labour Court, on appreciation of facts and circumstances of the case, came to the conclusion that the

interest demanded is justified and dismissed the claim for refund of interest. However, with reference to damages, the Employee's State Insurance

cum Labour Court relying upon the judgment of the Honourable Supreme Court in ESI Corporation v. HMT Limited reported in 2008-I-LLJ-814

(SC) and the judgment of the Division Bench of this Court in Beama Manufacturers (P) Ltd., v. Regional Director, ESI Corporation reported in

1991 (2) LLJ 29 (Mad), concluded that there is no mala fide intention on the part of the respondent- employer and hence, levy of damages is not

justified. On the aforesaid findings, the Employee's State Insurance cum Labour Court directed the appellant-Corporation either to refund a sum

of Rs.34,976/- (Rupees Thirty Four Thousand Nine Hundred and Seventy Six only) collected towards damages or adjust the said amount in future

subscriptions payable by the respondent- employer.

7. The learned Counsel for the appellant-Corporation would contend that the levy of damages is based on the ground that the respondent-

employer has not paid the contribution on the due dates. According to the learned Counsel for the appellant-Corporation, Section 85-B of the ESI

Act, 1948, empowers the appellant-Corporation to levy damages in the event of delayed payment.

8. As pointed out by the Honourable Supreme Court as well as the Division Bench of this Court in the decisions cited supra, levy of damages is

not automatic. Unless there is an element of mala fide that could be attributed to the respondent-employer, the damages could not be levied.

9. The Division Bench of this Court has also further made it clear that the order levying damages must contain reasons as to why the damages are

levied. The order impugned in E.S.I.O.P.No.12 of 2015 levying damages does not disclose any reason except stating that there is a delay in

payment. This order does not satisfy the parameters that are laid down by the decisions cited supra. Hence, I do not find any illegality or

irregularity in the order dated 03.08.2016 passed in E.S.I.O.P.No.12 of 2015 by the Employee's State Insurance cum Labour Court, Tirunelveli.

10. Therefore, this Civil Miscellaneous Appeal is dismissed. No costs.