

(1969) 04 MAD CK 0025
In the Madras High Court

Employees' State Insurance Corporation	APPELLANT
Vs	
A. Zackria	RESPONDENT

Date of Decision : 18-04-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Employees Compensation Act, 1923 — Section 4
Employees State Insurance Act, 1948 — Section 2, 51, 54, 54A, 75

Citation : (1970) 2 LLJ 96

Hon'ble Judges : Venkataraman, J

Bench : Single Bench

Judgement

Venkataraman, J.—This appeal has been filed by the Employees' State Insurance Corporation against the order dated 19th August, 1964,

of the City Civil Court, Madras, in a petition (E.I.O.P. No. 2 of 1964) filed before it u/s 75 of the Employees' State Insurance Act, 1948

(XXXIV of 1948)(hereinafter referred to as the Employees' State Insurance Act) by one Zsckria, the respondent in this appeal. He was a helper

to a welder in a manufacturing factory called Vummidiars (Manufacturers) Private Limited situated in the Industrial Estate, Guindy. On 18th March,

1959, when he was helping the welder, an iron particle ("according to him) hit his left eye and he was sent to the Government Ophthalmic Hospital;

and he appears to have been treated only in a partial way with the result that he had to go again to that hospital in March, 1960. Then the iron

particle was removed from his eye and the eve had to be removed and replaced by an artificial eye. He petitioned to the appellant-Corporation for

compensation under the Employees' State Insurance Act, but got an unsatisfactory reply that he was not eligible to compensation under the

Employees" State Insurance Act. He, therefore, filed the application out of which this appeal arises.

2. He firstly claimed a sum of Rs. 3,000 or in the alternative payment of Rs. 30 per month.

3. The defence was that the iron particle which was recovered from the left eye in March-½April 1960, by a thou magnet was not the particle

which had fallen into his eye on 18th March, 1959. It is suggested that only an aluminium particle had fallen into his eye on 18th March, 1959 and

that the iron particle which was actually recovered from his left eye in March-½April, 1960, must have got into his eye as a result of some

subsequent accident and that consequently the injury which resulted in the replacement of the natural eye by an artificial eye was not an

"employment injury" within the meaning of Section 2(8) of the Employees" State Insurance Act It was also urged that he was not entitled to any

lump sum compensation. The reason for this was put forward thus: ""There is no provision in the Employees"" State Insurance Act or in the

Regulations authorising him to put forward claim for lump sum compensation or benefit, as the percentage of loss of earning capacity has to be

decided by Medical Board only in cases relating to employment injury in accordance with the provisions of the Employees" State Insurance Act.

4. The Employees" Insurance Court found on the evidence that the iron panicle which was removed from the left eye in March-April, 1960, was

the one which had got into the applicant's eye on 18th March, 959, and that the injury which was sustained on 18th March, 1959 was, therefore,

an employment injury within the meaning of Section 2(8) of the Employees" State Insurance Act. The court fixed Rs. 30 per mouth for life at

compensation.

5. The corporation has filed this appeal. The first point raised by their learned counsel, Mr. K.A. Veeraswami, is that the Insurance Court was

wrong in its conclusion that the injury which necessitated the replacement of the natural eye by an artificial eye was an employment injury, In other

words the contention was repeated that what got into the eye on 18th March 1959, was an aluminium particle, that the respondent recovered from

that even during the treatment given in March, 1959, itself and that he must have sustained the injury as a result of which the iron particle got into

his eye only subsequent to March, 1959. Section 82(2) of the Employees' State Insurance Act says that ""an appeal shall lie to the High Court from

an order of an Employees' Insurance Court if it involves a substantial question of law."" The question thus raised is one of pure fact. It is urged that

in deciding the question the consideration applicable to Section 100, Civil Procedure Code, will apply. Even so no ground has been made out

before me to justify interference with the finding of the Insurance Court. Indeed, I am satisfied that there was only one injury with an iron particle

getting into the eye on 18th March, 1959 and that it necessitated the replacement of the natural eye by an artificial eye. The loss of one eye would

be a permanent partial disablement within the meaning of Section 51(b) of the Employees' State Insurance Act.

6. The next point which is raised is that, even so, the Insurance Court should have referred the matter to the Medical Board, viz., constituted under

the regulations framed under the Employees' State Insurance Act by virtue of the power conferred u/s 96 of the Employees' State Insurance Act.

The regulations were amended as a result of some amendments to the Employees' State Insurance Act itself in 1966. Since the application herein

was filed and decided before these amendments the learned Counsel referred only to the regulations and the Act as they stood before those

amendments. Any reference in what follows will be only to those regulations unless otherwise appearing from the context.

7. Regulation 72 of the Employees' State Insurance (General) Regulations, 1950 said briefly that ""any question as to whether disablement

occurring as a result of an employment injury sustained by an employee should be treated as permanent disablement within the meaning of Section

51 of the Act shall be referred to the appropriate Medical Board constituted under Regulation 75. Regulation 73 provided that a Medical Board

shall after examining the disabled person submit its report to the appropriate Regional Office making recommendations as to whether the

disablement can be declared to be of the permanent nature and, if so, whether the extent of loss of earning capacity can be assessed provisionally

or finally and also assess the proportion of the loss of earning capacity. Regulation 74 provided for an appeal against the decision of the Medical

Board to the Appeal Tribunal constituted under Regulation 76.

Regulation 76 ran thus:

76. Appeal Tribunals.½An Employees" Insurance Court shall constitute the Appeal Tribunal for the purposes of Regulation 74 and for such

purpose, it shall be assisted by the following persons to be selected by it as assessors:

(a) One or more medical experts;

(b) One or more officials of or members from a trade union or unions.

8. What the learned Counsel for the appellant-Corporation suggests is that after determining that the loss of one eye was due to an employment

injury, the Insurance Court should have referred the question again to the Medical Board and left it to the disabled person to file an appeal to the

appeal tribunal. The point urged is that the Insurance Court could not have fixed the disablement benefit itself.

I have no doubt that the contention is unsustainable. Section 75(1) of the Employees" State Insurance Act, so far as material, runs thus:

If any question or dispute arises as to½

* * *

(e) the right of any person to any benefit and as to the amount and duration thereof,

* * *

such question or dispute shall be decided by the Employees" Insurance Court in accordance with the provisions of this Act.

9. Section 75(2) of the Employees" State Insurance Act says that the following claims shall be decided by the Employees" Insurance Court,

namely:

(f) any claim for the recovery of any benefit admissible under this Act.

10. The application of the respondent was filed before the Employees" Insurance Court because there was a dispute as to his right to the benefit

under the Employees" State Insurance Act. u/s 75 it shall be decided by the Insurance Court in accordance with the provisions of the Employees"

State Insurance Act and that is reinforced by Section 75(2)(f). This means that it is the Insurance Court itself which has to decide firstly whether

the respondent was entitled to any benefit under the Employees" State Insurance Act and also as to the amount and duration thereof. There is no

provision in the Employees' State Insurance Act (as it stood before the amendment of 1966) obliging the Insurance Court to refer the matter to the

Medical Board and close the application after making such a reference. In this respect, the amendments made in 1966 make a departure. A new

provision Sub-section (2A) has been added to Section 75 and it runs thus:

If in any proceedings before the Employee's Insurance Court a disablement question arises and the decision of a Medical Board or a Medical

Appeal Tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question

before the Employees' Insurance Court, that court shall direct the Corporation to have the question decided by this Act and shall thereafter

proceed with determination of the claim or question before it in accordance with the decision of the Medical Board or the Medical Appeal

Tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under Sub-section (2) of Section

54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

11. Along with Sub-section (2A) of Section 75, Section 54 has been amended. The old Section 54 which is the one governing; ran thus:

54. Medical Examination.½All medical examinations and treatment referred to in the Workmen's Compensation Act, 1923, shall, for the

purposes of this Act, be carried out by duly appointed medical practitioners.

12. After the amendment by Act 44 of 1966 this section reads thus:

54. Any question-

(a) whether the relevant accident has resulted in permanent disablement; or

(b) whether the extent of loss of earning capacity can be assessed provisionally or finally; or

(c) whether the assessment of the proportion of the loss of earning capacity is provisional or final; or

(d) in the case of provisional assessment, as to the periods for which such assessment shall hold good,

shall be determined by a Medical Board constituted in accordance with the provisions of the regulations and any such question shall hereafter be

referred to as the "disablement question".

13. A new section has also been added as 54A and it reads thus:

(1) The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a Medical Board for determination of

the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally

assessed, it shall again be so referred to the Medical Board not later than the end of the period taken into account by the provisional assessment.

(2) If the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation may

appeal in the prescribed manner and within the prescribed time to-

(i) The Medical Appeal Tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed

manner and within the prescribed time to the Employees' Insurance Court, or

(ii) The Employees' Insurance Court directly.

As the Employees' State Insurance Act stood before the amendments in 1966, there was no provision requiring the Insurance Court to close the

application on the determination of the question that there was an employment injury and to refer the matter to the Medical Board. There was even

no provision that it was to keep the application pending in order to await the decision of the Medical Board. On the contrary, there was an express

provision that it had to decide the right of the disabled person to the benefit and the amount of duration thereof, itself.

14. The reliance on the "regulations 72 to 76 (old regulations) proceeds on a misconception of those regulations. Thus, old Regulation 72 would

apply only to a case where the Corporation admitted that there was an employment injury; and the only question was whether the disablement

occurring as a result of the employment injury should be treated as a permanent disablement within the, meaning of Section 51 of the Act. Then the

question had to be referred to the appropriate Medical Board. Regulation 72 would not apply to a case where the Corporation denied that there

was an employment injury. The regulation was not apposite enough to include the reference of such a question to the Medical Board. It is easy to

construe the old regulations on the footing that they applied to the case of the Corporation admitting that there was an employment injury, but there

was only a question whether it should be treated as permanent disablement. In

such a case the Medical Board had to give its report and either the Corporation or the disabled person could appeal against it to the Appeal Tribunal constituted under the old Regulation 76. It so happened that the Appeal Tribunal constituted under the old Regulation 76 was the Employees' Insurance Court itself assisted by one or more medical experts and one or more officials or a member of a trade union or unions. But under that regulation, the Insurance Court functioned as an Appeal Tribunal, that is to say, if a case was brought to it against the decision of the Medical Board. It may be noted that the reference to the appropriate Medical Board had to be made by the Regional Office or by the Corporation, There was no provision in the regulations providing for a reference to the Medical Board by the Insurance Court itself. On the contrary, the Insurance Court was constituted the Appeal Tribunal against the decision of the Medical Board. Thus, the whole scheme of the Regulations was different.

15. It may be added that under the Regulations as amended, the Appeal Tribunal shall be constituted by the State Government and it shall consist of a judicial officer of the State Government being a person other than the judge of an Employees' Insurance Court, who shall be assisted by one or more medical experts or one or more officials or members of trade union or unions. In other words, whereas previously, the Employees' Insurance Court was itself the Appeal Tribunal now a judge of the Employees' Insurance Court should not be a member of the Appeal Tribunal.

That is, because, u/s 54H of the Employees' State Insurance Act, 44 of 1966, an appeal lies to the Insurance Court against the decision of the Medical Appeal Tribunal. It may be noted that even after the amendment of the Employees' State Insurance Act in 1966, while the Insurance Court is obliged to await the report of the Medical Board and the Medical tribunal, the final decision on the question is that of the Employees' Insurance Court itself.

If this is the position even under the Amendment Act after the amendment of 1966, it would be surprising if as the learned Counsel for the appellant Corporation contends, the position was different under the Employees' State Insurance Act as it stood before the amendment in 1966 and did not vest the jurisdiction of the final determination of the dispute in the Insurance Court and obliged the court to close the application after referring the matter to the Medical Board. It is clear from

any point of view of the Act as it stood before the amendments in

1966 with a provision requiring the Insurance Court to decide the question itself and the absence of the provision requiring it to refer the matter to

a Medical Board, the Insurance Court had to decide the question finally and was not obliged even to refer the matter to a Medical Board.

16. I therefore overrule the contention of the appellant that the Insurance Court had no jurisdiction to fix the amount of compensation itself.

17. The next contention of the learned counsel is that the compensation of Rs. 30 per month awarded by the Insurance Court is higher than what is

permissible under the Act, Section 51(1)(b) of the Employees' State Insurance Act says that ""Subject to the provisions of this Act and the

regulations, if any disablement benefit shall be payable to the person who sustains permanent partial disablement during his life.

18. Sub-section (2) of Section 51 says that ""disablement benefit shall be paid on the scale and subject to the conditions specified in this behalf in

the Second Schedule.

19. Rule 1 of the Second Schedule says that if the average daily wages of an employee are Rs. 3 and above, but below Rs. 4, the average

assumed daily wages will be Rs. 3-8.0. It is common ground that the daily wages received by the respondent was Rs. 3.50 and he had got it for

26 days in a month. The average daily wages will therefore be between Rs. 3 and Rs. 4 and the average assumed daily wage would therefore be

Rs. 3.50.

19. Rule 3 of Schedule 11 says that disablement and dependants' benefit shall be an amount equivalent to one half of the sum of the assumed

average daily wages etc, That is to say, it shall be Rs. 1.75 per day.

20. Rule 4 says (as far as it is relevant) the disablement benefit shall be payable to a person suffering from disablement as a result of an

employment injury sustained as an employee in a factory or establishment to which this Act applies as follows:

(i) to the insured person $\frac{1}{2}$

* * *

(b) for permanent partial disablement, at a percentage of the full rate as provided in Section 4 of the Workmen's Compensation Act, 1923, for life;

(c) for permanent total disablement, at the full rate for life.

21. In other words, this means that for permanent disablement the disabled person can get only a percentage of the full rate of the compensation

provided for permanent total disablement and the percentage is as provided u/s 4 of the Workmen's Compensation Act, 1923. Now the

compensation provided under the Workmen's Compensation Act, 1923, after the amendment effected to it in 1962 was 40% for the loss of one

eye. (Vide Section 4 of that Act and Schedule I-Part II of that Act). Thus the respondent would be entitled to a daily benefit of 40% of Rs. 1.75,

that is to say 70 paise; and for 30 days for a month he will be entitled to Rs. 21 per month. The figure of Rs. 30 was fixed by the Insurance Court

without reference to the above statutory provisions.

22. There remains the question whether the respondent should be asked to pay back the excess of Rs. 9 which he has received up till to-day. The

amount strictly speaking would be, no doubt, liable to be refunded; and it comes to about Rs. 500. But, as against that, the fact remains that the

Insurance Court has ordered the compensation to be given only from 24th December, 1963, the date of the application. That is neither just nor

correct as the applicant may be entitled to compensation even from April, 1960 (vide Section 80 and the proviso). That, at the rate of Rs. 21,

would come to over Rs. 800. In this view, the appellant-Corporation will not be entitled to recover back anything that has been paid up till date at

Rs. 30. The rate of Rs. 21 will hold good with effect from 28th January, 1969.

23. Having regard to the fact that the appeal has failed excepting with regard to the quantum of compensation, it is but fair that the respondent

should pay a substantial portion of the costs. I fix a consolidated sum of Rs. 100 to be paid by the respondent to the appellant.

24. This case having been set down this day for being mentioned as per office note the court made the following order:-

It is obvious that a mistake has crept in. The direction should be ""...It is but fair that the appellant should pay a substantial portion of the costs. I fix

a consolidated sum of Rs. 100 to be paid by the appellant to the respondent.