

SUPREME COURT OF INDIA

All India Emp.St.Insu.Corp'n Emp.Fedn.

Vs.

Empl. State Insurance Corp'n.

C.A.No.1199 of 2011

(Dalveer Bhandari and Deepak Verma,JJ.,)

31.01.2011

ORDER

1. Leave granted.
2. Heard learned counsel for the parties.
3. This appeal is directed against the judgment and order dated 11.08.2010 passed in Writ Petition (C)No.7690 of 2004 by the High Court of Delhi at New Delhi. The short question which arises for consideration is regarding the refund of the amount by the employees in view of their undertaking.
4. The relevant portion of the undertaking given by each of the employee is reproduced as under :

"If the above said Writ Petition or any SLP that the ESI Corporation may choose to file in the Supreme Court is decided in favour of the Corporation, I shall refund forthwith the entire arrears of pay of allowances and also the excess pay and allowances that might have been paid to me consequent upon implementation of the Orders of the Tribunal." In the said undertaking it was also mentioned that "in the event of my failure to refund the arrears and also the excess payment made forthwith, the Corporation shall have a right to recover such amounts from me."

4. In view of the categorical undertaking submitted by the employees, they are under an obligation to refund the excess amount paid to the Corporation or the Corporation would be at liberty to recover excess amount paid to the employees.
5. In the facts and circumstances of this case, we direct the Corporation to recover the excess amount paid to the employees within six years by fixing yearly installments.

6. Looking to the peculiar facts of this case, we further direct the Corporation not to recover the amount from the legal heirs of the deceased employees. With this observation, the appeal is disposed of, leaving the parties to bear their own cost.