

(2012) 01 AHC CK 0262

In the Allahabad High Court

Case No : First Appeal From Order No. 1814 of 2002

Employees State Insurance Corpn.

APPELLANT

Vs

Ram Chandra

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 75
Employees State Insurance Act, 1948 — Section 82

Citation : (2012) 01 AHC CK 0262

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Sanjay Misra, J.—Heard Sri Saral Srivastava, learned counsel for the appellant and Sri Neeraj Agrawal, learned counsel for the respondents.

2. This is an appeal u/s 82 of the Employees State Insurance Act, 1948 against the judgement and order dated 24.7.2002 passed in Employees State Insurance Appeal No. 209 of 1993 (Ram Chandra vs. Employees State Insurance Corporation) by the Judge, Employees State Insurance Court, Kanpur Nagar, whereby 15% loss of earning capacity has been awarded to the respondent-workman. This appeal was admitted on the substantial questions of law No. 1 and 2 on 25.9.2002.

3. According to Sri Saral Srivastava, learned counsel for the appellant, the Medical Board, which is Body of Experts as constituted under Regulation 75 of the Employees State Insurance (General) Act, 1950 as such the opinion of the Medical Board was binding on the Employees State Insurance Court. His further submission is that the injury alleged to the shoulder was not in any manner such as to deprive him of its use and hence be considered as a loss to his earning capacity.

4. Sri Neeraj Agrawal, learned counsel for the respondent-workman has

submitted that the report of the doctor of Lala Lajpat Rai Hospital clearly indicates that there was loss of earning capacity, in view of the injury report and the certificate and therefore, the Employees State Insurance Court has rightly awarded 15% loss in earning capacity and there could be no error found in the impugned award. He further states that the respondent-workman had filed report of the doctor of Lala Lajpat Rai Hospital in support of his claim.

5. Having considered the submissions of learned counsel for the parties and perused the impugned order as also the record of the lower court, the opinion of the Medical Board is no doubt opinion of an expert body constituted under the Statute itself. However, in case there is any other medical opinion available, the same also requires to be considered while deciding the claim. In the present case, the certificate of Lala Lajpat Rai Hospital has been filed by the workman, which is available on record. The same is a out patient slip No. 63230, wherein on 10.2.1993 it has been recorded that there is a complaint of injury in the right shoulder and the medicine has been prescribed for 7 days with the advice to under go physiotherapy. Insofar as this out patient slip is concerned, it is not a certificate of Lala Lajpat Rai Hospital certifying that there is 15% loss of earning capacity. It is in fact a prescription of the hospital's Doctor for treatment by physiotherapy and he gave medicine. As such it cannot be recorded that the Lala Lajpat Rai Hospital has assessed 15% loss of earning capacity of the respondent-workman and to the contrary the report of the Medical Board constituted under the Act is available on record.

6. The opinion of the Medical Board clearly indicates that there is no restriction in the movement of the right shoulder and it has free motion. Consequently, when the Medical Board, which is an expert body has not found any loss of earning capacity and the prescription of the Lala Lajpat Rai Hospital does not also give opinion about any loss of earning capacity, the Employees State Insurance Court could not have misinterpreted the prescription as certificate of loss of earning capacity. Clearly the view of the Employees State Insurance Court is not in accordance with law. Apart from prescription of the Lala Lajpat Rai Hospital there is no other certificate available on record of any Medical Practitioner or Hospital certifying that there is loss of 15% earning capacity of the right shoulder of the respondent-workman. It is settled that the Medical Board is an expert body and unless there is any contrary evidence, the report of the Medical Board cannot be disbelieved when there is no valid reason whatsoever. Consequently, the impugned order appears to be illegal and the substantial questions of law are answered in favour of the appellant-Employees State Insurance Corporation.

7. In view of the aforesaid circumstances, the finding recorded in the impugned order dated 24.7.2002 passed in Employees State Insurance Appeal No. 209 of 1993 (Ram Chandra Vs. Employees State Insurance Corporation) by the Judge, Employees State Insurance Court, Kanpur Nagar is set aside. However, the benefit, if any, already availed by the respondent-workman shall not be returned. The appeal is allowed accordingly.

No order is passed as to costs.