
(1987) 09 MAD CK 0001
In the Madras High Court

Tiruppur Textiles (P) Ltd.

APPELLANT

Vs

E.S.I. and Others

RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(5), 2(8), 2(9), 2(9)(1), 2(9)(b)
Workmens Compensation Act, 1923 — Section 19, 30

Citation : (1989) 1 ACC 71 : (1988) 2 LW 172

Hon'ble Judges : P.K. Sethuraman, J

Bench : Single Bench

Judgement

P.K. Sethuraman, J.—The petitioner is the appellant. This is an appeal against the order passed by the learned District Judge, Coimbatore,

constituting the Employees State Insurance Court, dismissing the petition filed by the appellant u/s 75 of the Employees' State Insurance Act, 1948

hereinafter referred to as the Act.

2. The appellant herein filed the petition u/s 75 of the Act for the relief of declaration that the order of the first respondent/Employees' State

Insurance Corporation by its Regional Director, Madras, dated 30-10-1985 is arbitrary, illegal and unjustified and for declaring that the third

respondent R. Shanmugam is an employee entitled to permanent disablement benefit from the Employees' State Insurance Corporation and for a

direction to the first respondent to provide such permanent disablement benefit to Shanmugam and for costs. According to the appellant/petitioner

the Tiruppur Textiles (P) Ltd., Tiruppur, employs about 1000 workmen and all the employees are covered under the Employees' State Insurance

Scheme and the third respondent R. Shanmugam is also an employee in the mills covered under the E.S.I. Scheme and he has been paying

contributions regularly and the petitioner has also contributed the employers contribution. The third respondent Shanmugam is an employee in the

Preparatory Department as a Doffing Boy bearing Ticket No. 260. On 7-1-1985 Shanmugam was attending to the work in the day shift that

commenced at 7:00 A.M., and ending with 3:30 p.m. While he was working the combing machine he was removing the cotton wound on the back

bottom detaching roller and while picking the lap he got his fingers in his left hand except the thumb caught in between the detaching roller and the

combing cylinder. As a result of this all his four fingers except the thumb in his left hand were crushed and later surgically removed. He was

immediately rushed to the Government Hospital at Tirupur and the petitioner assisted and admitted him for treatment. Shanmugam is covered under

the E.S.I. Scheme with insurance No. 51-1789235. After taking treatment at the Government Hospital, Tirupur, Shanmugam went to the E.S.I.

Hospital and was provided only with medical and sickness benefit, but he was declined by the first respondent the permanent benefit on the ground

that he was not an employee within Section 2(9) of the Act since he was drawing wages exceeding Rs. 1,000/- on the date of accident on account

of the gradual increase in the Dearness Allowance due to rise in cost of living As the first respondent declined to provide the disablement benefit,

the said Shanmugam filed an application before the Additional Commissioner for Workmen's Compensation, Coimbatore in W.C. No. 55 of

1985 against the petitioner claiming a sum of Rs. 55,224.24 as compensation and the same is pending enquiry.

3. The contributions had been paid by both Shanmugam and the petitioner in respect of him upto November 1984 and he was a workman even on

the date of the accident since the corresponding benefit period in respect of him was upto June 1985, and as such he is entitled to permanent

disablement benefit from the first respondent. The salary drawn by the injured Shanmugam at the commencement of the contribution period

commencing from 27-5-1984 was Rs. 1,000/- which was below the statutory minimum and his pay scale crossed the line of Rs. 1000/- only on

and from August, 1984 and as such he continued to be an employee with the meaning of the Act and he is entitled to the permanent disablement

benefit and hence the refusal of benefits by the first respondent on the ground of Shanmugam's salary being above Rs. 1000/- on 7-1-1985 viz.,

the date of accident, is totally untenable as per the provisions of the Act.

4. The petitioner sent an accident report on 8-1-1985 and also wrote a letter in detail setting out the entire facts mentioned in the letter dated 27-

9-1985, requesting the first respondent to extend to the injured Shanmugam the permanent disablement benefit, but the first respondent by their

letter dated 30-10 1985 negated the claim of the petitioner in respect of the said Shanmugam on the sole ground that the salary drawn by

Shanmugam on the date of accident was about Rs. 1,000/- per mensem, though legally he is entitled to the permanent disablement benefit. Hence

the petitioner has filed the petition contending that the order of the first respondent is against law and has also sought the declaration as prayed for

in the petition.

5. The first respondent/Employees' State Insurance Corporation, in the counter contended that the petition is not maintainable and the petitioner

with a view to shirk its responsibility to pay compensation to the third respondent has filed the petition and it was true that Shanmugam who was

employed by the petitioner sustained injury on 7-1-1985 and he was drawing a salary of less than Rs. 1,000/- but according to the Act if salary

reaches the stage of Rs. 1000/- and above such an employee automatically ceased to come under the Scheme even though he will be entitled to

medical sickness-cash benefits by, virtue of contributions paid in the earlier contribution period. Though Shanmugam ceases to be an employee

under the Act with effect from 24-11-1984 he had to be provided sickness benefit and medical benefit on the date of accident and subsequently,

due to the contributions paid from November 1983 to May 1984 and from May 1984 to 24-11-1984. Shanmugam, the third respondent, being

an insured person is entitled to enjoy the benefit as per Section 46 (1) (a) and 46 (1) (e) of the Act and he need not be an employee at the time of

the accident. The petitioner is trying to mix up the issue and mislead so as to deny its liability.

6. On the date of the accident Shanmugam is not an employee as per Section 2(9) of the Act and the accident on 7-1-1985 is not an employment

injury as per Section 2(8) of the Act. The petitioner who is conscious of this fact had submitted an accident report stating in column 11(c) that the

third respondent is not an employee under the Act since he was drawing more

than Rs. 1000/- even in August, 1984. Accordingly the petitioner cannot all of a sudden change its mind and come forward with the case that the third respondent should be compensated for the injury by the E.S.I. Corporation. The E.S.I. Corporation when it was informed about the accident sent a reply dated 3-10-1985 pointing out that the third respondent cannot be compensated under the Act and the remedies if any have to be worked out under the Workmen's Compensation Act. The present petition is not maintainable and the third respondent has also initiated action before the second respondent and the second respondent can decide the issue regarding the nature of the liability. Hence, it has been prayed that the petition has to be dismissed with costs.

7. The second respondent/Additional Commissioner for Workmen's Compensation in the memo of objection contended that the petitioner has not sought for any relief as against the Additional Commissioner for workmen's compensation and hence he had been unnecessarily impleaded and the petition is bad for misjoinder.

8. The third respondent Shanmugam in the counter contended that the petition is not maintainable and the petitioner has no cause of action to commence the proceedings as per Section 77 of the Act and he belongs to A.I.T.U.C. Union and the Secretary of that Union wrote a letter dated 11-10-1985 to the first respondent asking for certain clarifications with respect to W.C. No. 55 of 1985 pending before the second respondent and the first respondent sent a reply dated 30-10-1985 and such a reply will not give the cause of action u/s 77 of the Act. He had not made any claim for disablement benefit under the Act and in the absence of such a claim no cause of action arose and consequently the petition u/s 75 is not maintainable. The employees under the petitioner have been classified into three categories such as set A, B and C as per the regulations numbers 4 and 5 of the E.S.I. (General) Regulations 1950 in order to fix the contribution periods and corresponding benefit periods. He falls under the said C group which is from midnight of the last Saturday of May to midnight of last Saturday in next November. B Group is from the midnight of last Saturday in November to midnight of last Saturday in next May. To enjoy the permanent disablement benefit as per Section 46(1) (c) of the Act, a worker should be an "employee" under the Act as defined u/s 2(9) of the Act. If

the wage of a worker exceeds Rs. 1,000/- per month then he is not covered under the Act provided that an employee whose wages exceed Rs. 1,000/- a month at any time after the beginning of the contribution period he will continue to be the employee under the end of that period He contributed to the first respondent upto last Saturday of 24th November 1984 only i.e. upto the end of the first contribution period for C set workmen. His next contribution period commences from midnight of last Saturday of November 1984 upto midnight of last Saturday of May 1985. On the date of accident i.e., on 7-1-1985 the wages of the third respondent exceeded Rs. 1,000/- per month and he crossed the prescribed ceiling of Rs. 1000/- in the month of August 1984 itself. From August 1984 onwards he continues to draw wages over and above the prescribed ceiling of Rs. 1,000/- and at the time of commencement of the contribution period November to May his wages exceeded Rs. 1,000/-. Hence he is not an employee under the Act. The petitioner himself in the accident report has mentioned that he is not an employee under the Act. The proviso to Section 2(9)(b) of the Act will not apply to him as he ceased to be an employee from the midnight of 24th November 1984. Even though he ceased to be an employee since he crossed the limit of Rs. 1,000/- as wages in the month of August, the petitioner and himself had been paying contribution upto 24th November 1984 only as per the proviso to Section 2(9)(b) of the Act since his wages was below Rs. 1,000/- during the month of May 1984, i.e., at the commencement of contribution period and hence he was deemed to continue as an employee until the end of that contribution period viz., upto 24th November 1984. Even though he ceased to be an employee under the Act with effect from 24-11-1984 he was provided with sickness benefit and medical benefit on the date of the accident and subsequently due to the contributions period of November 1984 to May 1984 and May 1984 to 24th November 1984. Corresponding benefit period for the above two contribution periods are August 1984 to February 1985 and February 1985 to August 1985 as per the Regulations 4 and 5 of the Employees State Insurance (General) Regulations 1950.

9. It is enough if a person is an insured person to enjoy the above-said sickness benefit and medical benefit as per Section 46(1) (a) and (e) of the

Act. He need not be an employee under the Act. When he is not an employee under the Act the court will have no jurisdiction to decide the question. The second respondent is empowered u/s 19 of the Workmen's Compensation Act to decide whether the third respondent is a worker or not under the Act. In case the management proves that he is not an employee the petition before the second respondent has to be inevitably dismissed. The Workmen's Compensation Act itself is a self-contained Code which also provides an appeal to the High Court u/s 30. Hence, it has been prayed that the petition has to be dismissed.

10. No oral evidence was let in by the parties. The documents filed by the petitioner have been marked as Exs. A 1 to A 4 and the respondents' documents have been marked as Exs. B1 and B2. The learned Principal District Judge, Coimbatore constituting the Employees' State Insurance Court, who enquired the petition held that the petition is devoid of merits and the order passed by the Employee's State Insurance Corporation is liable to be set aside. Accordingly the petition was dismissed with costs. Hence the present appeal.

11. It is the contention of the appellant that the lower court failed to appreciate the real question and the lower court erred in coming to the conclusion that the third respondent who is an employee under the Act could not claim the permanent disablement benefit under the Act. It is also contended that the lower Court failed to see that Section 61 of the Act bans an employee from making any claim for the benefits under any other enactments if he is an employee under the Act. It is further contended that the lower court failed to correctly understand Section 2(9)(1) of the Act as well as Section 2(5) of the Act. The lower court also erred in holding that the injury suffered by the third respondent was not an employment injury. The accident took place while the third respondent was working in the combing machine and having regard to the fact that the ESI contribution had been paid up to the end of November 1984 the third respondent is an employee under the Act and the corresponding benefit period extended upto June 1985 while the accident took place only in January 1985. The E.S.I. authorities are bound to extend the benefits like permanent disablement benefit to the third respondent. Accordingly the order by the learned District Judge is liable to be set aside.

12. The points that arise for consideration in this appeal are as to (1) whether the appellant is entitled to the declaration that the third respondent is

an employee of the appellant and therefore the third respondent will be entitled to the permanent disablement benefit under the Act, and (2)

whether the order passed by the Employee's State Insurance Corporation on 30-10-1985 is liable to be set aside.

13. It is to be seen that the third respondent who was an employee under the appellant was paying contribution and the appellant was also paying

the management contribution and the first respondent had objected to the eligibility of the third respondent for permanent disablement benefit on

the ground that he was not an employee within Section 2(9) of the Act since he was drawing wages exceeding Rs. 1,000/- on the date of accident

on account of the increase in the Dearness Allowance due to rise in the cost of living. The Employees State Insurance Corporation viz., the first

respondent, in the counter filed in the lower court has stated that he was an employee drawing a salary of less than Rs. 1,000/- and was entitled to

the benefits under the E.S.I. Scheme, but has stated that according to the Act if the salary of the employee reaches the stage of Rs. 1,000/- and

above he automatically ceased to come under this Scheme. All the same he will be entitled to medical sickness benefits and cash-benefits by virtue

of the contributions paid in the earlier contribution period. He ceased to be an employee under the Act with effect from 24-11-1984 but he had to

be provided with the medical benefits on the date of the accident and subsequently, due to contributions paid from November 1983 to May, 1984

and from May 1984 to 24-11-1984. It is also further stated in the said counter that the third respondent being an insured person is entitled to

enjoy the above benefits as per Section 46(1)(a) and 46 (1)(e) of the Act and he need not be an employee at the time of the accident. In this

connection it is to be pointed out while stating that from 24-11-1984 the third respondent ceased to be an employee under the Act, but he had to

be provided sickness benefit and medical benefit on the date of accident and subsequently due to contributions paid in the earlier contribution

periods, the proviso to Section 2(9) of the Act has not been taken into consideration. Under the proviso to Section 2(9) it is provided that an

employee whose wages (excluding the remuneration of overtime work) exceed one thousand rupees before the amendment in the year 1985 a

month at any time after and not before the beginning of the contribution period shall continue to be an employee until the end of that period. The

third respondent belonged to the said C category and as per Section 4 of the Employees State Insurance (General Regulation) 1950 the

contribution period for the said C category is from the last Saturday of May to the last Saturday in next November and the corresponding benefit

period is from November to May. Even in the counter statement filed by the first respondent it is clearly admitted that even though the third

respondent ceased to be an employee under the Act with effect from 24-11-1984 he had to be provided with sickness benefit and medical benefit

on the date of accident and subsequently due to the contributions paid from November 1983 to May 1984 and from May 1984 to 24-11-1984. It

is also further stated therein that the third respondent being an insured person is entitled to enjoy the above benefits as per Section 46(1)(a) and

46(1)(e) of the Act and he need not be an employee at the time of the accident. While that is so it is not known why the Employees' State

Insurance Corporation is denying the liability to provide disablement benefit as contemplated u/s 51 of the Act. Section 51 of the Act provides for

disablement benefit whether total or partial. The lower court has failed to take the said provision into consideration providing for disablement

benefit under the Act. It is also to be pointed out that the lower court failed to consider the corresponding benefit periods for the contribution

periods of employees under "set" C. It appears that only in November 1984 the third respondent became entitled to wages at Rs. 1,033-02 and

from 25-11-1984 contributions had not been recovered. In such cases there could be no doubt that the proviso to Section 2(9) of the Act will

come into play. Even assuming that the third respondent happened to receive more than one thousand rupees much earlier, having regard to the

fact that during the contribution period from November 1982 to May 1983 he will be entitled to benefits during the corresponding benefit period

viz., from August 1984 to February 1985. In this connection it may also be pointed out that under Act 45 of 1984 the wages limit of Rs. 1,000/-

was raised to Rs. 1,600/- with effect from 27-1-1985. But the accident in this case occurred on 7-1-1985. But having regard to the amendment it

may be pointed out how Parliament was interested in protecting the welfare of the employees by raising the wages limit so as to cover the

employees whose wages will be less than Rs. 1600/-.

14. In the trial Court the appellant is shown to have cited the decisions reported in Hindustan Lever Limited v. E.S.I. Corporation 1973 I LLJ 259

and Mohamed Ismail Ansari v. E.S.I.C. Bombay 1979 II LLJ 169. As regards the said decisions the lower court has stated that what had been

laid down in the decisions may not be applicable to the facts of this case. In the decision Hindustan Lever Limited v. E.S.I Corporation (supra), the

Delhi High Court while disposing of a writ petition had dealt with the definition of "employee" contained in Section 2(9) of the Act. There it has

been pointed out that if a question arises as to whether a person is an employee or not within the meaning of the Act, then it is necessary to

determine whether a person is an employee working in connection with the work of the factory within the meaning of Section 2(9) of the Act and

this test has to be applied in the case of every person who is sought to be covered by the Act. It appears that the contention taken in that case was

not whether the establishment as a whole was covered by the Act, but whether persons working in the establishment are covered by the Act as it

stood then. As regards the dispute between the parties as to whether a person is an employee within the meaning of the Act, it has been pointed

out that u/s 75(l)(a) it should be decided by the Employees' State Insurance Court and the prima facie decision of the Corporation is of very little

effect. In the decision reported in Mohamad Ismail v. E.S.I.C. Bombay 1979 II LLJ 169, it has been pointed"" out that the proviso to Section 2(9)

of the Act carves out an exception to benefit the workman and a fiction is introduced in the proviso to protect the workman to enable him to reap

the benefits of the contributions made by them in earlier periods.

15. Learned Counsel for the appellant also placed before me the decision reported in Abad Fisheries v. Commissioner, Workmen's

Compensation 1985 66 FJR 257. In that decision a Division Bench of the Kerala High Court while pointing out Section 53 of the Act has stated

that where a workman is an insured person covered by the E.S.I. Scheme, no compensation can be claimed from his employer under the

Workmen's Compensation Act in respect of the employment injuries sustained by him. The Division Bench has followed the decision of Punjab

and Haryana reported in Lakshmi Oil Mills v. Thakur Dass 1972 41 FJR 667. The

trial court in the order has also pointed out that the counsel for the Employees' State Insurance Corporation represented that the third respondent has not suffered any employment injury within the meaning of Section 2(8) of the Act and that was also not controverted. In this connection it is to be pointed out that even in the petition filed by the appellant it has been clearly mentioned that the third respondent was attending work in the day shift on the day of accident viz., 7-1-1985, and while he was working in the combing machine and was removing the cotton wound on the back bottom detaching roller and while picking the lap he got his fingers, in his left hand except the thumb caught in between the detaching roller and the combing cylinder. While that is so, it is not known as to how it could be contended that the third respondent had not suffered employment injury as defined in Section 2(8) of the Act.

16. Thus, having regard to the principles laid down in the decisions in the case, the contention of the Employees' State Insurance Corporation that the appellant is not entitled to the declaration sought for cannot be accepted. Accordingly, I hold that the order passed by the Employees' State Insurance Corporation viz., the first respondent herein, dated 30-10-1985 is liable to be set aside. In the result the Civil Miscellaneous appeal is allowed setting aside the order passed by the lower court and the first respondent is directed to pay the cost of this appeal to the appellant.