

(1998) 03 OHC CK 0013
In the Orissa High Court
Case No : M.A. No. 373 of 1996

Employees' State Insurance Corporation APPELLANT
Vs
Md. Sahid RESPONDENT

Date of Decision : 27-03-1998

Acts Referred:

Employees State Insurance Act, 1948 — Section 54

Citation : (1999) 1 ACC 399 : (1998) 2 ACC 782 : (1998) 86 CLT 532 : (1999) 1 LLJ 71

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Purnendu Prasad Ray, D.P. Ray, N.D. Tripathy and A.P. Ray, for the Appellant; S. Rath, B. Senapati, S.N. Mohapatra, K.R. Mohapatra, S. Ghose, S. Jothy, J.N. Rath and S.B. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—In this appeal u/s 82 of the Employees' State Insurance Act, 1948 (hereinafter called the "Act"), the Employees' State Insurance Corporation (hereinafter called the "Corporation") has challenged the order of the Employees' Insurance Court (in short, "E.I. Court") whereunder the Court has assessed the loss of earning capacity of the claimant-respondent at fifteen per cent.

2. It is no longer in dispute that the claimant was engaged as a Coolie under a firm named M/s. Saret Kumar Rout, a Contractor, working under the Rourkela Steel Plant. The establishment is covered under the E. S. I. Scheme and the claimant was insured. On August 10, 1993, the claimant in course of his employment fell from a height and sustained some injuries. His case was referred to the E.S.I. Medical Board (hereinafter called the "Board") which found that there was permanent disablement and the loss of earning capacity was to the extent of 3 per cent. The claimant being dissatisfied by the assessment made by the Medical Board filed appeal before the E.I. Court in accordance with Section 54A(2)(ii) of the Act. The E.I. Court has assessed the loss of earning

capacity at 15 per cent. The said order is under challenge at the instance of the Corporation. The only controversy that remains to be resolved is regarding the extent of loss of earning capacity.

3. Though several contentions have been raised by the counsel for the appellant, it is necessary to deal with only one point. It has been contended by the counsel for the appellant that the E.I.Court has disposed of the matter on the basis of a report obtained from the doctor without affording opportunity to the parties to adduce evidence. On a perusal of the order sheet maintained by the E.I.Court, it is found that though the E.I.Court had framed specific issues, it had not fixed a date for adducing evidence. The E.I.Court has based its order on the basis of the opinion given by the doctor sought for by the Court itself by its order dated February 15, 1996. However, subsequently, it has not fixed any date specifically for the purpose of adducing evidence. It is apparent from Section 78 of the Act, the E.I.Court is empowered to record evidence. Though it is true that the order sheet does not reveal that the present appellant wanted to adduce evidence, it would have been better for the E.I.Court to fix a specific date for the purpose of hearing to enable the parties to adduce evidence if they so desired. This having not been done, the order of the E.I.Court has become vulnerable.

4. The question is whether the matter should be remanded to the E.I. Court to enable it to fix a date of hearing so that the parties can lead evidence or whether the Medical Board should be asked to give a fresh opinion in the matter. The report of the Medical Board has not specifically indicated any reason as to why the loss of earning capacity has been fixed at 3 per cent. Similarly, the report of the Medical Officer given pursuant to the order of the E.I. Court is also not very eloquent on this aspect. The learned counsel for the claimant-respondent has submitted that the Medical Board may be asked to furnish fresh opinion in the matter after examining all the relevant papers and after examining the claimant. He has further submitted that though the Medical Board in the first instance had assessed the loss of earning capacity at 3 per cent and thereafter the E.I.Court had assessed at the rate of 15 per cent, no amount has been paid. The learned counsel for the appellant is not in a position to say as to whether the amount required to be paid in accordance with the provisions of the Act and the Rules made thereunder has been paid or not. Having regard to all the relevant circumstances and materials on record and the submissions made by the counsels for parties, I consider it appropriate in the interest of justice to dispose of the appeal on the following terms and conditions:

(i) The Medical Board shall give a fresh report in accordance with law after examining all the relevant papers as well as the claimant, as expeditiously as possible preferably within a period of four months from today.

(ii) The E.S.I. Corporation is required to pay the dues of the claimant from March 30, 1994 till March 13, 1996, that is to say, the date of decision of the E.I.Court by calculating the loss of earning capacity at the rate of 3 per cent as found earlier by the Medical Board.

(iii) The Corporation is further required to pay to the claimant at the rate of 15 per cent from the date of decision of the E.I.Court till fresh assessment is made by the Medical Board and thereafter the amount is to be paid in accordance with the assessment made by the Medical Board.

(iv) Both the parties are free to challenge the decision of the Medical Board to be given pursuant to the present decision if they feel aggrieved by the assessment made by the Medical Board.

(v) The Medical Board as well as the Courts of appeal would be free to take their own decisions in accordance with law on the basis of all the relevant materials and circumstances on record without being influenced by any of the earlier assessments made by the Medical Board or the E.I.Court.

(vi) In case the Medical Board or the appellate Court assess the loss of earning capacity at a rate lower than 15 per cent, such decision would be effective only from the date of decision and the claimant-respondent would not be required to refund excess amount, if any.

5. The Miscellaneous Appeal is accordingly allowed subject to the directions contained above. There will be no order as to costs.