

(2002) 06 CAL CK 0021

In the Calcutta High Court

Case No : C.O. No's. 2360, 2362 and 2363 of 1997

Employees" State Insurance Corporation

APPELLANT

Vs

Lachan Deo Singh

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Employees State Insurance Act, 1948 — Section 75(2A)

Citation : (2003) 3 LLJ 807

Hon'ble Judges : Hrishikesh Banerjee, J

Bench : Single Bench

Advocate : Subal Moitra, for the Appellant;

Final Decision : Allowed

Judgement

Hrishikesh Banerji, J.—These three Revisional Applications all under Article 227 of the Constitution of India have been heard analogously. The first application is directed against the order dated November 8, 1995 passed by the learned Judge, Employees" Insurance Court, Calcutta in Appeal No. 1 of 1993 filed in the said Court. By the impugned order the learned Judge allowed the appeal filed by the opposite party whereby the "nil" award of the Medical Board on the question of loss of earning capacity of the injured person was set aside by the learned Judge who held that the insured person had suffered 10% loss of earning capacity.

2. The opposite party Lochan Deo Singh has been an employee of Nuddia Mills Company Limited at Naihati, District-24 Parganas (North). On June 6, 1987 he sustained an employment injury on his left leg heel and ankle joint following sudden fall of a heavy iron material causing multiple fracture. He was under medical treatment at the E.S.I. Hospital, Kalyani, J.N.M. Hospital at Kalyani and E.S.I. Hospital at Sealdah.

3. He was also under the treatment of E. S. I. paneled doctors for more than two years but did not fully recover from the effects of the injuries sustained by him. As his movement was substantially restricted he was unable to perform his job

as ably as he had been performing prior to the employment injury: suffered by him and that as a result there was loss of his earning capacity to a great extent. He was examined by the Medical Board on April 10, 1991 but his loss of earning capacity was assessed as "nil" by the Medical Board.

" 4. In the appeal preferred by the opposite party against the Medical Board's "nil" award dated April 10, 1991 in respect of the employment injury sustained by him on June 6, 1987 on his left leg, heel and ankle, the learned Judge, E.I. Court found that the Medical Board's report (Ex-A) had no basis at all and struck down the same holding that the affected person would be entitled to 10% loss of earning capacity.

5. In C.O. No. 2362 of 1997 the E.S.I. Corporation has challenged the order passed by the learned Judge of the E. I. Court, Calcutta in Appeal No. 85 of 1995. By the said order dated January 22, 1997 the Presiding Officer of E.I. Court, Calcutta set aside the Medical Board's award of 1% loss of earning capacity of the opposite party herein and enhanced the loss of earning capacity to 5%.

6. In C.O. No. 2363 of 1997 the Corporation has challenged order dated January 8, 1997 passed by the E.I. Court in Appeal No. 90 of 1995 before the said Court whereby the loss of earning capacity of the opposite party herein was enhanced from 1% as awarded by the Medical Board to 4%.

7. In all these three appeals out of which the present Revisional Applications have arisen the Tribunal viz., the Employees' Insurance Court assessed the loss of earning capacity without examination of the petitioners or any other person as witnesses for determining the loss of earning capacity.

8. Mr. Moitra, appearing for the Corporation, cites the following decisions in support of his contention that the aforesaid orders of the Tribunal setting aside the awards of the Medical Board and enhancing the percentage of the loss of earning capacity of the concerned employees are not sustainable:

(1) E.S.I. Corporation v. Hari Hazra, 1981 (1) CHN 250

(2) E.S.I. Corporation v. Badal Pal FMA No. 375 of 1993 of this Court.

(3) E. S. I. Corporation v. Ramchandra Kole, FMA No. 678 of 1979 of this Court.

9. In FMA No. 678 of 1979 (supra) the insured person was one Ramchandra Kole who was employed as a Fitter mechanic in the Board Loom Department, Hastings Mill Ltd., Rishra, District- Hooghly. He sustained an employment injury on July 15, 1976 on having been accidentally hit by a broken piece of cast iron pinion in the weaving department which was being repaired by the insured person and as a result his left eye was affected by deep corneal abrasion. He was admitted to E.S.I. Hospital at Baltikuri and after his discharge he obtained partial disablement benefit to the extent of 30%. His case was referred to the Medical Board headed by Dr. I.S. Roy and the finding of the Board was that there was no

loss of earning capacity.

10. The appeal preferred by the applicant before the E.S.I. Board against the "nil" award of the Medical Board was allowed and the said Court found that the appellant had suffered partial disablement and was entitled to the benefit of the loss of earning capacity 20%.

11. The appeal preferred by the E.S.I. Corporation against the aforesaid order of the E.I. Court was allowed by this Court on the ground that even after the accident there has been no reduction or loss in the earning capacity and he admitted before the Tribunal in his cross-examination that he was getting his pay in the same scale of pay as he was drawing prior to the accident.

12. In the cases which are now being heard by this Court there is nothing on record to show that any of the affected persons and/or any other witness on their behalf was orally examined before the E.I. Court to ascertain whether there has actually been any loss of earning capacity of any of the concerned opposite parties following the employment injuries sustained by them.

13. In *E. S. I. Corporation v. Hari Hazra*, (supra), it has been held by a single Bench of this Court that the opinion of the Medical Board in case of a scheduled injury cannot override the statutory provisions of the schedule and that a harmonious construction of Section 75(2-A) of the Act clearly suggests that the said section is applicable to cases of un- scheduled injuries I e, the injuries which are not covered by any part of the schedule and that only in such a case that the extent of the loss of earning capacity is to be decided on evidence and the opinion of the Medical Board in this regard could be final and binding between the parties.

14. In the case decided by a Division Bench of this Court in P.M. A. No. 375 of 1993 (supra) the employee had suffered injuries while working. The Medical Board assessed the loss of earning capacity for the four injuries on the fingers etc. at 13% and for the partial loss of vision of one eye at 10%. The employee filed an appeal before the Tribunal and the Tribunal affirmed the finding of the loss of earning capacity on account of the injuries to the fingers etc. at 13% and enhanced the loss of earning capacity from 10% to 30%. It was urged on behalf of the E.S.I. Corporation that the Tribunal had raised the loss of percentage of the earning capacity for the partial loss of vision of one eye from 10% to 30% without recording any evidence for the purpose of assessment of the actual loss of earning capacity for such loss of vision of one eye and as no evidence was on record to contradict the assessment of the Medical Board the Division Bench directed the E.I. Court to give an opportunity to both the parties to adduce further evidence as would be necessary for proper adjudication of the issues involved.

15. In view of the aforesaid decisions this Court is of the opinion that in all the three cases the parties should be allowed to adduce further oral and documentary evidence in support of their respective claims as regards the loss of

earning capacity before the E.I. Court.

16. Accordingly, all the three Revisional Applications are allowed. The orders passed by the E.I. Court in all the three applications are set aside and the E. I. Court is directed to decide the cases afresh after allowing the parties to adduce further evidence regarding the loss of earning capacity of the concerned employees.

17. No order as to costs.

18. Urgent xerox certified copy of this judgment and order, if applied for, be given to the parties as expeditiously as possible.