



राष्ट्रीय राजधानी क्षेत्र, दिल्ली सरकार

Government of National Capital Territory of Delhi  
श्रम विभाग / LABOUR DEPARTMENT

कार्यालय उप श्रमायुक्त  
जिला: पूर्व उत्तर-पूर्व  
विष्णुकर्मा नगर, झिलमिल कॉलोनी  
शाहदरा, दिल्ली-110095

OFFICE OF THE DY. LABOUR COMMISSIONER  
DISTRICT: EAST & NORTH-EAST  
VISHWAKARMA NAGAR, JHILMIL COLONY  
SHAHDARA, DELHI-110095  
E-Mail: labdlcnec.delhi@nic.in

Phone: 011-22145486, 22151001

Website: labour.delhigovt.nic.in

Fax: 011-22145487

No. F. CEC-I/NE/36/2021/6842-45

21/02/22

In the matter of: -

Sh. Mahendra Tower S/o Late Sh. Narayan Tower  
R/o Adarsh Nagar, Khekra,  
Distt. Baghpat, UP-250101

.....Claimant

V/s

1. Sh. Density Industries

Through its Owners Sh. Deependra Gupta & Sh. Anurag Gupta  
R/o E-421, Plot No. 47, Gali No. 6,  
Friends Colony Industrial Area,  
Shahdara, Delhi-110095.

.....Respondent No. 1

2. Sh. Sachin Jain Agent ESIC

R/o E-421, Plot No.47, Gali No. 6, Friends Colony  
Industrial Area, Shahdara, Delhi-110095.

.....Respondent No. 2

3. ESIC through its ESIC SRO office

At 8113/1, Vikas Mall, First Floor,  
Navin Shahdara, Shadara, Delhi-110032

.....Respondent No. 3

Date : 21.02.2022

For claimant	-	Sh. Mahendra Tower with Sh. Pankaj Raj, Adv
For respondent No. 1	-	Sh. Vipul Gupta with Sh. Deependra Gupta
For respondent No. 2	-	Sh. Sachin Jain
For respondent No.3	-	Sh. Saurabh Kumar, Manager and Sh. Gaurav Singh, Assistant

#### PROCEEDING-CUM-ORDER SHEET

1. Matter discussed with all the parties. The claimant has filed claim application stating that he was in employment with respondent No. 1 since 27.03.2017 and was operating casting/ grinding/ polishing machine and met with an accident at around 05.30 PM on 01.07.2018 due to which he sustained serious injuries in his leg and was admitted at the Cosmos Super Speciality Hospital where operation was done and some portion was removed from the injured leg and the rod was inserted. Thereafter, he was shifted to Shreya Hospital where plastic surgery was done. The claimant has further stated that the position of his right leg becomes more serious and he was admitted at ESIC hospital where the doctors cut his right leg. The claimant has stated that the owner/employer got him treated in a private hospital to avoid the police case and thereafter admitted him in ESIC hospital through some conspiracy done with Sh. Sachin Jain agent of ESIC. The claimant has stated that he is 22 years old and only bread earner of the family and has prayed to award compensation to the tune of Rs. 25 lakhs alongwith 50% penalty and 24% interest.



2. Notice was issued to all the parties and all the parties are present today. The claimant has impleaded ESIC as one of the parties and Sh. Saurabh Kumar, Branch Manager, Shahdara and Sh. Gaurav Singh, Assistant from Sub- Regional Office, Nand Nagri with employer and so called ESIC agent Sh. Sachin Jain are also present.
3. From the bare perusal of the claim, it is noticed that the Respondent No. 1 has filed accident report and approached ESIC for getting employment injury benefit in respect of claimant. The employment injury benefit in respect of claim of claimant was admitted and processed by the then Manager of the Branch Office and was sent to sub-regional office for regularisation of leave period of more than 30 days and the sub-regional office rejected the claim vide letter dated D/SRO/NN/TB/AE/Relapse/2019/VOL.-2 dated 26.10.2021 issued by Assistant Director (Benefits) citing reasons that the changes have been made in the I.P of beneficiary/injured and the establishment was registered after the accident. In response to the above said letter of Assistant Director (Benefits), the Branch Manager has again sent a letter through email mentioning therein that the period from 2.07.2018 to 15.03.2019 and 30.05.2019 to 05.08.2019 was regularised by Medical Refree, Mori Gate and has requested to consider the same as employment injury and allow for payment of temporary disability benefit case. Sh. Gaurav Singh, Assistant appearing from sub-regional office informed that the case has again been rejected but filed no documentary proof/letter in this regard.
4. The reason for providing medical treatment from Pvt. Hospital to the injured was enquired from the employer Sh. Deependra Gupta on which he told that he took the injured workman to Pvt. Hospital for better treatment and the injured workman Sh. Mahendra Tawar also stated that the employer took him to Pvt. Hospital for better treatment and to avoid cutting of leg.
5. On enquiry, it was told by ESIC officials that there is no designation of ESIC agent. Sh. Sachin Jain is also present and he stated that he gives consultation/support to employers in their ESI and other labour related matters.
6. Sec.2 (14) of the ESIC Act, 1948, defines ensured persons which mean 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 benefit provided by this Act. As per E-pehchan card filed by ESIC in respect of Sh. Mahendra Singh. Insurance No.101417028, date of Regn. 21.4.2017 shows that injured workman/beneficiary was registered with ESIC since 21.04.2017 under the employment of M/s Thrive Engineers, B-47, 1<sup>st</sup> Floor, Vishwakarma Park, Lakshmi Nagar, Delhi since 27.03.2017. The other E-pehchan card filed by ESIC shows the date of appointment of injured workman/beneficiary as 22.05.2018 with same insurance number and date of registration under the employment of Respondent No.1. The establishment of the Respondent No.1 was covered under the ESIC w.e.f. 01.07.2018 and on that particular day, the claimant/injured workman/beneficiary was admittedly in the employment of Respondent No.1. Moreover, it is admitted by ESIC officials that they received accident report in Form-12 on 02.07.2018. On enquiry, ESIC official told that the claim of beneficiary/injured workman/claimant has also been rejected on the ground that the establishment was not covered at the time of accident but could not file any document/letter to show that the establishment was covered after the accident.
7. From above and in the absence of any document/letter to show that the establishment was covered after the accident, it is observed that the establishment was covered under ESIC at the time of accident and the claimant was employed with the Respondent and therefore, ESIC should have admitted the claim of injured workman/beneficiary/claimant. The Hon'ble Supreme Court vide judgement dated 20.12.2002 in Civil Appeal No. 8623 of 2002 titled as "Bhagirath Engineering Vs R. Ranganayaki and the other" has held that who can be treated as an insured person u/sec. 2(14) of the ESIC Act. The Judgement is reproduced below:-

for Claimant

for ESIC  
for R1

for R1

for R1

Vipul Adv.

(R2) for R1

(R3) for R1

(R3) for R1



**Supreme Court of India**

**Bharagath Engineering vs R. Ranganayaki And Anr on 20 December, 2002**  
**Bench: Syed Shah Quadri, Arijit Pasayat**

CASE NO.:

Appeal (civil) 8623 of 2002

PETITIONER:

BHARAGATH ENGINEERING

RESPONDENT:

R. RANGANAYAKI AND ANR.

DATE OF JUDGMENT: 20/12/2002

BENCH:

SYED SHAH MOHAMMED QUADRI & ARIJIT PASAYAT

JUDGMENT:

JUDGMENT 2002 Supp(5) SCR 642 The Judgment of the Court was delivered by PASAYAT, J. Leave granted.

The challenge in this appeal is to a Division Bench judgments of the High Court at Madras. The point involved, though short, is interesting and relates to the question as to who can be treated as an 'insured person' under Section 2(14) of the Employees' State Insurance Act, 1948 in short, 'the Act'.

A brief reference to the factual position, which is almost undisputed, would suffice.

One Balakrishnan [hereinafter referred to as 'the deceased employee'] was employed by the appellant [hereinafter referred to as 'the employer'] on and from 20th May 1987. He lost his life in an accident which was claimed to be arising out of and in the course of his employment with the employer. Respondent No.1 [hereinafter referred to as 'the claimant'] filed an application for compensation before the Commissioner for Workmen's Compensation, Trichy, under Workmen's Compensation Act, 1923 hereinafter referred to as 'the Compensation Act'. [The employer questioned the maintainability of the proceeding on the ground that Section 53 of the Act clearly barred entertainment of such an application. The stand was accepted by the Deputy Commissioner of Labour and the Commissioner for Workmen Compensation, who held that the deceased employee was covered by the Act and was an 'insured person' as contemplated under Section 2(14) of the Act. The matter was carried in appeal before the High Court by the claimant which, by the impugned order, held that Section 53 of the Act had no application. Consequent upon recording a finding that the deceased employee cannot be treated to be an insured person. It was noticed by the High Court that the registration for the purpose of insurance was granted subsequent to the death of the employee. In fact, the application for registration was submitted after the death of the employee and at the time the registration was granted, the employee was dead. Registration with the Employees' State Insurance Corporation [in short 'the Corporation'] was considered to be the outcome of a contract between the employee and the Corporation. It was, therefore, held that an employee could be covered by the benefits of the Act only when the registration is granted and not at an anterior point of time. Direction was given to the authorities under the Compensation Act to deal with the application.

In support of the appeal, learned counsel appearing for the appellant submitted that the High Court's approach was erroneous because the language of Section 2(14) of the Act makes it clear that even before an employee is registered for the purpose of insurance with the Corporation, the obligation of the employer to pay contribution is not wiped out. Reference was made to various provisions, more particularly to Rule



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58(2)(b) of the Employees' State Insurance (Central) Rules, 1950 (in short the Rules) and Regulation (4) of the Employees' State Insurance (General) Regulations, 1950 [in short, 'the Regulations'.] Rule 58(2)(b) deals with a situation where 'employment injuries' are sustained before the commencement of the first benefit period. Merely because the contribution had not been paid by the time the employee died, that does not affect the liability of the Corporation. There is a statutory obligation to pay the contribution in respect of every employee once the factory or establishment is covered by the Act and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment. With reference to Section 38 of the Act, it was submitted that there was a statutory requirement for insurance in relation to all employees. The scheme of the Act is conceptually different from other contracts of insurance and the relationship of the contractor and the contractee is not that of the employee and the Corporation, but that of the employer and the Corporation.

Learned counsel appearing for the Corporation submitted that Section 2(14) of the Act was wide enough to cover an employee who dies even before the registration with the Corporation. According to him, the benefit under the Act is more beneficial to the employee than the compensation that could be awarded under the Compensation Act.

Learned counsel appearing for the claimant, on the other hand, submitted that only when the person is registered for the purpose of insurance with the Corporation, the Act has application and it is not that all the employees are automatically insured. What is contemplated under Section 38 of the Act, which is a statutory requirement, is to insure all the employees.

Section 2(14) of the Act, which is the pivotal provision, reads as follows:

"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."

It is to be noted that the crucial expression in Section 2(14) of the Act is 'are or were payable'. It is the obligation of the employer to pay the contribution from the date the Act applies to the factory or the establishment. In *5.7. v. Harrison Malayalam Pvt. Ltd.*, [1993] 4 S.C.C. 361, the stand of the employer that employees are not traceable or that there is dispute about their whereabouts does not do away with the employer's obligation to pay the contribution. In *5.7. Corporation v. Hotel Kalpaka International*, [1993] 2 SCC 9, it was held that the employer cannot be heard to contend that since he had not deducted the employee's contribution on the wages of the employees or that the business had been closed, he could not be made liable. Said view was reiterated in *Employees' State Insurance Corporation v. Harrison's Malayalam Limited*, [1998] 9 SCC.

74. That being the position, the date of payment of contribution is really not very material. In fact, Section 38 of the Act casts a statutory obligation on the employer to insure its employees. That being a statutory obligation, the date of commencement has to be from the date of employment of the concerned employee.

The scheme of the Act, the Rules and the Regulations clearly spell out that the insurance covered under the Act is distinct and different from the contract of insurance in general. Under the Act, the contributions go into a Fund under Section 26 for disbursement of benefits in case of accident, disablement, sickness, maternity, etc. The contribution required to be made is not paid back even if an employee does not avail any benefit. It is to be noted that under Regulation 17-A, if medical care is needed before the issuance of temporary identification certificate, the employer is required to issue a certificate of employment so that the employee can avail the facilities available. 'Wage period', 'benefit period' and 'contribution period' are defined

for claimant

for R2

for R1

for R1

DPAL

Vipul Adv.

R2

R(3)

R(3)

R(3)



in Section 2(23) of the Act, Rule 2(IC) are Rule 2(2-A) of the Rules. Rule 58(2)(b) is a very significant provision. For a person who becomes an employee for the first time within the meaning of the Act, the contribution period under Regulation (4) commences from the date of such employment from the contribution period current on that day and corresponding benefit period shall commence on the expiry of the period of nine months from the date of such employment. In cases where employment injuries results in death before the commencement of the first benefit period. Rule 58(2Xb)(ii) provides the method of computation of dependent benefit. It provides for computation of dependent benefits in the case of an employee dying as a result of employment injuries sustained before the first benefit period and before the expiry of the first wage period.

Rule 58(2)(b)(ii), insofar as it is relevant, reads as follows: Dependants' s benefits.

2(b) Where an employment injury occurs before the commencement of the first benefit period in respect of a person, the daily rate of dependant's benefit shall be:

(i) xxx

xxx

xxx

(ii) Where a person sustained employment injury before the expiry of the first wage period in the contribution period in which the injury occurs, the rate, forty per cent more than the standard benefit rate, rounded off to the next higher multiple of five paise corresponding to the group in which wages actually earned or which would have been earned had he worked for a full day on the date of accident/ fall."

When considered in the background of statutory provisions, noted above, the payment of non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an 'insured person', as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise. We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons.

The civil appeal is, accordingly, allowed but in the circumstances, without any order as to costs.

8. From the above, it is clear that, the claimant/injured workman/beneficiary is covered under ESIC as on date of accident and is entitled for benefits from ESIC.
9. Sec.53 of Employee's State Insurance Act, 1948 deals with **"Bar against receiving or recovery of compensation or damages under any other law-** An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damaged under the Workmen's Compensation Act, 1928 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act."
10. Since the claimant is covered under ESIC, therefore, provisions of EC Act, 1923 are not applicable and therefore, the matter is being closed in this office.
11. The aim and object of both the Acts are for social benefits and to provide financial benefits to dependents of deceased and injured. The coverage of ESI Act in this case will be more beneficial for the claimant/injured workman/beneficiary. As EC Act provides for one time compensation whereas benefits under ESIC in

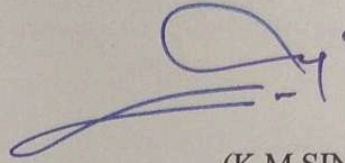


respect of the claimant/injured workman/beneficiary will be paid regularly as injured workman/beneficiary/claimant has become permanently disabled.

12. Since the matter is covered under ESIC, therefore, ESIC officials are directed to process the claim and release the benefits to the claimant/injured workman/beneficiary within the period of 15 days.

Copy of the order be given dasti to all the parties.

Given under my hand and seal on 21<sup>st</sup> day of February, 2022.



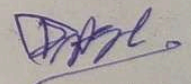
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Commissioner, Employees Compensation

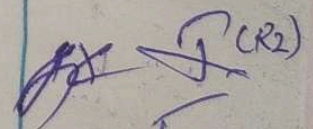
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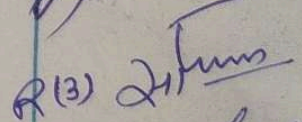
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फरवरी

For R1



Vipul Adv.

 (R2)

R(3) 

(R(3)) 