

Dependents entitled to ESI benefits

CAN an employee who has ceased to pay contribution to the ESI Scheme, and his dependents, claim benefits under the scheme?

Yes, according to a Division Bench of the Kerala High Court consisting of Justice P A Mohammed and Justice D Sreedevi. (MFA 748/88)

T V Paulo, an employee of Premier Cable Company, was remitting contributions to the Scheme till September, 1986. Thereafter he did not pay any contribution as his salary crossed the ceiling limit of Rs 1,600. On March 7, 1987 he met with an accident in the course of his employment and subsequently died in hospital on May 1, 1987.

His dependents submitted a representation to the ESI Corporation claiming dependents' benefits. The corporation turned down the plea. But Insurance Court, Alappuzha, held that the dependents were entitled to the benefits. The corporation challenged this in appeal before the High Court contending that the employee was entitled to the benefits of the Act only during the period for which he had effected contribution and that in order to be entitled to the benefits relating to employment-injury, the employee must be an insured person at the time when the accident occurred.

The Bench did not accept the argument. The employee had been covered by the scheme and there had been remittance of contribution till September 1986. No contribution was remitted thereafter, as he started drawing more than Rs 1,600 per month.

That does not mean that he and his dependents would lose all benefits under the Employees State Insurance Act, which is a welfare legislation. The interpretation canvassed by the corporation cannot be adopted because the very purpose of the Act would be defeated if such an interpretation is accepted. Judgment passed by the court below is perfectly in order.

Member not employee

THE Employees State Insurance Act defines 'employee' as "any person employed for wages in or in connection

cloths taking yarn from the society as loan and supplying finished products to the society which marketed the same.

The Insurance Court, Kollam, held that there was no employer-employee relationship between the society and its members and hence the ESI Act was not applicable. The High Court upheld the order saying that the crucial question was whether any wages were paid to the members of the society.

There is no evidence to show that they were paid any wages or that they were working within the premises of the society using the looms owned by the society. They were sharing profits according to the quantity of the finished products and the price of the

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with the work of a factory or establishment to which the Act applies'.

Members of a co-operative society who take raw materials from the society, manufacture goods and return finished goods to the society for marketing, are not employees of the co-operative society and so they are not covered by the ESI Act. Such is the reasoning of a Division Bench of the Kerala High Court to hold that Vattiyoorkavu HW Co-operative Society was not bound to pay ESI contribution in respect of its working members. (MFA 256/87)

The ESI Corporation had initiated proceedings against the society, which is engaged in the manufacture of handloom cloths, for not making contributions in respect of its

yarn. The members were not working as employees and earning therefrom, but were self-employed.

Sub-letting

SUB-letting of a tenanted premises by its tenant, without the express consent of the owner of the premises, is an excellent ground for the owner to seek eviction of the tenant.

If a co-operative society merges with another co-operative society and transfers a leasehold building to society to which it has merged, does it amount to sub-lease? According to Justice K G Balakrishnan and Justice S Krishnan Unni of the Kerala High Court,

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