Section 144-B of the Act are no doubt for the guidance of the Income Tax Officer but are binding upon him by virtue of Section 144-B(5) of the Act.

Question 3.

This question is answered in favour of the Revenue, that is, in the affirmative. The Income Tax Officer has the jurisdiction to add over a lac of rupees but before doing so he has to follow the procedure given in Section 144-B of the Act.

Question 4.

Under this question, it is answered that if the Income Tax Officer does not follow the procedure laid down in Section 144-B of the Act, it is not fatal to the framing of fresh assessment after following the procedure within the period of limitation.

Question 5.

This question is answered in favour of the Revenue, that is, in the affirmative that the Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) provided fresh asessment is made within the period of limitation.

(10) The parties are left to bear their own costs

P.C.G.

Before : *G. R. Majithia, J.*

SMT. SHEELA,—*Appellant.*

versus

THE REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, CHANDIGARH AND ANOTHER,—*Respondents.*

First Appeal from the Order No. 926 *of* 1983.

31st August, 1989.

Employees State Insurance Act, 1948—Ss. 2(6-A), 75 & 82—Death of employee taking place while he was on his way to factory—Occurrence of death—Whether during the course of employment—Theory of notional extension—Applicable.

Held, that what is of utmost importance is to realise that recognition has been accorded to the notional extension. Once the theory of notional extension is properly applied to the factual situation pertaining to this particular case, it has to be held that the accident occurred within the area falling within the notional extension theory. The deceased was on his way to the place of his work and the dependents of the employee would be entitled to the benefits under the Act.

(Para 6)

First appeal from the order of the Court of Shri S. S. Chahal, PCS, Employees Insurance Court, Chandigarh, dated 14th September, 1983 dismissing the application of the appellant and leaving the parties to bear their own costs.

Claim :—*Application u/s 75 of the ESI Act for quashing the impugned order of the respondent No. 2 and for quashing the impugned order dated 11th October, 1982 and 5th November, 1982 of respondents No. 1 and 2 respectively, refusing to provide dependent benefits under the ESI Act.*

Claim in Appeal :—*For reversal of the order of the lower Court.*

R. L. Chopra, Advocate, *for the Appellant.*

K. L. Kapur, Advocate, *for the Respondents.*

JUDGMENT

G. R. Majithia, J.

(1) This appeal under Section 82 of the Employees State Insurance Act, 1948 (for short the Act) is directed against the order of the Employees Insurance Court, Chandigarh, whereby he dismissed the application filed by the appellant under Section 75 of the Act.

(2) The facts :

The appellant's husband was employed with M/s Electronic Products of India, Industrial Area, Chandigarh. The establishment is covered under the Act. The deceased husband of the appellant was also covered under the Act and was allotted Insurance No. 2340621 and the appellant is a dependent within the meaning of Section 2(6-A) of the Act. On December 11, 1981, the deceased husband of the appellant left his house at about 8.30 A.M.

to join his duties at 9 A.M. He used to board local bus at Sector 19, local bus stand. At about 9.30 A.M. a stranger came to the residence of the appellant and informed her that the person who was carrying the card issued by the Employees State Insurance Department had expired at local bus stand Sector 19, Chandigarh. The appellant gave intimation in this regard to the respondents to release the benefits payable to her under the Act. The same were denied necessitating the filing of a petition under Section 75 of the Act.

(3) The respondents contested the application primarily on the ground that the death had not occurred out of and during the course of employment. There was no employment injury. The pleadings of the parties gave rise to the following issues :—

(1) Whether the impugned orders dated 11th October, 1982 and 5th November, 1982 are illegal, void and liable to be set aside on the grounds mentioned in the petition ? O.P.P.

(2) Whether the petition against the respondents is not maintainable ? O.P.R.

(3) Relief.

The Employees Insurance Court found that the deceased had not died due to employment injury. Resultantly, issue No. 1 was found against the appellant. Issue No. 2 was answered in favour of the appellant.

(4) There is no dispute that the deceased husband of the appellant was covered under the Act and that the appellant being widow of the deceased is a dependent within the meaning of Section 2(6-A) of the Act. The appellant appeared as PW.1 at the trial and stated on oath that her husband was in the employment of M/s Electronics Products of India. He used to go to the factory in a local bus. He generally left the residence at 8.15 A.M. On December 11, 1981, in the morning, he went to the office of Mr. Khanna. On his return, he picked up his tiffin from his residence and left for the factory. Within 10/15 minutes of his departure, a gentleman showed her the identity card issued by the

Employees State Insurance Department and informed her that the bearer of the card expired at the local bus stand. She rushed to the bus stand and collected his deadbody and brought the same to her residence. The evidence of the appellant that her husband expired at the bus stand finds corroboration from the Statement of RW.1 Shri A. S. Sareen, Manager Local Officer, Employees State Insurance, Chandigarh. He stated on oath that he investigated the case and submitted his report wherein he had stated that the insured person died at the local bus stand of Sector 19, Chandigarh at 8.30 A.M. The time and place of death stands established from the statement of RW.1. The appellant's version that her husband died when he was on his way to the office could not be shettered in the cross-examination. She was cross-examined at length but she stood like a rock and was categoric about the manner, place and time of the death of her husband. In rebuttal evidence Shri K. C. Sharma, Insurance Inspector stated that the deceased did not receive any employment injury. In cross-examination, he admitted that he did not investigate the case personally. He did not visit the place of death nor did he make any enquiry from the appellant with regard to the accident in which her husband died. He also did not make any enquiry from the P.G.I. with regard to the death of the deceased. No reliance can be placed on the testimony of this witness.

(5) As observed above, the only conclusion which can be drawn is that the deceased husband of the appellant died while he was going to his place of work. While determining whether the accident had occurred in the course of employment, the following propositions emerges from the law declared by the Apex Court in *Saurashtra Salt Manufacturing Co.* v. *Bai Valu Raja and others* (1). namely :

(i) as a rule employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment:

(ii) Notwithstanding the aforesaid rule. it is now well settled position in law that the said proposition (i) is subject to a rider, namely. that it is subject to the theory of notional extension of the employees' premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work;

(1) A.I.R. 1958 S.C. 881.

(iii) Notional extension theory can be taken recourse to in order to extend in both 'time' and 'place' in a reasonable manner, in order to ascertain whether an accident to a workman may be regarded as in the course of employment though he had not actually reached his employment premises;

(iv) Facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of employment of the workman keeping in view at all times the theory of notional extension."

(6) Each and every one of the aforesaid propositions constitute the real ratio of the decision. What is of utmost importance is to realise that recognition has been accorded to the notional extension. Once the theory of notional extension is properly applied to the factual situation pertaining to this particular case, it has to be held that the accident occurred within the area falling within the notional extension theory. The deceased was on his way to the place of his work and the dependents of the employee would be entitled to the benefits under the Act. It will be useful to reproduce the following observations of M.P. Thakkar, J. in *Sadgunaben Amrutlal and others* v. *The Employees' State Insurance Corporation, Ahmedabad* (2), wherein it was held thus :—

"Only the bus and the few minutes in the bus stand between the workman and the factory. The notional extension is permissible in time as also in space, as has been declared by the Supreme Court. Once this formula is applied as it must be, it can be unhesitatingly said that the employee concerned was within the notionally extended zone. And thus it can be said that the accident occurred in the course of employment for the workman had set out on his journey to the place of work. But for the fact that he had collapsed he would have been at the factory within a couple of minutes. In our opinion, notional extension theory can be meaningfully applied in a situation like the present so as to effectuate the intention of the legislature to extend the benefits to the workman

(2) 1981 Lab. I.C. 1653.

who contributes towards the costs of running of the scheme evolved with a benevolent eye in order to appease the social conscience. We are, therefore, of the opinion that the accident had occurred in the course of employment."

For the reasons aforementioned, the appeal is allowed. The order of the Employees Insurance Court is set aside and the orders dated October 10, 1982 and November 5, 1982 are quashed. The respondents are directed to release all the benefits payable to the appellant under the Act within one month from the date of receipt of this order. The parties are directed to bear their own costs.

P.C.G.

Before : G. R. Majithia, J.

RANDHIR KAUR AND OTHERS,—*Appellants.*

versus

BALBIR SINGH AND OTHERS,—*Respondents.*

First Appeal from the order No. 198 *of* 1985.

31st August, 1989.

Motor Vehicles Act, 1939—*S.* 110-*A*—*Bus driver on the main road could not control his vehicle and crushing the scooterist under front wheel—Deceased entering main road from opposite direction—Negligence of bus-driver—Maxim of* res ipsa loquitur *applies.*

Held, that in fact, it was the result of the negligence of the bus driver. He was already on the main road and could not control the vehicle when the deceased, after negotiating the bend of the filling station was in the process of getting on the road leading to the Industrial Area. The deceased appeared to have already entered the main road. The bus was coming from the opposite direction. The driver could not control the vehicle and he crushed the scooterist under he left front wheel of the vehicle. In these type of cases, the maxim *res ipsa loquitur* applies. The doctrine of *res ipsa loquitur* applies to person who is oposing the claim petition. He has failed to discharge the onus. This bald assertion cannot be believed. He has concealed material facts. On the material brought on record, it is possible to hold that the accident took place as alleged by the driver.

(Paras 4 & 5)