(1999) 03 AP CK 0001

Andhra Pradesh High Court

Case No: A.A.O. No''s. 733 of 1994

Transport Corporation India Ltd.		APPELLANT
	Vs	
Employees State Insurance Corporation and Another		RESPONDENT

Date of Decision: March 3, 1999

Acts Referred:

- Employees State Insurance Act, 1948 - Section 2(9), 39(5), 48

Citation: (1999) 2 LLJ 581

Hon'ble Judges: N.Y. Hanumanthappa, J; C.V.N. Sastri, J

Bench: Division Bench

Advocate: A.K. Jayaprakash Rao, for the Appellant; Vemuri Venkateswara Rao, for the Respondent

Final Decision: Allowed

Judgement

N.Y. Hanumanthappa, J.
Since the facts and question of law that arises for consideration in all these appeals are common, they are being disposed of by a common judgment.

2. Aggrieved by the orders passed by the Employees Insurance Court in E.I. Case. No. 52 of 1992 dated March 15, 1992; E.L.C. No. 54 of 1992 dated March 15, 1992; E.I. Case No. 1 of 1994 dated May 12, 1994; and E.I. Case Nos. 35,30,31,41,33,39 of 1990 dated November 6, 1993 respectively holding that the Hamalies are employees and the Transport Corporation is liable to pay contribution, the appellant-Transport Corporation filed these appeals. In C.M.A. No. 1021 of 1992 the order under challenge relates to the applicability of the provisions of the E. S. I. Act as well as the period of limitation and hence this appeal will be considered separately. The facts which are necessary to dispose of these appeals are as follows.

3. The appellant herein filed petitions before Employees Insurance Court at Hyderabad u/s 75(1) of the Employees'' State Insurance Act, 1948 praying to

determine the dispute between the appellant and the first respondent E.S.I. Corporation with regard to the applicability of the provisions of the E.S.I. Act and contribution if any payable by the Appellant-Corporation and consequently declare the proceedings dated July 6, 1984 initiated by the respondent-Corporation as illegal and set aside the same. The case of the appellant as regards the plea now under challenge is that Hamalies charges cannot be considered to be the wages since they do not fall under the definition of wages and that the hamalies are not employees. It is its further case that it never engaged hamalies directly and that there is no employer and employee relationship between them as for the purpose of loading and unloading work the drivers or owners of the vehicles, who will be paid in lump sum, will engage them. The case of the first respondent-Corporation is that its Inspector on verification of the records found that the appellant itself engaged the hamalies for loading and unloading work and hence it claimed contribution on the wages to regular employees, temporary employees/trainees as well as hamalies. It is also its case that hamalies are also employees within the meaning of Section 2(9) of the E.S.I. Act and in support of its case it relied upon a decision of this Court in Rajakamal Transport and Another Vs. Employees'' State Insurance Corporation, Hyderabad, wherein it was held that hamalies do come within the meaning of Section 2(9) of the E.S.I. Act and therefore it was constrained to initiate proceedings u/s 45-B of the Act. The Employees Insurance Court after framing the necessary issues and considering the oral and documentary evidence found that the account books belonging on the appellant would go to show that wages are paid to hamalis by the appellant and the work of loading and unloading is carried on in the premises of the appellant and as per its directions and if the contention of the appellant that the drivers look after the work of loading and unloading is correct, then there would not have been any entry as regards payment of wages to the hamalies and thus came to the conclusion that the first respondent-Corporation has rightly claimed the contributions on their wages. Hence, these appeals.

4. The learned Counsel for the appellant contends that the services of the hamalis were not utilised regularly but at some intervals, that their names are not maintained in the muster rolls and that none of the provisions of the E.S.I. Act are applicable to the facts and circumstances of the case. He also contends that the Court below erred in not taking into consideration the fact that hamalies are not engaged by the appellant and that the reasons assigned by the Court below in holding that the hamalis are employees of the appellant and thereby directing it to pay contribution are neither sound nor valid in law. In support of his contentions he relied upon a decision of the Supreme Court in Employees'' State Insurance-Corporation v. Premier Clay Products 1995 SCC (L & S) 162, wherein it was held that coolies hired for sporadic work of loading and unloading also work on the very day for others and hence they cannot be called casual workmen and thus no contribution is payable by the employer on their behalf; and decision of a Bombay High Court in Parle Bottling Co. (P) Ltd. v. E.S.I. Corpn. 1989 LLN (Bom.) 494 wherein

it was held that casual coolies from road/street hired to assist permanent loaders to load and unload crates at various places are not employees of the company within the meaning of Section 2(9) of the Act though payments are made to them on vouchers and therefore they are not covered by the Act.

5. The learned Counsel appearing for the respondent-Corporation has supported the order passed by the Court below and submits that the nature of work the workman was carrying on is covered under the definition of employees as defined u/s 2(9) of the Act, that workmen are part and parcel of the factory as loading and unloading was part of the work of the factory, that Act is a social legislation and its aim is to provide social security and other benefits to the workmen by making applicable the provisions of the Act and in support of his submissions he relied upon Rajkamal Transport''s case (supra) and sought for dismissal of the appeals.

6. After considering the arguments advanced on behalf of both the parties and settled legal position and in the facts and the circumstances of the case, we are of the view that principles laid down by the Supreme Court in Rajkamal Transport''s case to (supra) squarely applies to the case on hand. In the circumstances, the order passed by the Court below is correct and does not warrant any interference. The appeals are accordingly dismissed. No costs.

7. So far as C.M.A. No. 1021 of 1994 filed by the respondent E.S.I. Corporation is concerned, the conclusion arrived at in the other appeals relating to the applicability of the provisions of the E.S.I. Act to hamalies/ labourers applies to this appeal also. Insofar as the limitation aspect is concerned, the Court below after considering the evidence on record came to the conclusion that the claim made by the appellant herein is barred by limitation and held that the Transport Corporation is not liable to pay the amount in demand.

8. The learned Counsel for the appellant submits that claim to pay the contribution was made within time and therefore the recovery proceedings u/s 39(5) of the Act have been initiated by virtue of the powers vested u/s 45 (C) to (I) of the Act and hence the claim is valid and within jurisdiction. The learned Counsel for the respondent on the other hand submits that the claim is barred by limitation.

9. The contention of the respondent-Transport Corporation that there cannot be any demand for contribution as the same is made beyond the period of limitation is quite untenable. After considering the rival contentions and after going through the record, we feel that there is no substance in the said submission made by the respondent-Transport Corporation as the Act itself is silent as to the period of limitation. In other words, no period of limitation is prescribed. Our view is supported by a decision reported in Goodyear India Ltd., v. The Regional Director 1996 (6) SLR 645 wherein it was held that there is no bar of limitation for the payment of contribution. In the circumstances, the respondent-Transport Corporation is liable to pay the contribution. The demand made by the appellant

herein is therefore just and proper. The appeal is accordingly allowed. No costs.