

CASE NO.:
Appeal (civil) 6497 of 2001

PETITIONER:
P.B.Krishnankutty Nair

RESPONDENT:
The Regional Director, ESI Corpn. & Anr

DATE OF JUDGMENT: 07/03/2008

BENCH:
TARUN CHATTERJEE & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.6497 OF 2001

HARJIT SINGH BEDI, J.

1. This appeal arises out of the following facts.

2. The appellant who was a covered employee under the ESI scheme met with an accident in the course of his employment on 15th June 1990. An accident report was sent by the employer respondent No.2 in the present appeal to the respondent Corporation. The Corporation however refused to treat the injuries sustained, as injuries suffered during employment on the plea that on the date of the accident the employee was not covered under the ESI scheme. It was also communicated to the employee by a communication dated 4th December 1990 that he had ceased to be an employee with effect from 1st October 1989 and therefore he would not be entitled to any benefit for the disability but would be eligible for sickness benefits for the period 16th June 1990 to 30th June 1990. The employee thereupon filed an application before the Employees Insurance Court, Alappuzha claiming the benefit of disability on account of the injuries that he had suffered. In the counter statement filed by the Corporation, it was pointed out that the employee as an insured person had made contributions up to 30th September 1989 and that he ceased to be an employee with effect from 1st October 1989 as his salary had exceeded Rs.1600/- per month from 1st October 1989 and as such was not entitled to any benefit towards disability. The Employees Insurance Court in its order dated 14th November 1991 examined the various provisions of the Employees State Insurance Act 1948 (hereinafter called the "Act") and in particular the definition of 'employee' and 'insured person' under section 2(9) and 2(14) respectively as well as section 46 that dealt with 'benefits' and ultimately concluded that although the claimant ceased to be an employee with effect from 30th September 1989 he was nevertheless an "insured person" in terms of section 2(14) as he had paid contributions towards his insurance which would cover his case from 1st April 1989 to 30th September 1989 though he continued to be an insured person up to 30th June 1990 and as such his claim for the injury on 15th June was fully justified under the Act.

3. Aggrieved by the order of the Employees Insurance Court, the Corporation preferred an appeal before the High Court of

Judicature at Kerala. The High Court in its judgment dated 28th February 2000 noted that the facts of the case were not disputed and relying on a decision of the Division Bench of that very court in MFA 621/1986 (Regional Director, ESI Corporation vs. K.K.Surendra Babu) observed that if a person was not an employee during a particular contribution period and an accident had taken place during such period, he would not be entitled to ESI benefits. Having held above, the court further concluded that as the accident in the present case had also occurred after the claimant had ceased to be an employee, though within the contribution period, he was not entitled to the benefit of the payment of insurance from the Corporation. The appeal was accordingly allowed and the order of the Employees Insurance Court dated 14th November 1991 was set aside. It is in this situation that the matter is before us in appeal at the instance of the employee.

4. Certain facts are admitted on record: the date of accident 15th June 1990, and that the contribution had been made for the period 1st April, 1989 to 30th September 1989 which brought the contribution period to 30th June 1990. In these admitted facts, the learned counsel for the appellant has raised several arguments before us with reference to the statutory provisions. He has referred us to the definitions of 'employee' in section 2(9) of the Act and to 'insured person' in Section 2 (14) of the Act and to section 46 which talks about the benefits for an insured person in case of injury or sickness, and has argued that as the claimant was an insured person up to the end of the contribution period i.e. up to 30th June 1990, the accident having taken place within that period, the Corporation was liable to make payment to him. As against this, the learned counsel for the respondent has argued that the sine qua non for determining the eligibility for the payment of insurance under the Act was that a person was required to be an employee on the date of the accident and the claimant had admittedly ceased to be an employee with effect from 1st October 1989 and thus, he was not entitled to the payment of any disability benefit.

5. At the very outset, we may point out that the judgment relied upon by the Division Bench in reaching the impugned decision has not been cited before us by any of the counsel. We, therefore, do not have the benefit of the wisdom of the Division Bench in those cases and have accordingly examined the matter ourselves.

6. The matter must hinge on the various provisions brought to our notice by the learned counsel. We produce hereinbelow. Section 2(9), 2 (14) and Section 46 of the Act:
"Sec.2(9) "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 \026

(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;

Sec.2(14) "insured person" means 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 of the benefits provided by this Act.

Sec.46.Benefits. \026 (1) Subject to the provisions of the Act, the insured persons [their dependants or the persons hereinafter mentioned, as the case may be,] shall be entitled to the following benefits, namely \026

(a) periodical payment to any insured person in case of his sickness certified by a duly appointed medical practitioner [or by any person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf (hereinafter referred to as sickness benefit);

(b) periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to a maternity benefits);]

(c) periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as disablement benefit);

(d) periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee under this Act, as are entitled to compensation under this Act (hereinafter referred to as dependants' benefit);

(e) medical treatment for an attendance on

insured persons (hereinafter referred as to medical benefit; and

(f) payment to the eldest surviving member of the family of an insured person who has died, towards the expenditure on the funeral of the deceased insured person, or, where the insured person did not have a family or was not living with his family at the time of his death, to the person who actually incurs the expenditure on the funeral of the deceased insured person (to be known as [funeral expenses]

Provided that the amount of such payment shall not exceed [such amount as may be prescribed by the Central Government] and the claim for such payment shall be made within three months of the death of the insured person or within such extended period as the Corporation or any officer or authority authorized by it in this behalf may allow.]

(2) The Corporation may, at the request of the appropriate Government, subject to such conditions as may be laid down in the regulations, extend the medical benefits to the family of an insured person."

7. An examination of the provisions would show that the claimant was an employee up to 30th September 1989 and ceased to be so on the next day as his salary had exceeded Rs.1600/- per month which was the cut off wage fixed under the Act at that time. Admittedly, also the claimant was an insured person and the only difference between the two contesting parties is with regard to the significance of the contribution period which was to end on 30th June 1990. For determining as to whether an employee was entitled to the benefit under the Act, reference has to be made to section 46(c) which would cover the present case. Section 46(c) specifically provides for two cumulative conditions for its applicability i) the claimant must be an insured person and ii) that such an injury must be sustained when he was an employee. We therefore find that as the injury had been suffered after the claimant ceased to be an employee, he would not be entitled to any benefit of disablement notwithstanding the fact that his contribution period and his status as an insured person continued up to 30th June 1990. The Corporation has been taken pains to point out that certain benefits which would accrue to the claimant such as the benefit of sickness, has already been given to him. In this view of the matter, we find no merit in the appeal. It is accordingly dismissed. No costs.