

(2006) 07 AHC CK 0046
In the Allahabad High Court

Employee's State Insurance Corporation	APPELLANT
Vs	
Abdul Rashid	RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : (2007) 1 ACC 737

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—This is an appeal u/s 82 of the Employees' State Insurance Act, 1948 against the order of the Employees' Insurance Court, Kanpur dated 9th November, 1987, passed in Appeal No. 141 of 1987.

2. Abdul Rashid, an insured person, the employee of M/s. Elgin Mills No. II on or about 16th August, 1985 received employment injury in his left wrist. The Medical Board in its decision dated 15th July, 1985 found that there being no mark of injury on left wrist and palm and there being no restricted movement and there being no loss of earning capacity permanently, the employee concerned is not entitled for any award. This decision of the Medical Board was challenged by the employee, namely Abdul Rashid in the appeal before the Employees Insurance Court, wherein he has been awarded 15% loss of earning capacity permanently. Aggrieved against the aforesaid order the present appeal is at the instance of Employees' State Insurance Corporation.

3. Heard learned Counsel for the parties and perused the record.

4. The Employees' Insurance Court awarded 15% loss of earning capacity permanently simply on the basis that from the report the fracture at left metacarpal is evident. On this basis it passed the order under appeal.

5. The contention of the learned Counsel for the appellant is that the injury in question was non-schedule injury and it was not open to the Employees' Insurance Court to interfere with the order of the Medical Board, which is an

expert body. Learned Counsel for the employee supported the impugned order.

6. I have given careful consideration to the respective submissions of the learned Counsel for the parties and found that even the Employees' Court while granting the aforesaid relief to the employee has not recorded any finding that there has been any loss of earning capacity permanently to the employee. The simple case that an employee has received some injuries it would not entitle him to claim any relief unless there is loss of earning capacity permanently. The Employees' Court has no right in interfering with the order of the Medical Board simply on the ground that there is fracture and, therefore, the employee should get some benefit for it. The Employees' Court assessed permanent loss of earning capacity to be 15% without taking into consideration any legal principle and simply on the ground to the effect that the employee should be granted some relief.

7. In this view of the matter the order of the Employees' Insurance Court cannot be sustained and the same is hereby set aside.

The appeal is allowed accordingly. No order as to costs.