
(2004) 09 AHC CK 0270

In the Allahabad High Court

Case No : First Appeal From Order No. 154 of 2001

Employee's State Insurance Corporation

APPELLANT

Vs

Rajdeo

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(14), 2(15A), 2(15B), 46

Citation : (2005) 6 AWC 5452

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : A.K. Srivastava, for the Appellant; Bhoopendra Nath Singh, for the Respondent

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This is an appeal u/s 82 of the Employees State Insurance Act (hereinafter referred to as the Act) against the order passed by the Judge, E.I. Court, Kanpur in Appeal No. 49 of 1996 dated 11.12.2000.

2. The brief facts of the case are that the respondent was employed as a labourer in Muir Mill Kanpur. He in the course of employment on 22nd of August 1995 received employment injury in his right leg and the bone of the right leg was fractured. He was on certified leave from 23.8.1995 to 17.11.1995. The first Medical Board vide its report dated 26th April 1994 found that on account of fracture in the right leg, the movement of the knee is restricted with the result the respondent is entitled for 10 percent temporary partial disablement for a period of three months. After three months the respondent was examined by the second Medical Board who gave report dated 6th of August, 1996. This time the Medical Board found 5% permanent disability. Aggrieved against the aforesaid order of the Medical Board an appeal was filed before the Judge E.I. Court claiming 35 percent loss of earning capacity. The Judge E.I. Court by its order dated 11.12.2000 has awarded 15% permanent loss of earning capacity. This order of the E.I. Court is under challenge in appeal.

3. Heard the Counsel for the parties and perused the record.
4. The learned Counsel for the appellant submitted that it was not open to the E.I. Court to take a different view than the view taken by the Medical Board with regard to the loss of earning capacity permanently. The employee suffered non schedule injury and as such the order of the Medical Board should not have been disturbed by the E.I. Court. In contra, the learned Counsel for the respondent submitted that the order of the E.I. Court is perfectly justified and the appeal is liable to be dismissed as no substantial question of law is involved.
5. An appeal u/s 82 of the Act lies only on substantial question of law.
6. The Act was enacted by the Parliament to provide for certain benefits to the employees in cases of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Section 2, which contains definitions, provides in Sub-section (14) that an "insured person" shall be a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is, by reason thereof, entitled to any of the benefits provided in the Act. There is no dispute in the present case about the respondent being an "insured person" and thereby entitled to the benefits under the Act. Sub-section (15-A) of Section 2 defines "'permanent partial disablement" as meaning such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. It lays down further that every injury specified in part II of the Second Schedule shall be deemed to result in permanent partial disablement. Sub-section (15-B) says that, "permanent total disablement" would mean such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement and further that permanent total disablement shall be deemed to result from every injury specified in part of the Second Schedule or from any combination of injuries specified in part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said part II against those injuries amounts to one hundred per cent or more. "Regulation" is defined in Sub-section (18) to mean a regulation made by the Corporation while under Sub-section (19) "schedule" means a schedule to the Act.
7. Chapter V, which comprises of Sections 46 to 59-A deals, inter alia, with the various benefits which are available under the Act as also with determination of the question of disablement. Chapter VI, consisting of Sections 74 to 83. deals with adjudication of disputes and claims. Section 51, occurring in Chapter V and dealing with disablement benefit provides that subject to the provisions of the Act and the regulations, if any, (a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment for period of such disablement in accordance with the provisions of the First Schedule and (b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment for

such disablement in accordance with the provisions of the First Schedule and provides further that where permanent disablement, whether total or partial, has been assessed provisionally for a limited period or finally, the benefit provided under the provision shall be payable for that limited period or, as the case may be, for life.

8. Questions about disablement are u/s 54. determined by a Medical Board constituted in accordance with the provisions of the regulations and amongst the questions which have to be so determined are questions as to whether the accident has resulted in permanent disablement as also the extent of loss of earning capacity. Section 54A provides that the case of any insured person for permanent disablement benefit shall be referred by the Corporation to a Medical Board for determination of the disablement question and also that if the insured person or the Corporation is not satisfied with the decision of the Medical Board, an appeal can be taken to the Medical Appeal Tribunal with a further right of appeal to the Employees' Insurance Court. The Medical Board and the Medical Appeal Tribunal have been given the power to review their own decision in certain circumstances by Section 55 of the Act. An Employees' Insurance Court, constituted in accordance with Section 74, has u/s 75(1)(g) of the Act to decide any question or dispute between a person and the Corporation in respect, amongst others, of the benefit or other dues payable or recoverable under the Act, The decision of the Employees' Insurance Court can be challenged before the High Court in an appeal u/s 82(2) of the Act if it involves a substantial question of law.

9. From the broad features of the Act as noticed above, it is clear that the Employees State Insurance Act is beneficent piece of legislation enabling an insured person sustaining injury during the course of his employment to obtain benefits on account thereof on the basis, amongst others, that his earning capacity has been reduced by certain percentage as determined in first instance by the Medical Board. The order passed by the Medical Board has been made appealable to the Medical Appeal Tribunal constituted in accordance with the provisions of the Regulations u/s 54A(2) of the Act. A further right of appeal has been provided in the prescribed manner to the Employees Insurance Court. The insured person or the Corporation in stead of appealing to the Medical Appeal Tribunal can directly appeal to the Employees Insurance Court u/s 54A(2)(ii) of the Act.

10. From the scheme of the Act it is clear that the jurisdiction of the Medical Appeal Tribunal or the E.I. Court ;deciding upon the disablement question is not barred from estimating and fixing its own percentage of loss of earning capacity of an insured person resulting from an employment injury suffered by him for determining the strength of disablement benefit to which such persons becoming entitled under the Act, when it finds that such injury falls outside the description of one or other injury described in the second schedule to the Act.

11. Therefore, the argument of the learned Counsel for the appellant that the

E.I. Court is bound by the decision of the Medical Board has no merit. Otherwise the very purpose of providing an appeal against the decision of the Medical Board would become nugatory and would be a mere formality. (See the Regional Director, E.S.I. Corporation v. S. Saravanam 1990 (60) F.I.R. 165

12. The E.I. Court on the basis of the material produced by the parties before it is competent to differ from the decision of the Medical Board. But the E.I. Court cannot act whimsically. Its view should be supported by some evidence on the record and appeal to the reason. A Division bench of this Court in the case of New India Insurance Co. Ltd. v. Mohd. Aslam 2003 Allahabad Civil Journal 938, under the Workmen's Compensation Act has held that it is for the Workmen's Compensation Commissioner to accept or not to accept report of the Medical Practitioner. The report of the Medical practitioner, in the matter relating to the assessment of the earning capacity on account of injuries received by the workmen is only to furnishing a data on the basis of which an conclusion can be reached by the Workmen's Compensation Commissioner.

14. In the present case the E.I. Court has found on the basis of the medical report that the knee joint of the respondent has become hard. It has further found that on account of the fracture in the left leg the movement of the respondent is restricted. Having found this, the E.I. Court has awarded 15% loss of earning capacity permanently. This part of the order of the E.I. Court cannot be sustained. The opinions given by the Doctors of the Medical Board were expert opinions. In the absence of any contrary expert opinion it was not open to the E.I. Court to arrive at a conclusion that the respondent has suffered 15% loss of earning capacity permanently. There is no evidence on record to show as on what basis the Court below has arrived at the conclusion that the decision of the Medical Board awarding 5% permanent loss of earning capacity was incorrect. Loss of earning capacity permanently has to be established, with the help of some evidence,

15. The E.I. Court, on its own, in the absence of any material estimated the loss of earning capacity permanently at 15%. The said finding is not supported on any evidence and is perverse.

16. In the result the appeal is allowed and the matter is remanded to the E.I. Court for fresh decision. However the benefits which have been already availed by the respondent in pursuance "of the impugned order shall not be recovered from him. The parties may lead evidence in support of their respective cases.

17. In the result the appeal is allowed and the order of the E.I. Court is set aside. The matter is remanded to the E.I. Court for fresh consideration in the light of the observations made above.