

**SUPREME COURT OF INDIA**

Bangalore U.R.D.CO-OP.M.P.S.Union Ltd.

Vs.

The Regional Director, ESI Corpn.

C.A.No.1740 of 2009

(V.S.Sirpurkar and H.L.Dattu JJ.)

17.03.2009

**ORDER**

1. Delay condoned.

2. Leave granted.

3. Learned counsel for the appellant mainly argues before us the question of damages and points out that the High Court has held that the damages cannot be quantified and have to be read as compulsory damages in terms of Section 85-B of the *Employees' State Insurance Act, 1948 (read with Regulation 31-A of the Employees' State Insurance(General) Regulation, 1950)*. We have seen both the provisions. Learned counsel for the appellant very heavily relies upon a decision reported in (*Employees' State Insurance Corporation vs. HMT Ltd. and another*<sup>1</sup>) where this Court is of the view in paragraphs 14, 15 and 16 to the effect that there is a discretion in respect of the quantification of the damages. The said paragraphs run as under:-

“14. Section 85-B of the Act empowers the Corporation to recover damages in the event an employer fails to make the payment of the amount due in respect of contribution; subject, however, to the condition that the amount thereof would not exceed the amount of arrears as may be specified in the Regulations. The proviso appended thereto incorporates the principles of "natural justice".

15. Obligation on the part of the employer to deposit the contributions of both the "employer" and the "employee" is not in dispute. What is in dispute is as to whether the amount of damages specified in Regulation 31-C of the Regulations is imperative in character or not.

16. It is a well-known principle of law that a subordinate legislation must conform to the provisions of the legislative Act. Section 85-B of the Act provides for an enabling provision. It does not envisage mandatory levy of damages. It does not also

contemplate computation of quantum of damages in the manner prescribed under the Regulations.”

4. We have seen the impugned Judgment of the High Court wherein the High Court in paragraph 6 has observed:-

“.....In so far as appeal MFA 4036/03 is concerned, here again, the only circumstance under which the Corporation is vested with the discretion to waive or reduce interest is provided under Section 85-B of the Act and the fact that there was no malafide intention on the part of the respondent, is not a circumstance which would require the appellant to consider waiver or reduction of the damages that are likely to be imposed, for default in making contributions in time. Accordingly, the said appeal deserves to be allowed.”

5. It is obvious that the High Court has taken the view that the discretion is prohibited due to the language of Section 85-B of the Act. This Court has already taken a view that the levy of damages is not mandatory and that there is nothing in the Act to suggest imperatively the computation of damages only in the manner prescribed under the Regulation. Under these circumstance, we feel that insofar as the damages aspect is concerned, the High Court should decide the question of damages in the light of principles laid down by this Court in the case of *Employees' State Insurance Corporation vs. HMT Ltd. and another* (supra). The High Court is directed accordingly to re-hear the parties on the question of damages alone.

6. Insofar as the interest is concerned, we do not think that there is any case for interference particularly in view of the decision in *Goetze (India) Ltd. vs. Employees' State Insurance Corporation*<sup>2</sup>, and that aspect is closed. The matter is accordingly remitted to the High Court and the High Court will dispose of the matter in the light of the directions given by us in respect of damages alone. The appeal is disposed of accordingly. There shall be no order as to costs.

<sup>1</sup>(2008) 3 SCC 35

<sup>2</sup>(2008) 8 SCC 705