
(2003) 05 AHC CK 0122
In the Allahabad High Court
Case No : F.A.F.O. No. 2131 of 2002

Employees" State Insurance Corporation	APPELLANT
Vs	
Lakhan Lal	RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

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

Citation : (2003) 4 AWC 2720 : (2003) 3 LLJ 521

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Ashok Kumar Srivastava, for the Appellant; A.K. Sachan, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Kumar, J.—This is an appeal u/s 82 of the Employees" State Insurance Act against the order dated April 27, 1993 passed by Judge Employees Insurance Court, Kanpur in Appeal No. 245 of 1992.

2. Brief facts of the case are that Sri Lakhan Lal opposite party suffered an injury during the course of his employment on July 31, 1991 who was admittedly insured person for the purposes of the Act. It is admitted that Sri Lakhan Lal suffered head injury when he was disengaging threads of loom when his head came in contact with the over head bar of the loom. He was referred to Medical Board. Sri Lakhan Lal was examined by E.S.I. doctor on May 15, 1992 and it was found that he was suffering from manic depression, psychosis depression, post concusation syndrome followed by head injury. It appears that E.S.I. Doctor referred injured person for examination by Dr. Navneet Kumar Assistant Professor Neurology, Kanpur. Dr. Navneet Kumar in his report which is paper No. 6/8 has opined that the injured person was suffering from psychosis disorder. The Medical Board vide its decision dated September 8, 1982 has held injury sculf and did not award any loss of earning capacity. Being aggrieved by the order of Medical Board injured respondent filed appeal before Employees" State

Insurance Court, Kanpur and claimed 60% loss of earning capacity u/s 54A(2) of the Act (hereinafter referred as the Act). The Employees' Insurance Court, Kanpur vide its order dated April 27, 1993 allowed the appeal and awarded 50% loss of earning capacity permanently and set aside the order of Medical Board dated September 8, 1992. Being aggrieved by the order of the Employees' Insurance Court, Kanpur, the present appeal has been filed.

3. I have heard Sri Ashok Kumar Srivastava, learned counsel for the appellant and Sri A.K. Sachan, learned counsel for the respondent and perused the order of Employees Insurance Court.

4. The learned Judge has held that after examination by the E.S.I. Doctor on May 15, 1992, the injured person was referred for examination by Dr. Navneet Kumar Assistant Professor Neurology, Medical College, Kanpur who in his report has opined that injured person was suffering from psychic disorder. Learned Judge held that without considering the report of Dr. Navneet Kumar and the opinion given by E.S.I. doctor the Medical Board had awarded nil loss of earning capacity which was erroneous according to him. He further held that in the presence of report and opinion of the Specialist Neurology, the report of the Medical Board cannot be given weight. Learned Judge has further held that injured person was a weaver and mentally unsound person cannot perform the job of weaver and accordingly awarded 50% loss of earning capacity permanently. Learned counsel for the appellant submitted that the Employees' Insurance Court has illegally set aside the order of Medical Board in as much as submitted that the injured person was under employment and was working, therefore, the injury could not be treated as loss of earning capacity, therefore, the award of 50% loss of earning capacity permanently was not justified. Learned counsel for the respondent Sri A. K. Sachan submitted that the findings recorded by the Employees' Insurance Court are findings of fact based on material on record and therefore, cannot be interfered by this Court. He submitted that u/s 82 of the Act appeal lies when there is a substantial question of law involved, while in the present case there is no substantial question of law and the point/issue are concluded by the finding of fact.

5. Having heard learned counsel for the parties, I am of the opinion that there is no infirmity in the order of learned Judge Employees' Insurance Court.

6. Admittedly, Sri Lakhan Lal was insured person for the purposes of the Act and he has met with an accident which resulted in head injury. Employees' Insurance Court after considering the report of Dr. Navneet Kumar arrived at the conclusion that there was 50% of loss of earning Capacity. The finding of the Court is a finding of fact and based on material on record and unless found to be merely perverse and based on no material cannot be interfered by this Court. It is stated that merely because the injured person was continuing in employment, it cannot be said that he had not suffered loss of earning capacity because of his injury. Nature of injury as reported was relating to mental. The performance and efficiency of the work depends upon the mental soundness of the person. If a

person is mentally affected the working capacity is bound to be affected and it will definitely affect the future prospect of the person and the earning capacity. Thus, looking to the nature of injury Employees' Insurance Court awarded 50% loss of earning capacity which cannot be said to be erroneous. Finding of Court below is finding of fact based on the material and therefore, cannot be interfered.

7. In the result the appeal is dismissed.