
(1997) 08 KL CK 0035
In the High Court Of Kerala
Case No : M.F.A. No. 530 of 1989

Vasumathy

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 77(1A)

Citation : (1998) 1 ILR (Ker) 109 : (1998) 2 LLJ 134

Hon'ble Judges : V.V. Kamat, J;K.A. Mohammed Shafi, J

Bench : Division Bench

Advocate : B. Suresh Kumar, for the Appellant; T.P.M. Ibrahimkhan and P.S. Usuph, for the Respondent

Final Decision : Allowed

Judgement

Kamat, J.—The original applicant before the Employees' Insurance Court, Quilon is the appellant with a grievance that the E.S.I. Corporation contended that her application is barred by limitation u/s 77 of the Employees' State Insurance Act, 1948 and the Insurance Court had jumped at it to accept the contention and to hold that the applicant knocked the doors of the Insurance Court beyond the time limit prescribed u/s 77(1-A) of the said Act having presented the application beyond the period of three years from the date on which the cause of action arose.

2. The Employees' State Insurance Act, 1948 has come on the statute for providing benefits to the employees. A bare look at the mention of these benefits would show that the benefits contemplated are those to be seen in case of sickness, maternity benefits, employment insurance and other patterns in the process of the welfare of the employees by providing the insurance coverage for the benefit of the employees . In order to further the implementation of the above social welfare object by virtue of Section 3 thereof the Employees' State Insurance Corporation gets established with meticulously provided constitution thereof. The functions of the Corporation are also emphasised over and above

and in addition to the particulars of the schemes of benefits of which the provisions of the Act are eloquent. Not only that the schemes of benefits are to be watched by the Corporation but in addition thereto Section 19 of the Act expects the Corporation to promote measures for the improvement of the health and welfare of the insured persons not content with measures for the improvement, the Corporation is expected also in addition to promote measures for the rehabilitation and re-employment of insured persons. This rehabilitation and re-employment of insured persons is also understood in the context of those who become disabled or have not disabled but are found to be insured. There is yet another feature and it is that even in following up such measures if any expenditure is incurred the Corporation gets liberty subject to the sanction by the Central Government to meet the financial demands from the funds of the Corporation. Various provisions of the Employees' State Insurance Act, 1948 provide measures to look after the employees covered thereby. In the process of dealing with the situation it becomes imperative that the approach of the Corporation has to be in the spirit of the legislation and the requirements of various schemes taken up.

3. In the above background, if it is found that the Insurance Courts are required to deal with objections based on technicalities, such as the period of limitation, the situation in the nature of an estoppel or even in the nature of constructive res judicata, it will have to be viewed in the context of the object of legislation.

4. In a situation where the Government, public bodies and the statutory corporations have become major parties of the litigation even the Apex Court in *The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another*, and *Central Co-operative Consumers' Store Ltd. Vs. Labour Court, Himachal Pradesh at Shimla* and another, had an occasion to point out certain notions of fair play in the context of the litigation at hand with the Courts. In the process a voice of an expectation is also seen from the Courts that when there are occasions of dealing with legislations having the concept of social welfare as the edifice and the ringing tone in regard thereto, the usual style of contesting the litigation has been expected to be suitably modified to suit the ultimate purpose in the process. This is because the Courts are more concerned with advancing the object of the legislation than in allowing its time to be wasted on such technical considerations and that too at the hands of major parties litigating in the Courts of law.

5. The normal approach in regard to the law of limitation, bar of jurisdiction and other identical occasions is that the Court always finds it difficult to surrender its power and therefore proceeds to consider these aspects with an attitude which is more than critical in the context. It is not that the provision need to be twisted in favour of the object of the legislation. However the approach cannot be expected to be merely technical in the context. Section 77(1-A) has been introduced by Act No. 44 of 1966 with effect from January 28, 1968, enacting that every application commencing before the Insurance Court has to be made within a

period of three years from the date on which the cause of action arose. It then becomes the concern of the Court to determine the cause of action with reference to the factual matrix placed by the applicant to bring the proceedings within the period of limitation prescribed.

6. It would therefore, become important and crucial to know in such proceedings what would be the cause of action and commencement thereof.

7. Facts spread over tell us that the applicant was working in the shelling Section of the cashew factory (Respondent No. 2) and is covered by the provisions of the Employees' State Insurance Scheme in the context. She was a permanent employee and therefore entitled to get all the benefits under the scheme.

8. The incident relates back to August 10, 1975. She had undergone (PPS) operation and continued to be on leave as per medical advice till November 11, 1978 and because of that there is no dispute that her employment continued. Thereafter she felt uneasiness and had to undergo operation on November 20, 1978 and that too under medical advice. She was discharged after second operation on April 12, 1979. There is no dispute that on application for disabled benefit, she was given three months benefit upto February 10, 1979. Even after the operation, there was no cure and was referred to the Medical College Hospital, Trivandrum by the Employees' State Insurance Dispensary. 5 These continued treatment at the Medical College Hospital, Trivandrum as well as at the E.S.I. Hospital revealed what is described as "Incisional hernia". This was followed by the medical advice to avoid hard work and to do light work only. In addition complete rest was advised for a period of three months by the Medical College Hospital, Trivandrum, commencing on September 26, 1979.

9. The record further shows that there was again a major operation for "Incisional hernia" and still she was not cured.

10. It is her case that she was disabled to do; any work and the nature of disease revealed that she is permanently disabled from doing any work. This was, it is averred, the consequence of continuous sitting on the cement floor and as a result she became the victim of malignant disease. This continuous sitting in the shelling shed after PPS operation resulted in the pain of her abdomen raising many complications thereafter. She became the patient of "Incisional hernia" as a direct result of the nature of her employment. She claimed entitlement to permanent disablement benefit because of suffering from malignant disease requiring her to apply for long term disablement benefit.

11. The application in question is filed on April 23, 1987. The Employees' State Insurance Corporation relying on Section 77(1-A) of the Employees' State Insurance Act, 1948 urged that the said application is barred by limitation, having been filed after a period of three years. It is contended that earlier the applicant had filed I.C. No. 89/1983 for the very same relief claimed in the present application. The said case came to be dismissed for default and was subsequently restored. There was also an amendment application in the said

proceedings of 1983 which was also granted by the Insurance Court. This order of dismissal for default became the subject matter of a review petition. This review petition it is stated also received the same fate when it was dismissed for default on December 23, 1986. It is urged that because of the above position, the provision has to be thrown out having been barred by limitation prescribed u/s 77(1-A) of the Act.

12. It is further contended by the Corporation with regard to the plea that the record revealed leave of absence from December 17, 1978 upto December 16, 1979, because of hysterectomy sickness and benefit for 91 days was granted to the applicant and it was paid to her. It is submitted that as per the records of the Corporation there is no indication regarding PPS operation. It is contended that there is no legal right to claim permanent disablement benefit and the applicant would also be not eligible for extended sickness benefit because diagnosis Hysterectomy is not found in the list of diseases for which extended sickness benefit is payable in accordance with the provisions of Regulation 103 (a) of the Employees' State Insurance Regulations, 1950. It is urged that the entitlement for benefit relating to 91 days is already granted and paid and the applicant would not be entitled to any benefit. The thrust is that in view of the judgment in earlier claim I.C. 89/1983 the present applicant would not be maintainable in view of the observation in prior case that the applicant was not interested in prosecuting the matter.

13. The earlier application I.C. 89/1983 filed for the same relief came to be finally concluded by reason of the order of dismissal for default of the review petition on December 11, 1986 and it is contended that it was for the second time. The Corporation also contended that the basic document for laying the claim for benefits would be Ext.A-9 issued to the applicant on July 27, 1982. The said certificate certifies that the applicant is unfit to do the work which she was doing. It was argued on behalf of the Corporation that the present application, therefore, ought to have been filed within three years from July 27, 1984 (Ext.A-9) when the medical certificate was issued.

14. At the other end it was urged on behalf of the present appellant-applicant that the ailment is the consequence and has an element of continuance, every moment of subsequent period of time would give a recurring cause of action.

15. It was further argued on behalf of the appellant-applicant before this Court as well as before the Insurance Court that the applicant was never intimated by the Corporation that she would not be entitled to the benefits claimed. It is urged that denial of benefits by the Corporation would be the real cause requiring the applicant to come before the Insurance Court. This denial that the applicant would not be entitled to get any benefit was on April 27, 1984 and from Ext.A-20. In addition it is also contended that even with regard to the previous proceedings I.C. 89/1983 for the first time the Corporation presented written objection and that was on April 27, 1984 and as such the present application having been filed on April 23, 1987 would clearly be within a period of three

years satisfying the statutory provisions of Section 77(1-A) of the E.S.I. Act, 1948.

16. It will have to be appreciated that the applicant has to establish the claim to the benefits on the basis of the medical certificate. The legal right emerges in favour of the applicant with regard to the claim for benefit. What is really required to be so is the cause of action and cause of action has to be located with reference to a point of time when the applicant could really be said to be having no remedy other than to approach the Insurance Court. That would be the denial of benefit. It is no doubt that the benefit is claimed on the basis of the medical certificate Ext.A-9 and on the basis thereof a claim is made. The real cause is when there is a denial to the legal right it would be elementary that it is the denial to the claim of legal right which has to be understood as the cause of action from the point of view of starting point of limitation. It is not possible to accept the impugned order of the Insurance Court throwing out the applicant at the threshold.

17. We have before us a workman who could be understood to be having the health problem from the year 1975. The record shows that upto 1979 she continued to be on medical benefits and leave in regard thereto for the reason. There are subsequent operations also to deal with the complication revealing "Incisional hernia" as the result of the nature of the work. The medical certificate supports the contention that "Incisional hernia" is contracted by her as a result of the nature of her employment and she was suffering from malignant disease developed as stated above. Her claim for benefits are denied to her on April 27, 1984. The Insurance Court has missed the importance of the situation to trace the starting point of limitation to the medical certificate dated July 27, 1982, without realising that the medical certificate is not the cause but it would be the denial of benefits on the part of the Corporation that would be the starting point of limitation for the applicant to approach the Insurance Court. We have seen the record and the nature of the previous proceedings - I.C. No. 89/1982 which was dismissed for default and the petition to restore (I.C. 89/1983) also having been dismissed for default. In our judgment, there was no decision on merits and the denial is only available to have been communicated to the applicant on April 27, 1984 (Ext. A-10) when such a contention of denial appears for the first time. It is this denial which would be the cause for the applicant to approach the Insurance Court.

18. What we find as a matter of concern is that the Insurance Court has stopped short of proceeding further and has thrown out the proceedings at the threshold. It is here that something needs to be desired in the context. The remedies are for the benefit of workman, some of them are medical benefits. These are all brought up in the legislative enactment as social welfare measures. A travel of the proceedings right from the year 1987 down to this date, for the period of 10 years is our embarrassment. Had the Insurance Court seen the real spirit of the legislation and it is in this context we find that this is what is desired from the

statutory tribunals proceeding to throw out the applications without considering the situation on merits. It would have been an advantage to us if there has been a discussion on merits because we find that the evidence on record shows that the ailment making impossible to the applicant to do the work that she was doing is fortified by the medical certificate on record. In all such matters covered by social legislations time factor and quickness in regard thereto are heeling aspects going a long way parallel to the intention of the legislation. It would therefore, be desirable that the concerned Courts should hesitate to adjudicate the jurisdictional aspect and leave the matter at that stage. It would be really in consonance with justice that the Courts decide all issues to save the disadvantages arising out of inevitable life of the litigation in the Courts.

For the above reasons, we are left with no alternative but to remit the proceedings for decision on other questions, because the Insurance Court would have to be understood as having wrongly decided the question of limitation. The application which is filed on April 23, 1987 is well within the statutory period of three years, the cause of action having occurred on April 27, 1984 when the benefits were denied. For the above reasons appeal succeeds. Impugned order dated March 31, 1989 in I.C. No. 24 of 1987 of the Employees' Insurance Court, Quilon gets quashed and set aside and as a consequence the proceedings are remitted to the Insurance Court treating it to be within limitation to deal with other aspects of the matter. Order accordingly.