PATNA HIGH COURT
Hon'ble Mr. Shailesh Kumar Sinha, J.
Appeal from original order No. 4/2008, D/-1-5-2012

Employees' State Insurance Corporation, Patna and Ors.
vs.
R.K. Tekriwal s/o Late Matadin Tekriwal, Director, M/s. Azad Transport Company Private Limited and Anr.

EMPLOYEES' STATE INSURANCE ACT, 1948 - Section 82 - Appeal against the order of Employees' Insurance Court - Demand of ESI contribution by the Petitioner-corporation in respect of employees engaged for loading and unloading the goods as and when required was challenged by the respondent-company before El Court - Demand of ESI contribution by the petitioner, as raised, was rejected by the El Court - The petitioner has challenged the order of the El court - Held, Number of labourers engaged for loading and unloading and quantum of wages have not been identified by the ESI Corporation - The respondent-company has denied such labourers of being its employees stating that those labourers are engaged by the respective Truck drivers and paid by them - Hence, El Court has considered the material on record in its correct perspective - No merit in appeal and dismissed. Paras 4 to 6

For Appellants **:** Mr. Triloki Nath Maitin, Senior Advocate with Mr. Sudhir Kumar Bijpuria, Advocate.
For Respondents **:** Mr. Alok Kumar Sinha, Advocate with Mr. Indrajeet Bhushan & Mr. Manish Kumar, Advocates.

IMPORTANT POINTS

- In terms of the provisions of sub-sections (l) and (2) of section 82 of the Employees' State Insurance Act, 1948, no appeal shall lie from an order of an Employees' Insurance Court unless it involves a substantial question of law.

- The demand of ESI contribution is not tenable in the absence of identification of number of employees and quantum of wages paid to such employees.

JUDGMENT and ORDER (Oral)

PER SHAILESH KUMAR SINHA, J.-

1. The appeal is directed against the order dated 5th of November, 2007 passed by the Presiding Officer, Labour Court & Authority under Employees' State Insurance Court, Patna (hereinafter referred to as "the Court") in E.S.I, Case No. 12 of 2003, holding that the demand of contribution made by the respondent-Employees' State Insurance Corporation (hereinafter referred to as "the Corporation") as mentioned in Letter No. P/42-3793-Bima-1 dated 7.8.2003 for a sum of Rs. 4,31,569 being perverse and as such, is not tenable in the eye of law. The Corporation being aggrieved by the said order preferred the present appeal in terms of the provisions of section 82 of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act").

2. Shortly stated, the facts of the case are that the respondent-M/s Azad Transport Company Private Limited, Hajiganj, Patna City (hereinafter referred to as "the Transport Company") on receiving such demand filed an application under section 75(1)(g) of the Act before the Court for setting aside the said demand. The Corporation appeared in the said case and contested the application. Both the sides adduced oral as also the documentary evidence in support of their respective cases. The Court upon considering the oral and the documentary evidence on the record held to the effect

that in the absence of any evidence on the record, the relationship of master and servant between the Transport Company and the said Labourers could not be established and accordingly held that the demand of contribution is perverse and is not tenable in the eye of law.

3. Mr. T.N. Maitin, learned Senior Counsel appearing for the appellants submits that the order under appeal deserves to be set aside for the simple reason that the important documents such as Ext. B the letter dated 29th of January, 1998 written by the General Secretary of the Workers' Union of the respondent-Transport Company, Ext. D the inspection report of the Insurance Inspector dated 6th April, 1998 as also Ext. F, inter office communication between the head office of the Transport Company and its Branch were not considered by the Labour Court. Those documents were very important documents in support of the case of the Corporation. It is further contended that the demand of contribution from the Transport Company as per the letter dated 7th of August, 2003 with respect to the loading and unloading labourers for the period 1.10.1991 to 29.2.2000 was correct on facts and in law.

With regard to the question as to whether the labourers were covered under the provisions of the Act or not, in this connection reliance has been placed on a decision of the Supreme Court in the case of *Rajakamal Transport* v. *Employes' State Insurance Corporation,* reported in (1996) 9 Supreme Court Cases 644. Relying upon the aforesaid decision, it is contended on behalf of the appellants that even the casual workers were covered under the Act. In the instant case, the labourers were engaged in loading and unloading of the goods of the Transport Company. Accordingly, they being the employees within the meaning of section 2(9) of the Act, the Transport Company was required to deposit the contribution as demanded by the Corporation. It is, accordingly, submitted that the order under appeal be set aside.

4. On the other hand, Mr. Alok Kumar Sinha, learned counsel appearing for the respondent-Transport Company submits that the present appeal itself is not maintainable for the reason that in terms of the provisions of sub-sections (1) and (2) of section 82 of the Act, no appeal shall lie from an order of an Employees' Insurance Court unless it involves a substantial question of law. It is contended that the order under appeal is totally based on the factual aspects of the matter on consideration of the evidences adduced on behalf of the parties and since the finding of fact is not a substantial question of law, the appeal is not permissible under the Act. Learned counsel further submits that the Court upon considering the evidence adduced on behalf of the respondent-Transport Company as also the appellants found that opposite party witness No. 2 in his cross-examination himself admitted that he is not in a position to mention the number of employees and the quantum of wages for whom the contribution is demanded inasmuch as no statement of the applicant was recorded before passing the order purported to be under section 45A of the Act. Learned counsel submits that the labourers engaged in loading and unloading had no relationship with the Transport Company because as and when they were so required, they were engaged by the concerned Company for the purpose of loading and unloading. Their wages were not paid by the Transport Company. The Corporation could not bring any evidence on the record to counter the above factual position inasmuch as the labourers alleged to be working in the Transport Company at no point of time gave such statement that they were receiving their wages from the Transport Company. Their statement was not recorded by the Insurance Inspector while giving his report (Ext. D), which finds consideration in the order under appeal. It has further been submitted that the decision of the Supreme Court relied upon by the appellants materially differs from the fact as in the case before the Supreme Court the admitted position was that the labourers were engaged and paid by the Transport Company. However, in the instant case, the fact is not the same as the labourers were not engaged by the Company, however, they were paid by the truck owner/Driver. It is, accordingly, submitted that the appeal deserves to be dismissed on the ground of its maintainability as well as on facts.

5. On considering the rival submissions of the parties, the only controversy raised is with respect to appreciation of evidence. The contention of the appellants is that the relevant documents were not considered by the Labour Court while giving a finding against the Corporation whereas it is contended on behalf of the respondent-Company that on perusal of the order under appeal it would appear that the matter in issue was as to whether the labourers engaged for loading and unloading for whom demands were made by the Corporation were the employees of the Transport

Company or not. The Corporation could not bring any positive evidence on the record to show that they were the employees of the Transport Company by engaging them through any appointment letter nor produced any document to show that they were engaged by the Transport Company. The Court considered this aspect of the matter and discussed the order under appeal. The contention advanced on behalf of the appellants is that those documents, as referred to above, were not considered by the Court, but on perusal of the order under appeal, I find 'that in sum and substance all the materials on the record were considered by the Court in its correct perspective.

6. For the reasons and the discussions as above, I do not find any merit in this appeal. The same is, accordingly, dismissed. No costs.

Ref: LLR

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