
(2005) 06 MAD CK 0128

Madras High Court

Case No: C.M.A. No. 622 of 1997

N.K. Yahayagani Co.

APPELLANT

Vs

The Regional Director,
ESI Corporation

RESPONDENT

Date of Decision: June 29, 2005

Acts Referred:

- Employees State Insurance Act, 1948 - Section 2(14), 45A, 74, 75, 76
- Tamil Nadu Employees Insurance Court Rules, 1951 - Rule 16

Hon'ble Judges: R. Balasubramanian, J; Prabha Sridevan, J

Bench: Division Bench

Advocate: J. Josephat, for the Appellant; Jayakumari, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Balasubramanian, J.

As early as 30.4.1997, a learned Judge of this Court ordered notice of motion. It continues to be in the same state of affairs. Admit.

2. The respondent herein passed an order dated 16.5.1989 u/s 45-A of the Employees' State Insurance Act, hereinafter referred to as "the Act" determining the contribution payable by the appellant for the period from April 1984 to March 1986 at Rs. 34,917.93 with interest. The appellant went before the Employees' State Insurance Court, hereinafter referred to as the "Insurance Court", Chennai, in E.I.O.P. No. 48/1989 to set aside the order referred to above and to declare the actual amount of contribution payable by the appellant for the period in question, after giving credit to the payments already made. The E.S.I Court by order dated 30.8.1996 in E.I.O.P. No. 48/1989 directed the Registry to return to the appellant the proceedings for presentation before the proper Court. It is this order which is in challenge in this appeal filed before this Court.

3. Learned Counsel for the appellant would submit that in view of Rule 16 of the Tamil Nadu Employees' Insurance Court Rules, 1951, hereinafter referred to as "the Rules", the impugned order cannot be sustained. According to him, under the Rules referred to above, the Court at Chennai would have jurisdiction, since admittedly a part of the cause of action has arisen. Learned Counsel would also submit that though there is a reported judgment of this Court namely, *Sree Karpagambal Mills Ltd. v. First Additional City Civil Court and Anr.*, 1996 (3) LLJ (Supp.) 410 and an unreported judgment dated 1.9.1997 in *Arokia Match Factory v. The Regional Director, E.S.I Corporation, C.M.A. No. 1098/1988*, which lend support to the view taken by the Insurance Court in this case, yet in view of the fact that the above referred to two judgments have not taken into account the impact of Rule 16 of the Rules referred to above, this Court can safely hold that the above referred to two judgments are not in accordance with law. Learned Counsel, relying upon another judgment of this Court reported in *Sree Lakshmi Medicals, etc. v. The Regional Director, ESI Corporation*, 1999 (1) LW 204, would contend that a contrary view had been taken in the latter judgment and though it is contrary to the earlier two judgments of this Court, yet in view of the fact that the latter judgment had taken note of Rule 16 of the Rules referred to above, this Court may be inclined to confirm that latter judgment alone. Learned Counsel for the respondent would admit the existence of the case laws as referred to above and she would also state that the existence of Rule 16, was not brought to the notice of the learned Judges, who dealt with the first two cases. Since the point involved turns on the question of jurisdiction of the Insurance Court at Chennai, we are of the considered opinion that we need not go into the merits or otherwise of the claim of the parties before the Insurance Court.

4. u/s 74 of the Act, the State Government is empowered, by Notification in the Official Gazette, to constitute an Employees' Insurance Court for such local area as may be specified in the Notification. The Insurance Court at Chennai is one such Court notified by the State Government for a specified area. There are similar such notified Courts for various other areas in this State. Institution of proceedings is governed by Section 76 of the Act. That section makes it clear that subject to the provisions of the Act and any Rule made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time the question or dispute arose. The insured person is defined u/s 2(14) of the Act "as 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 other benefits provided by this Act". Admittedly, in this case the appellant is at Vaniyambadi (parties appear to have admitted this position before the Insurance Court). Therefore in normal circumstances, u/s 76 of the Act and in the absence of any provision under the Act itself or any Rules made by the State Government, the Insurance Court, within whose local area Vaniyambadi comes, alone would be the Insurance Court to deal with the dispute, since admittedly the insured persons were working only there at the time the dispute arose. Section 75 of the Act enumerates matters to be decided by the Insurance Court. In our considered opinion, Section 75 of the Act is a comprehensive and

exhaustive one and it covers all disputes that are likely to arise under the provisions of the Act. Whether the Act applies to an establishment or not; or whether the quantum of contribution demanded is correct or not or whether there is still any contribution payable by the establishment or not, are all questions, which can be brought u/s 75 of the Act, so that the Insurance Court constituted u/s 74 of the Act would be competent to enquire into the same and resolve it. At the risk of repetition, we state that in the absence of any provision in the Act or any Rule made by the State Government taking away the jurisdiction of the Insurance Court appointed for a particular local area, in which the insured person was working at the relevant time, there is no escape from the conclusion that any dispute arising under the Act in respect of such insured person shall be only before that Court appointed for that local area in question. Since Section 76 of the Act is made operational, subject to the provisions of the Act and any Rules made by the State Government, it is clear that proceedings can be instituted in any Court, other than the Court appointed for the local area in question, provided there is an enabling provision. As rightly contended by the learned Counsel for the appellant, the existence of Rule 16 was not brought to the notice of the learned Judge, who decided the case *Sree Karpagambal Mills Ltd. v. First Additional City Civil Court and Anr.*, 1996 (3) LLJ (Supp.) 410. In the unreported judgment dated 1.9.1997 in *Arokia Match Factory v. The Regional Director, E.S.I Corporation*, C.M.A. No. 1098/1988 of this Court also (rendered by one of us Justice R. Balasubramanian), it is seen that the existence of Rule 16, referred to above was not brought to the notice of the Court. A reading of the unreported judgment shows that the earlier reported judgment of this Court was followed in dismissing that appeal.

5. In the above context, we perused the latter judgment of this Court in the case *Sree Lakshmi Medicals, etc. v. The Regional Director, ESI Corporation*, 1999 (1) LW 204, where a learned Judge, taking into account the impact of Rule 16 of the Rules referred to above, took the view that the earlier two judgments of this Court were rendered without reference to Rule 16 of the Rules and therefore if a proceeding is initiated in accordance with the territorial jurisdiction prescribed under Rule 16 of the Rules, then it would be in order. We perused the Rules. Section 96 of the Act enables the State Government to make Rules. u/s 96(1)(h), the State Government is empowered to make a Rule in "any other matter which is required or allowed by this Act to be prescribed by the State Government". We have already referred to Section 76 of the Act, which enables the State Government to make a Rule with reference to the territorial jurisdiction of the Insurance Courts. Therefore the Rule framed by the State Government is strictly in accordance with Section 96(1)(h) of the Act. We went through the Rules referred to above. Rule 16 deals with place of suing. It reads as hereunder:

"Place of suing.-- In cases not falling under Sub-section (1) of Section 76, a proceeding against any person shall be instituted in the Court within the local limits of whose jurisdiction:

(a) The opposite party or each of the opposite parties where there are more than one, at the time of commencement of the proceedings, actually and voluntarily resides, or carries

on business, or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the commencement of the proceeding, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case, either the leave of the Court is given, or the opposite parties who do not reside, or carry on business or personally work for gain, as aforesaid, acquiesce in such institution, or

(c) the cause of action, wholly or in part, arose."

The Rules starts with the words "in cases not falling under Sub-section (1) of Section 76". We have already expressed our opinion that Section 75 of the E.S.I Act is comprehensive and exhaustive and it takes into its fold all disputes that are likely to arise under the Act. Therefore it is clear that except the Insurance Court constituted u/s 74 of the Act, no other Court would have jurisdiction to take upon any issue/dispute arising under the Act for consideration. If the territorial jurisdiction is confined only to the Court appointed for the local area in which the insured person was working at the relevant time as per Section 76 of the Act, then Rule 16, prescribing Courts before which the proceedings can be instituted, has no meaning at all. It is needless to state that a harmonious reading of the various provisions of law is a sound interpretation of Statute. If we read Section 76 of the Act as an absolute requirement with no exception whatsoever, then there is no legal necessity for the Legislature to insert a provision u/s 76 enabling the State Government to make any Rules in regard to the matter covered under that section. If there is no contra provision in the Act or in the absence of Rules made by the State Government, the Court mentioned in Section 76 of the Act alone would be the competent Court. In other words, it is clear to us that a reading of Section 76 of the Act and Rule 16 of the Rules and striking a balance, we are of the opinion that the normal Rule is to institute a proceeding before the Court appointed for the local area in which the insured person was working at the relevant time and the exception is Rule 16. Under Rule 16 the place of suing may be in the place where the cause of action, wholly or in part, arose. In this case, the order impugned was passed by the respondent within the jurisdiction of the Insurance Court at Chennai. Therefore it is clear that definitely a part of the cause of action has arisen here and as such the Insurance Court at Chennai would have territorial jurisdiction. Therefore we hold that the judgment *Sree Lakshmi Medicals, etc. v. The Regional Director, ESI Corporation*, 1999 (1) LW 204, had correctly laid down the law and the contra view taken in the other two judgments i.e., *Sree Karpagambal Mills Ltd. v. First Additional City Civil Court and Anr.*, 1996 (3) LLJ (Supp.) 410 and *Arokiya Match Factory v. The Regional Director, E.S.I Corporation*, C.M.A. No. 1098/1988, are not correct. As a result of our discussion and for the reasons stated above, we are inclined to set aside the impugned order and E.I.O.P. No. 63/1989 is remitted back to the file of the Insurance Court for disposal in accordance with law. Consequently, connected C.M.P. is closed.