

MANU/MH/2334/2012

Equivalent Citation: [2012(133)FLR605]

IN THE HIGH COURT OF BOMBAY

C.A.J. First Appeal No. 2380 of 2011

Decided On: 29.02.2012

Appellants: **East Asia Trading Co.**
Vs.

Respondent: **Regional Director, ESI Corporation**

Hon'ble Judges/Coram:

Mridula Bhatkar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: S.C. Naidu with Saurabh Kulkarni i/by C.R. Naidu & Co.

For Respondents/Defendant: P.M. Palshikar

JUDGMENT

Mridula Bhatkar, J.

1. Admit. Notice made returnable forthwith. Notice waived by the learned Counsel for the Respondent. Perused record and the Judgment.

This Appeal is filed against the Judgment and order dated 28th February, 2011 passed by the Employees' Insurance Court, Mumbai. The issue is in respect of the employees who remained on tour for 7 months or more in a year.

The point of determination is as follows:

Point of determination	Findings
1. Whether the said six salesmen on tour duty for 7 months or more during one year are concerned under the notification dated 5th January, 1982 or not.	No.

As per notification dated 5th January, 1982, such exemption given to the employees is enjoyed by the establishment after January, 1982. The main contention of the Appellants is that the documents produced by the Appellants showing the record of tour table of its six salesmen prior to 1982 was not appreciated by the Court.

2. Perused the Judgment and so also the compilation of the documents produced by the Appellants before this Court. It shows that the hearing under section 45 of the Employees' State Insurance Act, 1948 was taken before the Deputy Director, State Insurance Corporation Authority and the said Authority has passed the order on 11th April, 2002 wherein it is mentioned that on the date of hearing i.e. 23rd January, 2002, such record of these six salesmen was not produced. My attention is drawn to the letter dated 22nd January, 2002. On the day earlier to the order, the Appellants have written this letter to the Deputy Director pointing out that the record of the tour of the salesmen is available therefore, the Appellants demanded inspection of the

record by the Insurance Inspector and also requested to depute Insurance Inspector to verify the record. The Insurance Inspector visited only once i.e. on 19th September, 2001, thereafter, he did not visit on the next scheduled date i.e. on 10th October, 2001. Learned Counsel for the Respondent-Insurance Corporation submits that nothing was prevented the Appellants from producing the said records from 26th October, 2001 till 23rd October, 2001 before the Authority. However Inspector also failed to visit on the day fixed by him. After hearing the submissions and perusal of the record, I hold that the Appellants are to be given an opportunity to produce the record before the Deputy Director of the Insurance Corporation and the Deputy Director conducting the matter under the Employees' State Insurance Act, 1948 to decide the issue of coverage of six salesmen under the Act with reference to the notification and perusal of the documents produced by the Appellants. The order of the Employees' Insurance Court, Mumbai is set aside. The parties to appear before the Deputy Director of the State Insurance Corporation Authority on 20th March, 2012. The Appeal is disposed of in above terms. Civil Application No. 2300 of 2011 does not survive and the same is disposed of.

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