



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Monday the 23<sup>rd</sup> day of November, 2020)

**APPEAL No.406/2019**  
(Old No. ATA No.1432 (7)2015)

Appellant

M/s.Geetha Travels  
Vengad Post  
PB No. 2222  
Anjarakkandy  
Kannur -670 612

By Adv. P.Ramakrishnan

Respondent

The Assistant PF Commissioner  
EPFO, Sub Regional Office  
Kannur -671321

By Adv. K.C Santhosh Kumar

This case coming up for final hearing on  
23/10/2020 and this Tribunal-cum-Labour Court on  
23/11/2020 passed the following:

**ORDER**

Present appeal is filed from Order No.KR/KNR/  
14617/ENF (1) Damages/ 2015-16 / 2361 dated 04.09.2015  
assessing damages U/s 14 B of EPF & MP Act,1952  
(hereinafter referred to as 'the Act') for belated remittance of

contribution for the period 05/2010 to 04/2014. The total damages assessed is Rs. 3,05,217/- The interest demanded U/s 7Q of the Act is also being challenged in this appeal.

2. The appellant's husband late Shri O. Rajan was the proprietor of the appellant establishment, operating stage carriages. Shri. O. Rajan passed away on 10/06/2013 after prolonged treatment. This stage carriages were sold one after another for meeting the expenses for the treatment of late O Rajan. Due to the financial difficulties there was delay of remittance of provident fund contribution. The respondent initiated action U/s 14B of the Act. The appellant's son appeared before the respondent and pleaded that the delay was not intentional. However without considering the plea of the appellant, the respondent issued the impugned order. The Hon'ble High Court of Kerala in **RPFC Vs Harrison Malayalam Limited**, 2013 (3) KLT 790 held that financial difficulty is a mitigating factor while deciding quantum of damages. The existence of mensrea to contravene statutory provision must also be held to be a necessary ingredient for deciding the quantum of damages. The respondent failed to

exercise the discretion vested in him U/s 14B of the Act and Para 32A of EPF Scheme.

3. The respondent filed counter denying the above allegation. The appellant is covered under the provision of the Act. Hence there is statutory obligation on the appellant U/s 6 of the Act to remit the contribution within 15 days of close of every month. Admittedly there was delay in remittance of provident fund contribution. When there is delay in remittance of contribution the appellant is liable to remit damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant along with a delay statement. The appellant was also given an opportunity for personal hearing. A representative of the appellant appeared in the enquiry and admitted the delay. Hence the impugned orders were issued. In **Organo Chemical Industries Vs Union of India**, 1979 (2) LLJ 416 SC the Hon'ble Supreme Court held that even if it is assumed that there was loss as claimed, it does not justified delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allow to be link with the financial position of the establishment over different points of

time. The decision of the Hon'ble high Court of Kerala in **Regional PF Commissioner Vs Harrison Malayalam Ltd** (supra) is not at all relevant in the present case as the facts of that case are entirely different from that of the present case. The appellant failed to produce any documents to prove his financial difficulties during the course of enquiry. In **ESI Corporation Vs Loka Shikshana Trust**, 2008 (3) LLJ 945 (KNT) the Hon'ble High Court of Karnataka held that the Act makes it very clear that the contribution should be paid within due date and in default of the same, the employer is liable to pay the penalty by way of damages. When there is a duty cast on the employer to make the contribution within the due date and if the employer violates that provision, the employer shall be made liable to pay damages by way of penalty. There is no provision under the Act to challenge an order issued U/s 7(Q) of the Act.

4. The learned Counsel for the appellant pointed out that, the appellant failed to remit the contribution in time because of the financial difficulties due to the treatment and finally the demise of the proprietor. According to him the unit remains closed as of today because of the financial difficulties.

According to the learned Counsel for the respondent the appellant is a chronic defaulter. The appellant failed to produce any document to substantiate the claim of financial difficulties before the respondent. The appellant filed W.P.C NO. 1009/2015 challenging the assessment order issued U/s 7A of the Act. The Hon'ble High Court of Kerala granted 12 monthly instalments to remit the contribution for the period from 2009 to 2013. Since the appellant admitted the delay in remittance of contribution and there is no evidence to support the financial difficulties claimed by the appellant, it was pleaded that the appeal may be dismissed .

6. The appellant was operating stage carriages. It was a proprietary firm and the proprietor of the appellant establishment died on 06/12/2013 after prolonged treatment. At the time of filing the appeal the appellant was operating one vehicle. During the course of argument the learned Counsel for the appellant submitted that even that vehicle is sold and the appellant establishment is permanently closed. The appellant failed to produce any record to prove the same but the claim of the appellant was not objected to by the respondent. The only ground pleaded for delay in remittance

of provident fund contribution is that of financial difficulties. According to the learned Counsel for the respondent no documents were produced before the respondent to substantiate their claim of financial difficulties. The appellant failed to produce any document even in this appeal to substantiate their claim. The learned Counsel for the respondent pointed out that the appellant was a chronic defaulter and the dues for the period 2009-2013 was not remitted by the appellant in time. Therefore an enquiry U/s 7A was initiated and the dues was quantified by the respondent. The appellant approached the Hon'ble High Court of Kerala in WPC No. 1009/2015 and Hon'ble High Court was please to grant twelve equal monthly instalments to clear the dues. It is true that the instalments granted will not save the liability to pay damages. However in this special circumstances of this case it is felt that will substantiate the financial difficulties of the appellant to some extent. The Division Bench of the Hon'ble High Court of Kerala in **RPFC Vs Harrisons Malayalam Ltd**, (Supra) held that the financial difficulties is one of the ground that is required to be looked into as a mitigating factor while deciding the quantum of

damages. Though it is not supported by adequate documentary evidence, the appellant pleaded that the delay in remittance of provident fund contribution was due to financial difficulties. It was also pleaded that there was no mensrea in belated remittance of contribution. It is an extremely rare situation where the proprietor of a proprietary concern is hospitalized for a long treatment and the business of stage carriage ended up in financial difficulties and finally leading to closure of the establishment. In such a situation it is very difficult to hold that the delay in remittance in provident fund contribution was intentional.

7. Considering the facts and circumstances of this I am inclined to hold interest of the justice will be met if the appellant is directed to remit 60% of the damages assessed U/s 14B of the Act.

The learned Counsel for the appellant pointed out that the appeal against Sec 7Q order is not maintainable. On a perusal of Sec 7 (I) of the Act, it is seen that no appeal is provided from an order issued U/s 7Q. The Hon'ble Supreme Court **in Arcot Textile Mills Vs RPFC**, AIR 2014 SC 295 held that no appeal is maintainable from an order issued U/s

7Q of the Act. **In District Nirmithi Kendra Vs EPFO**, WPC No. 234/2012 the Hon'ble High Court of Kerala also held that no appeal can be preferred from an order issued U/s 7Q of the Act.

Hence the appeal is partially allowed, the impugned order U/s 14B modified and appellant is direct to remit 60% of the damage. The appeal against Sec 7Q order is dismissed as not maintainable.

Sd/-

**(V. Vijaya Kumar)**  
Presiding Officer