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**(2006) 07 AHC CK 0078**  
**In the Allahabad High Court**

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|----------------------------------------|------------|
| Employees" State Insurance Corporation | APPELLANT  |
| Vs                                     |            |
| Nawab Hussain                          | RESPONDENT |

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**Date of Decision :** 06-07-2006

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 54A

**Citation :** (2007) 2 ACC 434 : (2007) ACJ 370

**Hon'ble Judges :** Barkat Ali Zaidi, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Barkat Ali Zaidi, J.—It is now 24 years since the employee at Kanpur on 23.11.83 sustained an employment injury in his left eye resulting in diminution of vision and has still not been granted compensation.

2. It is not in dispute that the respondent worker during the hours of his employment, suffered an injury in his left eye. The eye surgeon to whom the worker was referred, examined his eye in L.L.R. Hospital, Kanpur (Government Hospital) found that there was 6/36 loss of vision in the left eye as a result of that injury. Respondent worker was thereafter referred to the Medical Board for determination of question of disability but the Medical Board was of the opinion that there was no disability in his left eye due to that injury in consequence whereof, there was also no loss of his earning capacity, provisionally or finally.

3. The respondent worker challenged this decision of the Board by filing the appeal as provided in Section 54A of the Employees" State Insurance Act, 1948 and the E.I. Court reversed the view of the Medical Board, placing reliance on the report of the eye specialist and held that the employment injury suffered by the respondent worker fell within the purview of entry No. 32 of the Second Schedule of the Employees" State Insurance Act and that the respondent worker was entitled to 30 per cent loss of earning capacity.

4. This is how, the appellant E.S.I. Corporation has come up in appeal before this

Court.

5. The counsel for the parties have been heard.

6. The E.I. Court relied upon the report of the eye surgeon of the L.L.R. Hospital, Kanpur which has mentioned 6/36 damage of vision in the left eye and on the basis thereof granted relief to the respondent worker. The contention from the side of the appellant Corporation is that the Medical Board did not find any diminution of vision and the view of the Medical Board must be deemed to be final and should override the finding of the eye specialist of the L.L.R. Hospital, Kanpur.

7. The Act provides for appeal against the decision of the Medical Board even directly to the E.I. Court u/s 54A of the Act. It is, therefore, for the court to determine whether there was such injury to the worker which entitled him to relief under the provisions of the Act. The court, obviously, cannot have any material before it except the reports of the doctor, who examined the worker. In the instant case, the worker was examined initially by an eye surgeon at L.L.R. Hospital, Kanpur and doctor found at the time of examination, the vision of his left eye was 6/36 while the vision of the other eye was 6/9, opining that the diminution of vision was due to the injury. The trial court relied on the findings of the eye specialist of L.L.R. Hospital, Kanpur in preference to the view of the Medical Board.

8. In the circumstances as they are, there seems no sufficient reason to differ from the view taken by the E.S.I. trial court which has relied on the findings and the report of the eye specialist and has mentioned clear reasons to differ with the report of the Medical Board. There is no reason to assume that the eye specialist of L.L.R. Hospital, Kanpur who examined the worker respondent gave a report for extra medical considerations. In the instant case, therefore, it seems just and proper to endorse the findings of the learned E.I. Court.

9. It is unfortunate that an appeal in the matter was filed by the E.S.I. Corporation. It is hoped that in future, they will take more humane view.

10. The appeal is dismissed with costs which are fixed at Rs. 5,000.