
(1983) 04 AP CK 0003
In the Andhra Pradesh High Court
Case No : A.A.O. No. 289 of 1983

Employees" State Insurance Corporation	APPELLANT
Vs	
B.V. Balanarasaraju	RESPONDENT

Date of Decision : 20-04-1983

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 51, 54A, 54A(1), 54A(2)

Citation : (1985) ACJ 563

Hon'ble Judges : Punneya, J;P.A. Choudary, J

Bench : Division Bench

Advocate : A. Naidu, for the Appellant; G. Bhikshapathi, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Choudary, J.—We find that this appeal by the Employees" State Insurance Corporation (hereinafter referred to as "the Corporation") is without merit. The employee was a Turner working under the management of a rubber industry in Hyderabad. One day while attending to his routine employment duties and feeding rubber into the machine, his fingers got caught and cut in the machine. He suffered the grievous loss of four of his right hand fingers. By reason of that accident, three of his right hand fingers were completely cut off and one had become totally inactive and useless. As a fact, he was incapacitated to do the usual work of feeding rubber any more. He claimed employment insurance benefits under the Act. He is entitled to such benefits. But what is in dispute is the quantum. For the assessment of loss of his earning capacity, the employee was sent to a Medical Board for its examination. Section 54-A(1) of the Employees" State Insurance Act, 1948 (hereinafter referred to as "the Act"), is the section of the Act that authorises this procedure. It requires the case of any injured person claiming any disablement benefit to be referred by the Corporation to a Medical Board for determination of the disablement question. The reference is required for determination of the nature of the injury and the quantification of loss of earning capacity. The Medical Board determines the

extent of loss of earning capacity of the injured person. The Board, in the present case opined, disagreeing with the claims of the employee, that loss of four fingers of his right hand did not result in permanent total disability.

It held that the employee merely suffered permanent partial disability. Having felt aggrieved by this somewhat startling opinion of the Medical Board, the employee appealed the matter u/s 54-A(2) of the Act to the Employees' Insurance Court (hereinafter referred to as "the Insurance Court"). The Insurance Court disagreeing with the opinion of the Medical Board, held that the employee suffered a permanent total disability. Now the Corporation complains to this Court and files this appeal contending that the loss of four fingers could result, as per the Second Schedule of the Act, only in permanent partial disability to the workman.

2. The decision in this appeal turns more upon law and less upon facts. The matter should be examined under the provisions of the Act, but never forgetting the fact that that Act has a social purpose to subserve and was enacted for giving insurance benefits to the disabled workman. Some reasonable sympathy towards the workman is not uncalled for. Some reasonable construction of the provisions of the Act, therefore, is not legally out of place. On the other hand in interpreting a social welfare measure, like the Employees' State Insurance Act, adoption of such a rule of interpretation promoting the declared objectives of the Act, cannot be found fault with. Examining the matter from that angle, we must reject the contention of the Corporation. But the argument of the Learned Counsel for the Corporation is that loss of four fingers of the right hand of an employee is treated by the Act itself as causing no more than permanent partial disability leaving no scope for play for the vibrations of sympathy upon the interpretation of the statute. On that basis it is argued by the Corporation, that the Insurance Court ought not to have held that the employee in this case suffered total disability. The Learned Counsel argued that inasmuch as the Parliament itself has treated the loss of four fingers as amounting to partial disablement only, it is not open for the courts to treat that very injury as amounting to total permanent disablement. It is true that where Parliament speaks, clearly the duty of the judicial organs of the State is to give effect to it.

3. But the question in this case, as in most cases, is whether the Parliament did say what the Corporation contends through the Second Schedule. There are several reasons for not accepting the argument of the Corporation. Firstly, we cannot hold that the Parliament could have intended to enact a law contrary to all common experience. Whatever the science of law aided and embellished by Maxwell or Craze and Crawford or Sutherland might be made to say on interpretation, common sense tells us that total loss of four fingers of a workman's right hand including the cutting off of the three of those fingers could never be held to have resulted only in permanent partial disablement of the workman whose daily work-duty consists in feeding rubber into the machine. His daily duty requires the use of those fingers which are now cut off his hand. Many

a thing man may or may not do without the aid and employment of his hands. Certainly the feeding of rubber into the machine is almost utterly impossible to be done by an employee without the use of his fingers. For the purpose of such a task, the employee does require the use of his fingers. The total loss of four out of his five fingers cannot but therefore be regarded as total permanent disablement. The employee is no longer fit to do the work he was hitherto doing. So much of what appears to be common knowledge is not denied even by the Corporation. But the argument of the Corporation is that as Part II of the Second Schedule to the above mentioned Act expressly declares even "loss of four fingers of one hand" to result only in permanent partial disablement, the Insurance Court cannot hold it as total permanent disablement. This argument of the Corporation is also technically defective. Under Part I of the Second Schedule to the Act a list of injuries resulting in permanent total disablement is given. In the case of permanent total disablement workman suffers loss of 100% earning capacity. But the loss of four fingers was not found mentioned in this list of injuries specified in Part I of the Second Schedule to the Act. On the other hand, the loss of four fingers is found mentioned in the list of injuries deemed to result in permanent partial disablement under Part II of the above Second Schedule. Loss of four fingers of one hand which was mentioned in the list of injuries deemed to result in permanent partial disablement was shown in Part II of the above Schedule as item No. 13. Item No. 13 which speaks of loss of four fingers of one hand was treated as resulting in loss of earning capacity of the workman only upto an extent of 50% and resulting in total partial disablement. Thus it appears, prima facie. Entry No. 13 of the Part II of the Second Schedule to the Act supports the argument of the Corporation. But in our opinion, this is not the right way to read the statute. The Schedule cannot be given the overriding importance superseding the rest of the statute and particularly the enacting clauses of the statute. The Act is enacted we noted for the purpose of providing certain benefits to the employees in case of their sickness, maternity and employment injury. The rate of these benefits payable to the workman depend upon the nature of the injury suffered. Section 51 of the Act declares that a person who sustains permanent disablement or temporary disablement to be entitled for the payment of monetary benefits. It is therefore clear that under the enacting part of the Act, an employee that suffers permanent total or partial disablement would be entitled to be paid the above statutory benefits. For the purpose of helping the determination of the question whether an employee in a given case, suffered permanent partial or total disablement the Act provided a statutory definition in Section 2, Clause 15-A and Section 2, Clause 15-B. A reading of these definitions would show that the scheme of the Act is to depend upon individual adjudication for determining the question whether the employee in a given case suffered total or partial permanent disablement. The Act does not depend upon any legislative declaration for determining what constitutes a permanent total or partial disablement. The entitlement of the workman for the disablement benefits under the Act is thus made to depend upon in each individual case on a finding that the workman suffered such a disablement within

the meaning of the Act arrived at by the statutory authorities set up u/s 54-A of the Act. The statute has, for that purpose set up u/s 54-A a machinery of a Medical Board, Medical Appeal Tribunal and Employees "Insurant" Court with authority to determine whether in a particular case the workman suffered any disablement and whether that disablement was partial or total.

4. Section 2, Clause 15-A of the Act defines "permanent partial disablement" to mean:

Such a disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement:

Provided that every injury specified in Part. II of the Second Schedule shall be deemed to result in permanent partial disablement.

Similarly, Section 2, Clause 15-B of the Act defines "permanent total disablement" to mean:

Such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries amounts to one hundred per cent or more.

5. In answering a question whether in a particular case the workman suffered permanent partial disablement or permanent total disablement, the authorities viz., the Medical Board, Medical Appeal Tribunal and Employees' Insurance Court, set up u/s 54-A of the Act will be guided and controlled by the above definitions. According to the above definitions, the difference between permanent partial disablement and permanent total disablement turns upon the quantum of loss of earning capacity which the employee suffered as a result of the accident. In the case of permanent total disablement the accident completely incapacitates the workman from doing all work which he was capable of performing at the time of the accident. In the case of permanent partial disablement the accident merely reduces his earning capacity. On the degree of loss of his earning capacity depends the answer to the question whether in a particular case, it is the permanent partial disablement or the permanent total disablement which the workman had suffered. In answering such a question the above-mentioned authorities u/s 54-A of the Act will have to examine the nature of the injuries suffered by the workman and the resultant loss in his earning capacity. Thus the scheme of the Act is that in each individual case, the authorities will hold inquiries and arrive at a finding as to the loss of earning capacity of the workman. If we accept the argument of the Corporation that the question

whether in an individual case the workman suffered permanent partial disablement or permanent total disablement, should be decided on the basis of the Second Schedule, the authorities set up u/s 54-A of the Act, will have no significant role to play in finding out the earning capacity. At the most, they can decide only the loss suffered of three fingers or four fingers. Thus, according to the argument of the Corporation, the authorities will have no significant role to play. This argument of the Corporation completely fails to assign any purpose to Clauses 15-A and 15-B of Section 2 of the Act. Why was the permanent partial disablement or the permanent total disablement defined in terms of the earning capacity of the workman, if those questions were to be determined on the basis of the entries in the Second Schedule? The implication of the argument of the Corporation is that where a workman had suffered any one or more of the injuries mentioned either in Part I or Part II of the Second Schedule, the machinery set up by the Act and referred to above for assessing the loss of earning capacity need not be resorted to at all. In those cases, the Medical Board, Medical Appellate Tribunal or the Insurance Court can only checkup the injuries with the entries in the Second Schedule and decide whether the employee's injuries fall under Part I or Part II of the Second Schedule. Such an argument of the Corporation, in our opinion, is completely contrary both for the purposes of the Act and its scheme which we have already referred to above. The very purpose of the above two definitions in Clauses 15-A and 15-B of Section 2 of the Act is to make the amount of compensation payable proportionate to the loss of the earning capacity which is required u/s 54-A of the Act to be ascertained by the authorities mentioned therein. The argument of the Corporation which eliminates all investigation into the individual loss of earning capacity in each case renders both the definition Clauses 15-A and 15-B of Section 2 largely purposeless. For example a workman may suffer loss of his four fingers of his left hand and such a loss may be less than the loss which he might suffer by the loss of his four fingers of his right hand. Under the entries in the Second Schedule, both losses were treated as equal. Further, under the Second Schedule, there can never be a total permanent disablement and no total loss of earning capacity. In our opinion, the Parliament could never have intended that the loss of four fingers in the left hand should be treated as equal with the loss of four fingers in the right hand and that in no case such a loss should be counted as a permanent total disablement. Whenever a Schedule is in conflict with the enacting provisions of the Act, the Schedule must give in. It is well-settled that a definition clause in a statute can also be an enacting clause. As the argument of the Corporation is contrary to the purpose and the scheme of the Act and would result in the Second Schedule superseding the enacting clause in Section 2, Clauses 15-A and 15-B, we cannot accept the argument of the Corporation.

6. The question then to be answered is what meaning and scope should be given to the Second Schedule to the Act. The answer to this question is two fold. (1) If the Second Schedule is to be read as being in conflict with the above-mentioned enacting provisions of the Act, the Schedule should be disregarded, because the

Schedule cannot be interpreted as having a higher efficacy of defeating the enacting provisions of the Act. But a careful reading of Section 2, Clause 15-A and Clause 15-B of the Act would show that the Second Schedule should be read in harmony with those provisions. The proviso to Section 2, Clause 15-A says, that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement. Similarly, the proviso to Section 2, Clause 15-B of the Act says that permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule from any total injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries amounts to one hundred per cent or more. The meaning of these provisos appears to us to direct the Tribunals set up u/s 54-A of the Act to treat the loss of the limbs as resulting atleast in the minimum loss of the earning capacity mentioned in the Second Schedule, In other words, the Tribunals cannot hold that in the case of injuries mentioned in the Second Schedule, loss of earning capacity is less than what is mentioned in the Second Schedule. This does not mean that the Tribunals cannot estimate the actual loss which the workman suffered from a particular injury over and above what is mentioned in the Second Schedule. In this view of the matter, an inquiry by the tribunal cannot be ruled out under the Act.

7. In this case, the Insurance Court found as a fact the workman suffered total permanent disablement, by reason of the loss of his four fingers in his right hand. Nothing is shown to us by the Corporation to set aside the finding of the Insurance Court. We accordingly dismiss this appeal.