(2013) 02 DEL CK 0293

Delhi High Court

Case No: FAO No. 383 of 2011 and CM 16433 of 2011

Rajesh Kumar		APPELLANT
	Vs	
General Director, ESIC Headquarter and Another		RESPONDENT

Date of Decision: Feb. 18, 2013

Acts Referred:

- Employees State Insurance Act, 1948 - Section 15, 75, 77(1)(A)
- Limitation Act, 1963 - Section 14, 15

Citation: (2013) LabIC 3680 : (2013) LLR 1279 : (2013) 2 PLR 51

Hon'ble Judges: V.K. Shali, J

Bench: Single Bench

Advocate: Bhupesh Narula, for the Respondent

Judgement

V.K. Shali, J.

This is an appeal filed against the order dated 24.1.2011 by virtue of which the application of the appellant, which in essence was a suit for recovery was dismissed holding that the same was barred by limitation. Briefly stated the facts of the case are that the appellant was purportedly employed with some private organization and was covered by ESIC Scheme and is purported to have incurred certain medical expenses to which he was entitled for reimbursement as per Government rules.

2. The case of the appellant was that he had written letters to the respondents and sent notices for reimbursement of the amount of Rs. 48,000/- or so on account of expenses incurred by him. However, despite this, the said amount was not reimbursed, accordingly, he filed an application u/s 75 of the ESI Act before the ESI Court.

3. In the application, it has not been mentioned that under what sub-clause, the application was filed but a perusal of Section 75 of Employees'' State Insurance Act, 1948 would show the application filed by the appellant was perhaps under

sub-clause (e) which deals with a right of any person to any benefit and as to the amount and duration thereof. This application was filed in the year 2003 in respect of the medical reimbursement for the period 1998. The matter was contested by the respondents who raised the question of limitation as well as the right of the appellant not to get reimbursement even on merits.

4. So far as the question of delay raised by the appellant is concerned, it was stated by the counsel for the respondents that the delay was attributable to the appellant himself. On the pleadings of the parties, the following issues were framed:--

(i) Whether the application is within time?

(ii) Whether the petitioner is entitled to the amount claimed in the application?

(iii) Relief.

5. The appellant in support of his case had examined himself and the respondent also examined one witness. After adducing evidence by the parties, the learned ESI Court which happened to be the Court of Sr. Civil Judge/Central Delhi in the instant case, decided the issue No. 1 which pertains to the limitation against the appellant.

6. In this regard, it has been observed by the trial court as under:--

The injuries were suffered in the year 1997 and as per statement PW-1, he had stated that he has submitted the documents in ESIC and he filed the petition thereafter. In this case the dues as per the petitioner were denied by respondent and he should have come before this Court at the most within three years of arising cause of action. In the petition date of injuries is not mentioned. No document have been exhibited. Oral testimony has been given putting all the blame on the ESIC. In the cross-examination, the petitioner has admitted that bills were submitted in 1988 and were returned in August 2001. Mere writing of the letter to the ESI will not extend the period of limitation. Time spent in compliance of statutory obligation can be taken into consideration only. There is no application on record for giving the benefit of the time consumed before the Consumer court as per section 15 of the Limitation Act. Hence the petitioner has failed to prove that petition was within limitation and this issue is decided against petitioner and in favour of the respondent and it is held petition is time barred.

7. I have heard the appellant who is present in Court and gone through the relevant record.

8. Section 77(1)(A) of the Employees'' State Insurance Act, 1948 prescribes that the proceedings before an Employees'' State Insurance Court shall be commenced by an application and every such application has to be filed within a period of 3 years from the date on which the cause of action arose. A perusal of the application filed by the appellant does not show that he specifically makes a mention with regard to the accrual of cause of action. In the absence of specific averment with regard to the

accrual of cause of action, it cannot be assumed that the cause of action accrued to the appellant to file the appeal in the year 2001 or 2002 so as to construe that the application for reimbursement of his medical expenses which was filed in the year 2003, was within time. On the contrary, the admitted fact of the case is that the bills in respect of which reimbursement has been sought by the appellant pertains to the year 1998. Merely by delaying the submission of the bills on the flimsy ground that the respondent had not been responding to the written request of the appellant to refund the amount, would not extend the period of limitation. Therefore, I feel that there is nothing illegal or improper in the order of the learned ESI Court to the effect that the application of the appellant itself was barred by time and therefore, the same could not be entertained.

9. So far as the plea of the appellant that before filing the application u/S. 75, he had gone to the consumer court under a bona fide impression that the Consumer Court would be able to give him the relief, was returned to him. It is stated that the time deserves to be excluded and there has to be an application in this regard. While as in the instant case, it seems that no application having been filed for exclusion of time spend by the appellant in a wrong forum which was not competent to give the requisite relief to him u/s 14 of the Limitation Act would not result in automatic exclusion of time. Therefore, I feel that there is no merit in the appeal of the appellant. However, keeping in view the fact that as the respondent had, on the very first date, offered an amount of Rs. 43,900/- out of the total amount of Rs. 48,000/- as claimed by the appellant, this Court had already passed an order in favour of the appellant and against the respondent directing the respondents to pay the aforesaid amount of Rs. 43,900/- to the appellant.

10. I have been informed by the appellant that the appellant already has received the said amount. Though, technically speaking, the aforesaid amount could not have been paid to the appellant as his application u/S. 15 has already been held as barred by time but nevertheless, keeping in view the peculiar facts and circumstances of the case as well as the statement made by the learned counsel for the respondent that the amount has already been paid to the appellant, no direction is required to be passed by this Court for refund of the amount. In view of the aforesaid facts and circumstances of the case, I do not find any merit in the said appeal, accordingly, the same is dismissed.