
(2007) 10 AHC CK 0014
In the Allahabad High Court
Case No : F.A.F.O. No. 2050 of 2002

Employees" State Insurance Corporation	APPELLANT
Vs	
Vijai Shankar	RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 82

Citation : (2007) 7 AWC 7652

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : P.K. Asthana, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—List revised.

2. Heard Sri P. K. Asthana, learned Counsel for the Appellant. No one appears for the Respondent.

3. This appeal u/s 82 of the Employees State Insurance Act, 1948 is directed against the order of the Employees Insurance Court dated 5.2.1988.

4. The Respondent was an employee of Elgin Mills No. I, Kanpur. He sustained employment injury in his right thumb. The Medical Board vide order dated 31.7.1987 refused to grant him any relief. Accordingly, he preferred an appeal before the Employees Insurance Court. The Employees Insurance Court by the impugned order has determined the loss of earning capacity to the tune of 7% on account of the aforesaid injury.

5. Learned Counsel for the Appellant has raised only one substantial question of law, i.e., whether in absence of any medical report the Employees Insurance Court was competent to determine the loss of earning capacity when the Medical Board has rejected the claim.

6. In this regard it may be noted that the the Medical Board of the Employees"

State Insurance Corporation consists of doctors who are experts in medical field. Their opinion cannot be overruled unless cogent evidence or better evidence in form of opinion of other doctors or medical experts is produced. In the instant case the Respondent has not adduced any evidence to rebut or falsify the report of the Medical Board or to establish that the decision of the Medical Board was incorrect. The Court cannot be recognized as an authority to sit as an expert in medical matters. Accordingly, in the absence of any medical report so as to establish that the injury sustained by the Respondent was not of such a nature as to result in permanent partial disablement causing loss of earning capacity, the Court was not justified in passing the impugned order.

7. Thus, it is held that the Employees' Insurance Court was not competent to determine the loss of earning capacity of the injured without there being any medical report in support.

8. Accordingly, the appeal is allowed. Order of the Employees Insurance Court dated 5.2.1988 is set aside. However, the benefit which has already been extended to the Respondent shall not be recovered from him.