
(2013) 07 AHC CK 0211

In the Allahabad High Court

Case No : First Appeal from Order No. 887 of 1991

Employees State Insurance Corporation

APPELLANT

Vs

Sidha Nath

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 6 ALJ 407 : (2014) 1 AWC 62 : (2013) 138 FLR 686

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Rajesh Tiwari and R. Chaddha, for the Appellant; S.C. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Rajesh Tiwari, learned Counsel for the appellant. No one appears on behalf of the respondent, despite service of notice and the list having been revised. This is an Appeal against the order dated 29.7.1991, passed by the Judge, Employees State Insurance Court, Kanpur by which he has allowed the Appeal filed by the respondent against the order of the Medical Board.

2. The brief facts, giving rise to the present Appeal, are that it was claimed by the claimant that on 21.6.1990, he suffered injuries in his right index finger during the course of the employment resulting into chip fracture of terminal phalanx of right index finger, which has resulted into permanent loss of earning capacity. The Medical Board has assessed the loss of earning capacity at 1%.

3. Being aggrieved, the respondent filed the Appeal before the Judge, Employees State Insurance Court, which has been allowed and loss of earning capacity has been assessed at 5%. The Court below has held that the nature and the extent of the injury falls within serial No. 36 of the second schedule of the Employees State Insurance Act read with foot note thereof, which provides 5% loss of earning capacity.

4. Learned Counsel for the appellant submitted that Medical Board, on an

examination of the injury, has described the nature of the injury as shrivelling of tissues of pulps only and such injury does not fall within the injuries mentioned at serial No. 36, which provides Guillotine amputation of chip of index finger. He submitted that shrivelling means "to contract, to wrinkles or folds." It is not a case of amputation of chip of index finger, therefore, such injury does not fall within the ambit of the injuries mentioned at serial No. 36 of the second schedule.

5. I have considered submissions of learned Counsel for the appellant and perused the impugned order as well as gone through the records.

6. In the record, the medical report of the Medical Board is available. In the report, the nature of the injury has been described as shrivelling of tissues of pulps only. In the record, there is a report dated 11.8.1990 of the Radiologist of the Employees State Insurance Hospital, Kanpur in which in the column of the present condition of the injured person, "amputation of chip of terminal phalanx or right finger" is mentioned. This report is for information of the Medical Board. Perusal of the Medical report reveals that the report of the Radiologist has not been considered at all. No basis has been given to arrive to the conclusion about the nature of the injury, namely, shrivelling of tissues of pulps and as a result of the injury why there is a loss of 1% in the earning capacity whereas in the report of the Radiologist of the Employees State Insurance Hospital, Kanpur, the details of the injuries and the nature of the injury have been mentioned as "amputation of chip of terminal phalanx or right finger". This report has also not been controverted by the appellant in the objection filed in the Appeal. A copy of the objection is also on record. The Appellate Court relied upon the report of the Radiologist of Employees State Insurance Hospital, Kanpur and has observed that undisputedly, the appellant suffered alleged employment injuries on 21.6.1990 in the Right Index Finger resulting into fracture of terminal phalanx and amputation Of tip of terminal phalanx which is evident from the perusal of B.I.I. (a) prepared by the Radiologist, Employees State Insurance Hospital, Kanpur.

7. In my view, nature of the injury described by the Medical Board is based on no material inasmuch as without consideration of the X-ray report and the report of the Radiologist, thus, it cannot be relied upon. The report of the Radiologist is more reliable inasmuch as it is based on the X-ray report. In view of the above, in my view the injury reported in the report of the Radiologist, being based on the X-ray report, falls within the injuries mentioned at serial No. 36 of the second schedule of the Employees State Insurance Act, which provides for 5% loss of earning capacity. Therefore, the order of the appellate authority is fully justified and as such does not call for interference by this Court.

In the result, the appeal fails and is dismissed.