
(1976) 05 CAL CK 0001
In the Calcutta High Court
Case No : F.M.A. No. 79 of 1971

Employees" State Insurance Corporation	APPELLANT
Vs	
Hafiz Khan	RESPONDENT

Date of Decision : 13-05-1976

Acts Referred:

Employees State Insurance (Central) Rules, 1950 — Rule 20
Employees State Insurance Act, 1948 — Section 43A(2), 54(2A), 54A(2), 75, 75(1)

Citation : 80 CWN 672 : (1976) 1 ILR (Cal) 499

Hon'ble Judges : M.N. Roy, J;Anil K. Sen, J

Bench : Division Bench

Advocate : Devesh Mukherjee, for the Appellant;Syed Hassan Imam, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—This is an appeal by the Employees" State Insurance Corporation u/s 82(2) of the Employees" State Insurance Act (hereinafter referred to as the said Act). On the provisions of Section 82(2) the appeal is limited to substantial question of law.

2. This appeal arises out of a proceeding which was initiated by the Respondent Hafiz Khan on an application under Sections 75(1)(e) and(g) and 75(2)(f) of the said Act before the Employees" Insurance Court, West Bengal. The proceeding was so initiated for the determination of loss of earning capacity and the assessment of permanent disablement benefit. The Respondent in course of his employment sustained an injury in his right eye on February 9, 1967. According to him, such injury resulted in permanent loss of vision of the said eye and, consequently, loss of earning capacity which would entitle him to get permanent disablement benefit under the provisions of the said Act. It is, however, not in dispute that prior to the said proceeding before the Tribunal, a similar claim on the basis of the same injury made by the Respondent to the Corporation was referred to the Medical Board constituted under the Act for determination of the

issue as to the extent of disablement and compensation therefore. Admittedly, the decision of the Medical Board was against the Respondent's claim. The Medical Board came to the conclusion that the Respondent had suffered no permanent disablement and, the percentage of loss of earning capacity was nil. This position was acknowledged by the Respondent in his application and in the said application to the Employees' Insurance Court, the Respondent disputed the correctness of the decision so arrived at by the Medical Board. The Respondent pleading permanent disability in respect of his vision claimed compensation at 30% in accordance with entry No. 32 of the second schedule.

3. This claim was contested by the Appellant Corporation before the Employees' Insurance Court. Specific defence was taken in the written statement filed by the Corporation that the assessment made by the Medical Board is not only correct but is final and binding between the parties and, as such, the Respondent was not entitled to claim any compensation whatsoever. This objection was pressed at the hearing. The learned Judge presiding over the Employees' Insurance Court, however, took the view that the report of the Medical Board was at best a piece of evidence which has to be considered along with other evidence and circumstances and such report does not conclude the issue at all. Judging in this light, the learned Judge rejected the report in the light of other evidence and came to the conclusion that the Respondent partially lost his vision because of injury in his right eye which would entitle him to claim compensation at 30% in terms of entry No. 32 of second schedule. He made an award accordingly on July 17, 1969 and that award is the subject-matter of challenge in this appeal before us.

4. Mr. Mukherjee, the learned Advocate for the Appellant, has contended purely as a question of law that the Tribunal below went wrong in thinking that the report of the Medical Board and its decision would only be a piece of evidence to be taken into consideration along with other materials and would not conclude the issue between the parties. In our opinion, there is ample substance in this contention of Mr. Mukherjee. It is unfortunate that the, Tribunal below failed to take note of the provision of Section 75(2A). This section lays down that if in any proceeding before the Employees' Insurance Court a disablement question arises and the decision of a Medical Board has been obtained, then the Tribunal is enjoined to proceed with the determination of the claim or question in accordance with the decision of the Medical Board subject to one exception, namely, there the Tribunal hears an appeal against the decision of the Board u/s 43A(2) of the Act, the Tribunal can make its own assessment and find out how far the decision of the Medical Board is correct. The effect of the provision is quite explicit, namely, that if the Tribunal is not sitting in appeal over the decision of the Medical Board on an appeal being preferred to it u/s 54A(2) of the Act, the decision of the Medical Board is binding between the parties and the Tribunal is bound to make an award in accordance with the said decision. Subject to the statutory appeal, the assessment by the statutory Board has been made conclusive by the statute itself and the Tribunal failed to appreciate this position.

Here the Tribunal was proceeding to adjudicate a claim u/s 75 and, in so doing, because of the provision as aforesaid, it had no other alternative but to accept the nil assessment of the disability as made by the Medical Board and it was not open to the Tribunal to consider the Board's report merely as a piece of evidence or adjudicate the correctness thereof. This being the position, the award made by the Tribunal is clearly contrary to law and, as such, is liable to be set aside.

5. Mr. Imam, the learned Advocate for the Respondent, concedes the difficulty which arises from the provision of Section 75(2A). In that view, Mr. Imam contends that when u/s 54A(2) the Respondent had also a right of appeal against the decision of the Medical Board to the Employees' Insurance Court and when in the application itself the said decision was challenged, this Court should consider the application to be an appeal and direct the same to be reheard" as such by the Tribunal; mere reference to the provisions of Section 75 or a claim made thereunder should not be considered to debar the Respondent from getting his relief by way of an appeal provided by Section 54(2A). On the facts of the present case, there is, however, an insurmountable difficulty in the matter of accepting such a contention put forward by Mr. Imam. Apart from the fact that the Respondent never preferred the claim in his application by way of an appeal u/s 54A(2), Rule 20(b) prescribes a period of limitation for such an appeal. The limitation prescribed is three months from the date of communication of the report of the Medical Board. Upon the Respondent's own admission in his application the final decision of the Board was communicated to him and he came to know of it on May 17, 1968. The application on which the proceeding was initiated was, however, filed on September 28, 1968. Therefore, on the day the application was filed the period of limitation for an appeal had already expired and no appeal could have been entertained on that day. This being the position, it is not possible for us to convert this application into an appeal u/s 54A(2) and direct rehearing thereof on that basis.

6. In the result, this appeal succeeds and is allowed. The award made by the Employees' Insurance Court, impugned in this appeal, is set aside. Respondent's application for compensation is dismissed.

7. There will be no order as to costs.

8. The money deposited by the Appellant in terms of the Court's order dated May 4, 1971, be refunded to the Appellant.

M.N. Roy J.

9. I agree.