

A M/S. BHARAGATH ENGINEERING

v.

R. RANGANAYAKI AND ANR.

DECEMBER 20, 2002

B [SYED SHAH MOHAMMED QUADRI AND
ARIJIT PASAYAT, JJ.]

C *Employees' State Insurance Act, 1948—Sections 2(14), 53—Death of employee during course of employment with employer—Registration with Insurance Corporation after the death of employee—Proceedings under Compensation Act—Applicability of the Insurance Act on the employee—Held, employee is 'insured person' under the Act—Date of payment of contribution is not very material—Date of commencement is from the date of employment of the employee—Proceeding under Compensation Act barred—Employees' State Insurance (Central) Rules, 1950—Rule 58(2)(b)(ii)—Employees' State Insurance (General) Regulations, 1950—Workmen's Compensation Act, 1923.*

E Deceased employee died in the course of his employment with the appellants-employer. Application for registration with Employees State Insurance Corporation for the purpose of insurance was submitted and registration was granted after the death of the employee. Respondent-claimant filed application under Workmen's Compensation Act, 1923. Maintainability of the proceeding was questioned on the ground that entertainment of such application was barred by Section 53 of Employees' State Insurance Act, 1948. Commissioner for workmen Compensation held that deceased employee was covered under Insurance Act and was an "insured person" as contemplated under Section 2(14) of Insurance Act. In appeal High Court held that Section 53 of Insurance Act was not applicable and deceased employee could not be treated to be an insured person; and that since registration was outcome of contract between the employee and the Corporation, employee could be covered by the benefits of the Insurance Act only when registration is granted to him and not at an anterior point of time. Hence the present appeal.

Allowing the appeal, the Court

H HELD: 1.1. The deceased employee was an 'insured person', as defined in section 2(14) of Employees' State Insurance Act, 1948. As the

deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Workmen's Compensation Act, 1923 were excluded statutorily. The High Court was not justified in holding otherwise. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons. [647-C, D, E]

Harrisson Malayalam Pvt. Ltd. [1993] 4 SCC 361 and *E.S.I. Corporation v. Hotel Kalpaka International*, [1993] 2 SCC 9, relied on.

1.2. Crucial expression in section 2(14) of the Act is 'are or were payable'. It is the obligation of the employer to pay the contribution from the date the Insurance Act applies to the factory or the establishment. That being the position the date of payment of contribution is really not very material. In fact, Section 38 of Insurance Act, casts a statutory obligation on the employer to insure its employees. That being a statutory obligation, the date of commencement has to be from the date of employment of the concerned employee. [645-H; 646-B, C]

Employees' State Insurance Corporation v. Harrison Malayalam Limited, [1998] 9 SCC 74, relied on.

2. The scheme of the Insurance Act, Employees' State Insurance (Central) Rules, 1950 and Employees' State Insurance (General) Regulations, 1950 clearly spell out that the insurance covered under the Act is distinct and different from the contract of insurance in general. [646-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8623 of 2002.

From the Judgment and Order dated 15.12.1999 of the Madras High Court in LPA 222/99.

K.V. Viswanathan, Kunwar Ajit Mohan Singh and K.V. Venkataraman for the Appellant.

K.B. Sounder Rajan and V.J. Francis for the Respondents.

The Judgment of the Court was delivered by

PASAYAT, J. Leave granted.

A The challenge in this appeal is to a Division Bench judgments of the High Court at Madras. The point involved, though short, is interesting and relates to the question as to who can be treated as an 'insured person' under Section 2(14) of the Employees' State Insurance Act, 1948 'in short, 'the Act'.

B A brief reference to the factual position, which is almost undisputed, would suffice.

C One Balakrishnan [hereinafter referred to as 'the deceased employee'] was employed by the appellant [hereinafter referred to as 'the employer'] on and from 20th May 1987. He lost his life in an accident which was claimed to be arising out of and in the course of his employment with the employer. Respondent No.1 [hereinafter referred to as 'the claimant'] filed an application for compensation before the Commissioner for Workmen's Compensation, Trichy, under Workmen's Compensation Act, 1923 hereinafter referred to as 'the Compensation Act'. [The employer questioned the maintainability of the proceeding on the ground that Section 53 of the Act clearly barred entertainment of such an application. The stand was accepted by the Deputy Commissioner of Labour and the Commissioner for Workmen Compensation, who held that the deceased employee was covered by the Act and was an 'insured person' as contemplated under Section 2(14) of the Act. The matter was carried in appeal before the High Court by the claimant which, by the impugned order, held that Section 53 of the Act had no application. Consequent upon recording a finding that the deceased employee cannot be treated to be an insured person. It was noticed by the High Court that the registration for the purpose of insurance was granted subsequent to the death of the employee. In fact, the application for registration was submitted after the death of the employee and at the time the registration was granted, the employee was dead. Registration with the Employees' State Insurance Corporation [in short 'the Corporation'] was considered to be the outcome of a contract between the employee and the Corporation. It was, therefore, held that an employee could be covered by the benefits of the Act only when the registration is granted and not at an anterior point of time. Direction was given to the authorities under the Compensation Act to deal with the application.

H In support of the appeal, learned counsel appearing for the appellant submitted that the High Court's approach was erroneous because the language of Section 2(14) of the Act makes it clear that even before an employee is registered for the purpose of insurance with the Corporation, the obligation of the employer to pay contribution is not wiped out. Reference was made

to various provisions, more particularly to Rule 58(2)(b) of the Employees' State Insurance (Central) Rules, 1950 (in short the Rules) and Regulation (4) of the Employees' State Insurance (General) Regulations, 1950 [in short, 'the Regulations'].] Rule 58(2)(b) deals with a situation where 'employment injuries' are sustained before the commencement of the first benefit period. Merely because the contribution had not been paid by the time the employee died, that does not affect the liability of the Corporation. There is a statutory obligation to pay the contribution in respect of every employee once the factory or establishment is covered by the Act and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment. With reference to Section 38 of the Act, it was submitted that there was a statutory requirement for insurance in relation to all employees. The scheme of the Act is conceptually different from other contracts of insurance and the relationship of the contractor and the contractee is not that of the employee and the Corporation, but that of the employer and the Corporation.

Learned counsel appearing for the Corporation submitted that Section 2(14) of the Act was wide enough to cover an employee who dies even before the registration with the Corporation. According to him, the benefit under the Act is more beneficial to the employee than the compensation that could be awarded under the Compensation Act.

Learned counsel appearing for the claimant, on the other hand, submitted that only when the person is registered for the purpose of insurance with the Corporation, the Act has application and it is not that all the employees are automatically insured. What is contemplated under Section 38 of the Act, which is a statutory requirement, is to insure all the employees.

Section 2(14) of the Act, which is the pivotal provision, reads as follows:

" 'Insured person' means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act."

It is to be noted that the crucial expression in Section 2(14) of the Act is 'are or were payable'. It is the obligation of the employer to pay the contribution from the date the Act applies to the factory or the establishment. In *E.S.I. v. Harrison Malayalam Pvt. Ltd.*, [1993] 4 S.C.C. 361, the stand of the employer that employees are not traceable or that there is dispute about

A their whereabouts does not do away with the employer's obligation to pay the contribution. In *E.S.I. Corporation v. Hotel Kalpaka International*, [1993] 2 SCC 9, it was held that the employer cannot be heard to contend that since he had not deducted the employee's contribution on the wages of the employees or that the business had been closed, he could not be made liable. Said view was reiterated in *Employees' State Insurance Corporation v. Harrisons Malayalam Limited*, [1998] 9 SCC 74. That being the position, the date of payment of contribution is really not very material. In fact, Section 38 of the Act casts a statutory obligation on the employer to insure its employees. That being a statutory obligation, the date of commencement has to be from the date of employment of the concerned employee.

C The scheme of the Act, the Rules and the Regulations clearly spell out that the insurance covered under the Act is distinct and different from the contract of insurance in general. Under the Act, the contributions go into a Fund under Section 26 for disbursal of benefits in case of accident, disablement, sickness, maternity, etc. The contribution required to be made

D is not paid back even if an employee does not avail any benefit. It is to be noted that under Regulation 17-A, if medical care is needed before the issuance of temporary identification certificate, the employer is required to issue a certificate of employment so that the employee can avail the facilities available. 'Wage period', 'benefit period' and 'contribution period' are defined in Section 2(23) of the Act, Rule 2(1C) are Rule 2(2-A) of the Rules. Rule 58(2)(b) is

E a very significant provision. For a person who becomes an employee for the first time within the meaning of the Act, the contribution period under Regulation (4) commences from the date of such employment from the contribution period current on that day and corresponding benefit period shall commence on the expiry of the period of nine months from the date of

F such employment. In cases where employment injuries results in death before the commencement of the first benefit period, Rule 58(2)(b)(ii) provides the method of computation of dependent benefit. It provides for computation of dependent benefits in the case of an employee dying as a result of employment injuries sustained before the first benefit period and before the expiry of the first wage period.

G

Rule 58(2)(b)(ii), insofar as it is relevant, reads as follows:

Dependants's benefits.

H

2(b) Where an employment injury occurs before the commencement of the first benefit period in respect of a person, the daily rate of

dependant's benefit shall be:

A

(i) xxx

xxx

xxx

(ii) Where a person sustained employment injury before the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate, rounded off to the next higher multiple of five paise corresponding to the group in which wages actually earned or which would have been earned had he worked for a full day on the date of accident/fall."

B

When considered in the background of statutory provisions, noted above, the payment of non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an 'insured person', as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise. We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons.

C

D

E

The civil appeal is, accordingly, allowed but in the circumstances, without any order as to costs.

K.K.T.

Appeal allowed.