



DELHI HIGH COURT
Hon'ble Mr. Girish Kathpalia, J.
W.P.(C) 16407/2022, Dt/- 8-11-2024

Ms. Godambari Raturi
v.
Employees State Insurance Corporation Ltd. & Anr.

EMPLOYEES' STATE INSURANCE ACT, 1948 — Section 2(22) – Wages – Monthly incentive – Section 2(9) – Employee – The deceased workman was employed with respondent No. 2 succumbed to Covid-19 in 2020 – Since the deceased workman was insured with respondent No. 1 ESIC during his life time, the petitioner wife filed claim before the ESIC to claim benefit of relief under the ESIC Covid-19 Relief Scheme – The ESIC rejected the claim on the ground that the workman did not fall within the expression “employee” under section 2(9) of the ESI Act – After obtaining the certificate from respondent No. 2 that deceased workman was drawing a salary of Rs. 19,585/- per month at the time of death, the petitioner submitted a fresh request – The fresh requested also rejected on the ground that in addition to the salary, the workman was also being paid a sum of Rs. 2,674/- per month toward incentive, thereby his monthly salary to be more than Rs. 21,000/- – Held, ESI Act is a Social Welfare Legislation and a benevolent financial support regime under the Covid Scheme – The interpretation of the relevant provisions has to be with a slight tilt in favour of have-nots in consonant with the spirit of law – The Covid Scheme was a welfare measure for the persons insured under the ESI Act and who are employees under section 2(9) of the ESI Act – Under the scheme read with Rule 50 of the ESI (Central) Rules, 1950, the eligibility in terms of monthly wage in case of able bodied persons was Rs. 21,000/- per month and Rs. 25,000/- in case of person suffering with disabilities prescribed under the rules – The deceased workman was receiving the special incentive for 4 months prior to his death – Keeping in mind the benevolent nature of the Covid Scheme, coupled with the nomenclature of the monthly payment of Rs. 2,674/- , the said amount was added to the monthly wages to throw the petitioner out of the Social Welfare ambit of the Scheme – The said special incentive was granted only for 4 months and during those 4 months, the respondents continued to deduct ESI contribution from his salary – The purpose of paying the special incentives was to enable the working class to bear additional expenditure in the form of masks, gloves and other necessary articles – The special incentive was only a temporary one, aimed at dealing with the working in the Covid environment – Such special incentives cannot be treated as part of wages thereby depriving relief under the scheme to the widows of such Covid warriors who continued to work during such unprecedented pandemic – Thus, the wages of the workman being less than Rs. 21,000/- per month, he being and insured person clearly fell within the definition of “employee” under section 2(9) of the ESI Act – The petitioner widow cannot be denied benefit of the Covid Scheme – The petition is allowed. Para 12 to 17

For Petitioner: Mr. Jitender Nath Pathak, Advocate.

For Respondent: Mr. K.P. Mavi, Advocate.

IMPORTANT POINTS

- Special incentive paid to the employees for bearing additional expenditures during pandemic, for a temporary period, is not ‘wages’ under section 2(22) of the ESI Act.
- Additional amount paid to the employee only to throw him out of the ambit of the Social Security Scheme would not be taken into consideration.
- When a special incentive was paid to an employee making his salary go above Rs. 21,000/-, but ESI contribution was being deducted on the entire salary (including the incentive), the person will continue to remain an ‘employee’ under section 2(9) of the ESI Act.

LaBbri Compliance Hub Private Limited

Corporate Office | Mumbai: 120-121, Swastik Disa Corporate Park, Opp. Shreyas Cinema, Ghatkopar (W), Mumbai – 400086.

Registered Office | Pune: Kumbare Brothers, Near Sidhivinayak Temple, Azad Nagar, Kothrud, Pune – 411038

Website: www.labbriohub.com

Formerly known as Exertion HR Solutions Pvt. Ltd.



- **Special incentives cannot be treated as part of wages thereby depriving relief under the scheme to the widows of such Covid warriors who continued to work during such unprecedented pandemic.**
- **The interpretation of the provisions of Social Welfare legislations such as the ESI Act has to be with a slight tilt in favour of have-nots in consonant with the spirit of law.**

ORDER

Girish Kathpalia, J.–

1. This writ action brought under Articles 226 & 227 of the Constitution of India seeks issuance of appropriate writ/order/direction/declaration in the nature of certiorari, mandamus, *quo warranto* or any other appropriate writ/order/direction in the nature thereof for declaring the action of respondent No. 1 pertaining to not giving benefit of relief under ESIC Covid 19 Scheme to the petitioner and for directing grant of the same to her. On issuance of notice, the respondent No. 1 Employees' State Insurance Corporation Ltd. and respondent No. 2 employer of the now deceased husband of the petitioner entered appearance through counsel. Both respondents filed reply/counter-affidavit and after completion of pleadings, I heard learned counsel for both sides.

2. Succinctly stated, circumstances leading to the present case, as culled out of rival pleadings are as follows.

2.1 Shri Om Prakash Raturi (hereinafter referred to as “the workman”), the now deceased husband of the present petitioner was employed during his lifetime with respondent No. 2, his last drawn gross salary being Rs. 19,535/- and special incentive of Rs. 2,674/- in June, 2020. The workman succumbed to Covid-19 on 01-07-2020. Since the workman during his lifetime was insured with respondent No. 1/ESIC, after his death, the petitioner filed before respondent No. 1, Claim Form dated 30-12-2021 along with the requisite affidavit, seeking benefit of relief under the ESIC Covid-19 Relief Scheme (hereinafter referred to as “the Covid Scheme”). But after considering the Claim Form of the petitioner, the Assistant Director (Benefit), ESIC rejected the claim vide letter dated 24-05-2022 on the ground that the workman did not fall within the meaning of the expression “employee” under section 2(9) of the Employees' State Insurance Act. After obtaining a certificate dated 19-07-2022 from respondent No. 2 to the effect that the workman was drawing a salary of Rs. 19,585/- per month at the time of his death, the petitioner submitted a fresh request for benefit of the Covid Scheme vide letter dated 22-07-2022. But that fresh request also was rejected by respondent No. 1 vide letter dated 29-08-2022 on the ground that in addition to the salary, the workman was also being paid a sum of Rs. 2,674/- per month towards incentive, thereby making his monthly salary to be more than Rs. 21,000/- and consequently the petitioner was held not entitled to benefit under the Covid Scheme. By way of the present petition, the petitioner has assailed that decision of respondent No. 1.

2.2 In its reply to the writ petition, the respondent No. 1 ESIC admitted that the workman passed away on 01-07-2020 due to Covid and pleaded that at the time of his death, the workman was drawing salary beyond the wage limit prescribed under section 2(9) of the ESI Act as reflected from his salary slip, so benefit of the Covid Scheme could not be granted to his dependent. The respondent No. 2 employer of the workman in their counter-affidavit did not dispute the death of the workman due to Covid, but pleaded that there has been complete compliance of payment of ESI contribution on behalf of the workman and there has been no default on their part in this regard.

2.3 The petitioner opted not to file any rejoinder and upon completion of pleadings, I heard learned counsel for both sides.

3. During arguments, learned counsel for petitioner took me through above records and contended that the decision of the respondents in rejecting the claim application of petitioner is not sustainable in the eyes of law. It was argued that for the purposes of benefit under the Covid Scheme, the relevant aspect is the monthly wages of the workman, which in the present case was Rs. 19,585/- and the other amount of Rs. 2,674/- cannot be considered for present purposes. On the



other hand, learned counsel for respondents supported the impugned decision of rejection of the claim of petitioner, taking me through the provisions under section 2(9) and section 2(22) of the ESI Act in support of his contention that the workman was not an employee within the meaning of section 2(9) of the Act.

4. Thence, the questions to be examined are as to whether the workman fell under the definition of “employee” under section 2(9) of the Act and whether for the purposes of benefit under the Covid Scheme, the monthly amount of Rs. 2,674/- paid to the workman can be treated as a component of “wages” under section 2(22) of the Act.

5. To begin with, while examining these questions, it has to be kept in mind that the issue being examined here is under a social welfare legislation of the ESI Act and a benevolent financial support regime under the Covid Scheme. That being so, the interpretation of the relevant provisions has to be with a slight tilt in favour of have-nots in consonance with the spirit of law.

6. The Covid Scheme, approved on 03-06-2021 by the Chairman ESIC was a welfare measure for the persons insured under the ESI Act, who are employees under section 2(9) of the Act. The Covid Scheme provided relief to the dependents of the insured persons in case of their death due to Covid-19 by way of periodic payments directly into their bank accounts. The eligibility conditions for grant of benefit under the Covid Scheme were that the insured person who died due to Covid disease must have been registered on the ESIC online portal atleast three months prior to the date of diagnosis of Covid disease resulting in his/her death; and the deceased insured person must have been in employment on the date of diagnosis of Covid disease and the contributions for atleast 70 days should have been paid or payable in respect of him/her during a period of maximum one year preceding the diagnosis of Covid disease resulting in death. The Covid Scheme enlisted various relatives of the insured person who would be entitled to receive benefit under the scheme and that list names spouse as one of the relatives.

7. What the respondents herein bank upon is a sentence in the Scheme Objective of the Covid Scheme, which sentence is: *“The scheme is a welfare measure for IPs (insured persons) who are employees under section 2(9) of the ESI Act and it provides relief to the dependents of the IPs in case of his/her death due to Covid-19”*.

8. It is not in dispute that the workman during his lifetime was an insured person under the ESI Act and that he passed away due to Covid disease.

9. Section 2(9) of the ESI Act defines “employee” as follows:

“employee” means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and—

(i) who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service; and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the



Apprentices Act, 1961 (52 of 1961), and includes such person engaged as apprentice whose training period is extended to any length of time but does not include—

(a) any member of the Indian naval, military or air forces; or

(b) *any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month:*

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.” (*emphasis supplied*)

10. Section 2(22) of the ESI Act defines “wages” thus:

“wages” means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include—

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) *any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or*

(d) any gratuity payable on discharge.” (emphasis supplied)

11. Another important provision for present purposes is Rule 50 of the Employees' State Insurance (Central Rules) 1950, formulated in exercise of powers conferred by section 95 of the ESI Act by the Central Government, which stipulates thus:

“50. Wage limit for coverage of employee under the Act.— *The wage limit for coverage of an employee under sub-clause (b) of clause (9) of section 2 of the Act shall be twenty-one thousand rupees a month:*

Provided that an employee whose wages (excluding remuneration for overtime work) exceed twenty one thousand rupees a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of that period:

Provided further that the wage limit for coverage of an employee who is a person with disability under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) respectively, shall be twenty-five thousand rupees a month”.

12. Reading together the above provisions of law, what emerges in the present context is that in order to be entitled to benefit under the Covid Scheme, the claimant must be one of the enlisted relatives of the deceased employee, as enlisted in the Scheme; and in order to be treated as employee, the insured person must have been drawing monthly wages not more than Rs. 21,000/- per month in case of disable bodied persons and Rs. 25,000/- in case of persons suffering with the disabilities prescribed under Rule 50 of the above quoted Rules.

13. In the present case, what is to be examined is as to whether the workman was drawing wages not more than Rs. 21,000/- per month and thereby fell within the definition of “employee” under section 2(9) of the ESI Act. In this regard, **it would be significant to note that as per admitted case of the respondents, for a period of four months prior to the death**



of the workman i.e. during the period from March 2020 to June 2020, ESI contribution was being consistently deducted from his salary and deposited with the ESIC.

14. The respondents place reliance on the Wage Certificate dated 19-07-2022 issued by the respondent No. 2 employer of the now deceased workman, according to which at the time of his death on 01-07-2020, the workman was drawing a salary of Rs. 19,585/- per month and in addition to that, he was also being given a “special incentive of Rs. 2,674/- for four months i.e., March, April, May and June 2020”. The respondents want to add the said two amounts to claim that the workman was drawing wages more than Rs. 21,000/- per month, so cannot be treated as employee for present purposes.

15. Keeping in mind the benevolent nature of the Covid Scheme, coupled with the nomenclature of the monthly payment of Rs. 2,674/-, I find it not acceptable to add the said amount to the monthly wages so as to throw the petitioner out of the social welfare ambit of the scheme. Evidently, the said amount of Rs. 2,674/- was a special incentive granted to the workman during Covid pandemic, that too for only four months preceding his death and even during those four months, the respondents continued to deduct ESI contribution from his salary.

16. The purpose of paying such special incentives during those harrowing days of Covid pandemic was to enable the working class to bear additional expenditure in the form of masks, gloves, sanitizers and other necessary articles including those related to travel to work, so that the work could go on, ensuring minimum damage to economy of the country. That special incentive also was only a temporary one, aimed at dealing with the working in the Covid environment. Such special incentives cannot be treated as part of wages thereby depriving relief under the scheme to the widows of such Covid warriors who continued to work during such unprecedented pandemic. That being so, the wages of the workman in present case cannot be treated to be more than Rs. 19,585/- per month and consequently, the wages being less than Rs. 21,000/- per month, the workman being the insured person clearly fell within the definition of “employee” under section 2(9) of the Act. Consequently, the petitioner being widow of the workman who admittedly succumbed to Covid cannot be denied benefit of Covid Scheme.

17. In view of above discussion, the petition is allowed and the impugned action of the respondents, denying benefit of the Covid Scheme to the petitioner is quashed. The respondents are directed to grant all benefits under the Covid Scheme to the petitioner within four weeks.

Ref: LLR

If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333