



Dy. Director, Insurance No. Dy. Director v. India Pistons

Repco Ltd.

Madras High Court (12 Nov, 2013)

CASE NO. C.M.A No. 1516 of 2010

ADVOCATES

JUDGES

P.R Shivakumar, J.

ORDER

P.R Shivakumar, J.:—

1. This appeal has been preferred under **section 82 of E.S.I Act, 1948**, against the order of the E.S.I Court (Principal Labour Court), Chennai, dated 8.12.2008 made in EIOP No. 36 of 2006.
2. The respondent before the E.S.I Court is the appellant and the petitioner before the E.S.I Court is the respondent herein. The arguments advanced by Ms. S. Jayakumari, learned Counsel appearing for the appellant are heard.
3. Admittedly, the respondent herein is engaged in the business of manufacturing fly wheel starter, ring gears. In the cause of their business, the respondent firm used to give various job works to be carried out in the factory premises of sub-contractors. **Though the job works had been entrusted to third parties by the respondent herein, the respondent herein did not have the power of supervision over the work entrusted to the contractor. The appellant- Corporation issued notice on the respondent levying contribution, holding them responsible as principal employer liable to pay contribution in respect of the workers employed by the contractor.** The said notice was issued by the Deputy Director Insurance No. V, E.S.I Corporation, Nungambakkam, Chennai 34.
4. The order passed by the appellant directing payment of contribution by the respondent herein under **section 45-A of the E.S.I Act**, dated 14.12.2005 was challenged before the E.S.I Court by the respondent herein under **section 75 of the E.S.I Act**, **contending that certain job works were given to independent contractors to carry out such works in their premises and the respondent herein did not have any control or supervision over the employees of the said contractors with whom job works were entrusted and the respondent herein, only had the power to give specifications and reject the finished goods if they do not conform to the specifications given by the respondent herein.**
5. As the appellant took a stand that the power to prescribe specifications coupled with a power to reject the finished goods would amount to supervision, the impugned order came to be passed by the appellant. When the same was challenged before the E.S.I Court, the E.S.I Court, relying on a judgment of the Full Bench of this Court, negated the contention of the appellant herein and allowed the E.I.O.P No. 36 of 2006 and the impugned order of the appellant was set aside.
6. As against the order of the E.S.I Court, dated 8.12.2008, the present Civil Miscellaneous Appeal has been filed under **section 82 of the E.S.I Act**. **Section 82 of the E.S.I Act** enables a party aggrieved by the order of the E.S.I Court to prefer an appeal to the High Court. But the scope of appeal is circumscribed by imposing a condition in sub-clause 2 to the effect that an appeal to the High Court from the order of the E.S.I Court shall lie if it involves a substantial question of law. When ever a party, who is aggrieved by the order of E.S.I, Court, wants to file an appeal, the party should precisely state the substantial question of law involved in the case in the grounds of appeal. At the time of admission of the appeal, this Court should also identify such substantial question of law involved in the case. In case, the High Court is of the view that no substantial question of law is involved, the appeal is bound to be dismissed in limine on that score alone.
7. Though this appeal was admitted, at the time of admission, no question was identified as the substantial question of law involved in this appeal. As much, this Court has to consider at this point of time, as to whether any substantial question of law has arisen in this case. The appellant who has chosen to challenge the order of the Lower Court Has to satisfy the Court that the case involves a substantial question of law and if such a question of law is decided in favour of the appellant the result would have been otherwise

LaBbriio 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

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than the one found the appellant the result Would have been other wise than the one found m the order of the Lower Court. In this regard, Ms. S. Jayakumari, learned Standing Counsel for the appellent would suggest the following to be the substantial question of law that has arisen in this appeal:

“Whether the respondent is liable to pay contribution for the workers of the independent contractor as it; they come under **section 2(9)(ii) of E.S.I Act.**

8. It is not in dispute that the independent contractor with whom the job works were entrusted, do the job work at their factory premises. It is not the case of the appellant Corporation that the employees of the independent contractors were placed under the control supervision for the respondent or a representative or an officer of the respondent who would be in a position to give on the spot instructions as to how the work was to be accomplished. It is also not the case of the appellant Corporation that the respondent herein or its officer were given power to take any action against the erring employees of the independent contractor in respect of their employment in accomplishment of the job work entrusted to the contractor. On the other hand, based on the admitted position that the respondent who has given job work to the independent contractor, does have the authority to prescribe specification and quality and also the power to reject the quality the learned counsel for the appellant would contend that the said power will not doubt exhibit the power of supervision and control over the employees of the independent contractors if it is a case of lending of the employee's of the independent contractors to do work in the factory premises of the respondent then there cannot be any scope for the respondent to escape the Liability since **section 2(9)(ii) of E.S.I Act** contemplates such liability.

9. On the other hand, the independent contractors have to do the job work with their own employees in their premises and supply only the finished goods to the respondent herein. As pointed out supra the power to prescribe specifications and quality and the further, power to Reject goods the case they do not conform to such specifications of quality will not amount to supervision or control over the employees of the independent contractors.

10. When such a question arose before this Court in a case before a learned Single Judge of this Court, the learned Single Judge pointing out conflicting views of two different Division Benches referred the matter to a larger Bench. On such reference a Full Bench consisting of the then Chief Justice and two other Hon'ble judges of this Court was constituted. The Full Bench in the reference **viz.; E.S.I Corporation rep by its Regional Director v. Bethall Engineering Company rep. by Ms. S.V Umayal, Proprietrix** . 2007 115 FLR 256 SC., **has held in categorical terms that the right to reject or accept work on completion; on scrutinizing compliance with job requirements as accomplished by a contractor the immediate employer through his employees, is by itself cannot be construed as effective and meaningful 'supervision' as envisaged under section 2(9) of the Employees State, Insurance Act, 1948.**

11. Following, the said dictum made by the Full Bench of this Court the learned Judge of the E.S.I Court held that the employees of independent contractors could not be held to be the employees of the respondent as their principal employer for the purpose of payment of contribution under the E.S.I Act. Since the question raised by the appellant as substantial question of law has already been settled and answered by a decision of the Full Bench of this Court, the same cannot be projected as a substantial question of law. Apart from that, the said question of law as decided by the Full Bench of this Court has been applied by the E.S.I Court without any deviation. **Therefore, this Court comes to the conclusion that there is no merit in the appeal and the same deserves to be dismissed. Accordingly, the appeal is dismissed. However, there is no order, as to costs.**

12. Appeal Dismissed.

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