

(2007) 09 AHC CK 0206
In the Allahabad High Court

Employees" State Insurance Corporation	APPELLANT
Vs	
Akhtar	RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Citation : (2007) 115 FLR 1131 : (2008) 1 LLJ 833

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard P.K. Asthana, learned Counsel for the appellant. No one has put in appearance on behalf of the claimant-respondent despite the service of notice being sufficient upon him.

2. The appeal is directed against the order of the Employees Insurance Court dated April 29, 1988 passed in appeal No. 65 of 19SSAkhtar v. Employees State Insurance Corporation, Kanpur.

3. The claimant respondent was an employee of the Elgin Mill. It is said that he suffered injury in his right knee while on duty on June 29, 1987. Admittedly, the said injury is non-schedule injury. The Medical Board disallowed the claim of the claimant-respondent vide order dated December 16, 1987. The said order was impugned in the appeal. The appellate Court has allowed the appeal partly and has determined the loss of earning capacity of the claimant-respondent to the extent of 5%.

4. Learned Counsel for the appellant has raised a substantial question of law as to whether the appellate Court was justified in superseding the decision of the medical board without there being any evidence to substantiate the loss of earning capacity of the claimant respondent?

5. I have perused the order of the Employees Insurance Court. The Employees Insurance Court had allowed the appeal without discussing any evidence and has

awarded 5% loss of earning capacity without there being any documentary evidence in support of the same. This has been done by the Employees Insurance Court on his own accord and his personal observation of the right knee joint of the claimant respondent. The Employees Insurance Court, records that there is pain in the right knee of the claimant-respondent. In my opinion the pain in the knee cannot be ascertained on mere observation of the knee. Moreover the opinion of the medical board which consists experts can not be over-ruled on mere personal observation without there being any evidence in support thereof. Admittedly there is no medical report of any private doctor or any certificate of medical expert certifying loss of earning capacity of the claimant-respondent on account of pain or injury in the right knee joint.

6. In view of the above, the impugned order of the Employees Insurance Court dated April 29, 1988 cannot be sustained. The appeal is allowed. The order under appeal dated April 29, 1988 passed by Employees Insurance Court Kanpur in appeal No. 65/1988 Akhtar v. Employees State Insurance Corporation, Kanpur is set aside. However it is made clear that any benefit which may have been given to the claimant-respondent shall not be recovered from him.