

(1974) 03 MAD CK 0040
In the Madras High Court

The Mysindia Tiles and Engineering Company	APPELLANT
Vs	
Employees State Insurance Corporation	RESPONDENT

Date of Decision : 13-03-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195

Citation : (1975) 1 MLJ 124

Hon'ble Judges : C.J.R. Paul, J

Bench : Single Bench

Judgement

C.J.R. Paul, J.—This is an appeal against the order of the learned First Additional Judge of the City Civil Court, Madras as Employees

Insurance Court, decreeing the claim for Rs. 7,125 claimed as contribution payable u/s 40 (1) of the Employees State Insurance Act, 1948, on an

ad hoc basis for the period 1st October, 1957 to 30th June, 1965 in respect of certain employees of the appellants' factory.

2. It is not disputed that the factory in question is a factory as defined in Section 2 (12) of the Employees State Insurance Act, 1948, liable to pay

employees contribution and in respect of the permanent employees of the factory such contribution was being paid. In Exhibits A-1, A-2, A-12

and A-13 the inspectors who visited the factory on the several dates mentioned therein found some casual workers engaged in the manufacture of

mosaic tiles in addition to permanent employees. The manager of the appellant company as R.W. 1 testified that casual labourers were employed

for laying the tiles in buildings on contract work done outside the factory and also for crushing marble lumps which were used as mosaic chips in

the making of mosaic tiles. But there was no evidence that these casual labourers were employed only for laying mosaic tiles outside the factory by

contractors. The evidence of R.W. 1 was that crushed marble lumps were used as mosaic chips in the making of the tiles. In its accounts the

appellant company had not shown the wages paid to casual labourers separately and the wages paid to permanent labourers separately. It had

mixed up the wages paid to permanent labourers and casual labourers and entered them under one head of account namely tiles-wages. No

attendance register was also maintained in respect of casual labourers, with the result there was no record from which it could be found who were

the casual labourers who were employed in the manufacture of tiles by the appellant company, though there was definite evidence and it was not

disputed that casual labourers were employed by the appellant company. In those circumstances the Employees' Insurance Court held that the

employees in respect of whom contribution was claimed fell u/s 2 (9) of the Act and the appellant company was liable to pay that contribution.

3. There was dispute as to the quantum of contribution payable. The Employees' Insurance Court was unable to accept the statement of account

filed by the appellant company on the ground that it had omitted to take into account several items. For two items of payments made to casual

workmen who were employed for laying tiles outside the scope of the factory the Insurance Court found that no acceptable data or basis had been

given which would support the omission of those items and that the company was not in a position to satisfy the Court that the payment of wages

which the company had omitted to include in the statement of account represented really wages paid to casual labourers who had nothing to do

with the manufacture of mosaic tiles.

4. The plea of limitation put forward by the Company was also rejected by the Court in view of the decision of this Court in Solar Works Vs.

Employees' State Insurance Corporation and Another, .

5. It is now contended in this appeal that the lower Court erred in awarding the claim made by the Corporation in respect of the casual labourers

whose services were entertained occasionally and also for work done outside the factory for laying tiles and that, in any event, the claim of the

Corporation is barred by limitation.

6. Admittedly the appellant company had been employing casual labourers who were also crushing marble chips which were used in the

manufacture of tiles. No records are available from I which it could be found who among the labourers who were working in the factory were

permanent and who among them were casual. As such the Employees' Insurance Court was right in having held that the employees in respect of

whom the claim for contribution was made by the Employees State Insurance Corporation would fall u/s 2 (9) of the Act and that finding, in my

view, is quite correct.

7. With regard to the quantum of contribution also, in view of the circumstances which have been detailed in paragraph 5 of the Judgment of the

Insurance Court, the Insurance Court was quite right in its finding with regard to the quantum of contribution.

8. Now there remains the question of limitation. In Dhala Tanning Company, Gemini Studios, Madras, Vijaya Productions (P.) Limited, Lessees of

Vijaya Vauhini Studio Vs. Employees State Insurance Corporation, it was held that in order to attract Article 137 of the Limitation Act, 1963, the

application should be to a Court, and an application to a statutory body would not be governed by the said Article. The Insurance Court is only a

statutory body and not a Court governed by the Code of Civil Procedure. It was observed in that case:

The Insurance Court is only a statutory body and not a Court governed by the Code of Civil Procedure. Section 74 of the Act says that the State

Government shall, by notification in the Official Gazette, constitute an Employees' Insurance Court for such local area as may be specified in the

notification. u/s 78 of the Act, certain powers of a civil Court are given to the Insurance Court.... As a matter of fact, if the Insurance Court" is a

civil Court there would be no occasion for conferring certain of the powers; of the civil Court on the said Insurance-Court. Only for purposes of

summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects, administering

oath and recording evidence, the powers of a civil Court are conferred on the Insurance Court. The abovesaid section also provides that the

Insurance Court shall be deemed to be a civil Court within the meaning of Section 195 and Chapter XXXV of the Code of Criminal Procedure,

1898. These provisions, far from making the-Insurance Court a civil Court, only highlight the distinction between the Insurance Court and the civil

Court. It is significant to note that u/s 75 (3) of the Act, it is provided that no civil Court shall have jurisdiction to decide or deal with any question

or dispute for which provision is. made in the earlier sub-sections of that section.... That again goes to show that the Insurance Court is not a civil

Court."" Discussing the question whether Article 137 would apply only to applications under the Code of Civil Procedure, in Nityananda, M. Joshi

and Others Vs. Life Insurance Corporation of India and Others, the-Supreme Court held that Article 137 only contemplates applications to Courts

Their Lordships of the Supreme Court have observed there:

It is not necessary to express our views. on the first ground given by this Court in Town Municipal, Council, Athani Vs. The Presiding Officer,

Labour Courts, Hubli and Others etc., It seems to us that it may require serious : consideration whether applications, to Courts under other

provisions, apart from Civil Procedure Code, are included within Article 137 of the Limitation Act, 1963, or not.

9. In view of this observation of the Supreme Court, learned Counsel for the appellant Mr. N.C. Raghavachari wants me to refer this matter to the

decision of a Full Bench. But I do not think it necessary to refer this matter to. a Full Bench. In the aforesaid decision of this Court the matter has

been considered fully and I respectfully agree with the views expressed by the Bench in the aforesaid case. There can be no doubt whatsoever that

the Insurance Court is not a civil Court. As has been pointed out in the aforesaid decision, provisions have been made in the Act that for certain

specified purposes the Insurance Court should be treated as a civil Court and the circumstances which have all been detailed in the aforesaid

decision definitely point out that the Insurance Court is not a civil Court. Such being the case when Article 137 of the Limitation Act would have

application only to applications filed in a civil Court, it cannot be said that the claim in this case is barred by limitation. In these circumstances I find

that this appeal has to be and is dismissed with costs.