

(2007) 03 KL CK 0016
In the High Court Of Kerala
Case No : Ins. Appeal No. 7 of 2005

E.S.I. Corporation

APPELLANT

Vs

Hussain Sainuddin

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Employees State Insurance (Central) Rules, 1950 — Rule 20, 20B
Employees State Insurance Act, 1948 — Section 45A, 46, 54A(2), 73, 75
Limitation (Amendment) Act, 1964 — Article 137, 181, 5

Citation : (2007) 03 KL CK 0016

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : T.V. Ajayakumar, for the Appellant; K.P. Mehaboob Sherieff and S. Vinodkumar, for the Respondent

Final Decision : Dismissed

Judgement

K. Padmanabhan Nair, J.—The Regional Director, ESI Corporation has filed this appeal challenging an order passed by the Insurance Court, Alappuzha allowing an appeal filed by Respondent u/s 54A of the Employees' State Insurance Act ("Act" for short) claiming 100% disablement benefit.

2. The Respondent while working as a labourer in Telco Works at Pune met with an accident and sustained employment injury on 14-6-1992. After sometime he came back to Kerala and continued treatment in E.S.I. Hospital till 28-7-1993. Subsequently, he was treated in Medical College, Alappuzha also. He claimed disablement benefit, alleging that on account of the injury sustained by him he is totally disabled and hence disablement benefit is to be given, treating it as a case of 100% disability. The matter was referred to Medical Board. Medical Board fixed disability at 50%. Challenging that decision the Respondent filed an appeal u/s 54A of the Act before the Insurance Court. The Insurance Court allowed the appeal and ordered that the Respondent should be given 100% disablement benefit. Challenging that order this appeal is filed.

3. The learned Counsel appearing for the Appellant has argued that appeal before the court below was hopelessly barred by limitation and without assigning any valid reason delay of 5 years 9 months and 19 days was condoned by the Insurance Court. It is also argued that u/s 77(1A) of the Act an outer time-limit of 3 years is fixed for initiating any proceeding and in this case, the proceedings were initiated after more than 5 years. The Insurance Court being a persona designata has no jurisdiction to condone the delay invoking Section 5 of the Limitation Act. It is also contented that the Insurance Court ought to have accepted the disability fixed by the Medical Board and it should not have adopted its own reasoning for fixing it as a case of 100% disability.

4. Chapter 5 of the Act which contains Sections 46 - 73 deals with "Benefits". Section 46 defines the word benefit. Section 46(1)(c) defines disablement benefit. Section 54 deals with the method of determining the disablement benefit. It provides that the disablement benefit shall be determined by a Medical Board constituted in accordance with the provisions of the regulations. Section 54A deals with the appeal. It reads as follows:

1. 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 if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the Medical Board not later than the end of the period taken into account by the provisional assessment.

2. If the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to-

(i) the medical appeal tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees Insurance Court or

(ii) the Employees' Insurance Court directly.

5. A reading of Section 54A makes it clear that if a workman or injured person makes a claim for disablement benefit, the same has to be referred to a Medical Board for determining the disablement question. If the insured person is not satisfied with the decision of Medical Board fixing the disablement benefit, he has got two remedies. He may file appeal before the medical appeal tribunal and if he is not satisfied with the decision of the tribunal he can file a second appeal before the Insurance Court. He can also directly challenge the decision of the medical board, before the Insurance Court. Section 54A(2) provides that the appeal is to be filed in the prescribed manner and within the prescribed time. Rule 20B of the State Employee Insurance (Central) Rules, 1950 prescribes the period of limitation. An appeal is to be filed within three months from the date of communication of the decision of the Medical Board or medical appeal tribunal to the insured person or the Corporation.

6. According to the Appellant any proceeding before the Insurance Court is to be commenced by filing an application. It is contented that an appeal filed u/s 54A of the Act is also a proceeding and since an outer time-limit as fixed by Section 77(1A) of the Act, any appeal filed after the expiry of three years is to be rejected as barred by limitation. It is argued that Rule 20(a) makes it clear that an appeal filed u/s 54A is also to be filed by presenting an application and the Insurance Court has no jurisdiction to enlarge the time beyond the period of three years fixed u/s 77(1A) of the Act.

7. Section 77(1A) as well as Section 54A were incorporated in the parent Act w.e.f. 28-1-1968 by Act 44 of 1966. Section 75 deals with the jurisdiction of the Employees Insurance Court. Section 77 deals with the commencement of the proceedings. In this connection, it is to be noted that the period of three years is fixed for filing petition from the date on which cause of action, arises. But for an appeal u/s 54A, period of limitation is not from the date on which cause of action arises. The words cause of action means the whole bundle of material facts which it is necessary for the litigant to prove in order to entitle him to succeed in the proceeding. It is connected with original proceedings and not with an appeal. The period of three years u/s 77(1A) begins to run from the date on which cause of action for filing the petition arises. In *Vasumathy v. E.S.I. Corporation* 1998 II L.L.J. 148 a Division Bench of this Court has held as follows:

The legal right emerges in favour of the applicant with regard to the claim for benefit. What is really required to be so is the cause of action and cause of action has to be located with reference to a point of time when the applicant could really be said to be having no remedy other than to approach the Insurance Court.

8. Section 75(2A) makes the position very clear. It is to be noted that Section 75(2A) was also incorporated w.e.f. 28-1-1968 by Act 44 of 1966 which reads as follows:

If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a Medical Board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the Medical Board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under Sub-section (2) of Section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

9. A reading of Section 77(2A) makes it clear that any original proceedings before the Insurance Court for assessment of disablement benefit, the Court may refer the matter to Medical Board. In such cases, the Insurance Court has to

decide the issue based on the report of the Medical Board or Medical Appeal Tribunal. But if it is an appeal u/s 54A, the Insurance Court itself can determine all issues, It is evidently clear that there is vital distinction between the original proceedings before Insurance Court and an appeal filed u/s 54A of the Act against an order of Medical Board.

10. The period of limitation for filing the appeal against an order of Medical Board before the Insurance Court under 20B of Rules starts for the date of communication of the order. In *ESI Corporation v. Hafiz Khan* 1977 LAB I.C. 1175 a Division Bench of Calcutta High Court has held that an application u/s 75 cannot be treated as an appeal u/s 54A of the Act when the application was filed beyond the period of limitation prescribed for filing an appeal. In *Employees' State Insurance Corporation Vs. Asian Paints India Ltd. and another*, a Division Bench of the Bombay High has held that the limitation prescribed by Section 77(1A) of the Act cannot apply to the determination of the claim made u/s 45A of the Act. The same principle should apply to an appeal filed u/s 54A of the Act. So any time-limit u/s 77(1A) will not apply to an appeal u/s 54A of the Act. The time-limit for filing appeal is governed by provisions contained in Rule 20B of the Central Rules. Rule 20B of the Rules provides that an appeal is to be filed within three months. But the proviso to the said rule gives power to the Court to entertain an appeal filed after the expiry of three months, if it is satisfied that the applicant had sufficient reasons for not filing the appeal within the said period. It is also to be noted that the provision contained in Section 77(1A) apply generally to proceedings where as Section 54A read with Rule 20B is a special provision regarding appeal. So provision of Section 54A read with Rule 20B shall prevail over Section 77(1A) of the Act.

11. Originally no time-limit was fixed for filing the application for initiating any proceedings before the Insurance Court. There was dispute as to whether Article 181 old Limitation Act corresponding to Article 137 of Limitation Act, 1964 is applicable to such proceedings. Section 77 was amended incorporating Sub-Section 2A in order to resolve that controversy. So the contention of the Appellant that an outer time-limit is fixed for filing an appeal u/s 54A and Insurance Court has no jurisdiction to enlarge that time is without any merit. I reject the same. Since Rule 20B itself provides for condonation of delay it is not necessary to consider whether Section 5 of the Limitation Act is applicable to an appeal filed before the Insurance Court. That issue is left open to be decided in appropriate proceedings.

12. The Insurance Court has given very cogent reasons for condoning the delay. It was found that Respondent became a living vegetable due to the injuries sustained while working at Pune. As there was nobody to support him at Pune he came back to his native place. It is also found that he was suffering from amnesia on account of injury. So the findings of the Insurance Court that the delay is to be condoned is legal and proper and only to be confirmed. It is true that the Medical Board had fixed disability at 50%. But Section 75(2A) confers

power to the Insurance Court to consider and take a decision of its own regarding disablement benefit.

13. The Medical Board fixed the disability at 50% holding that there was left sided hemi paresis due to old head injury. Neuro Surgeon had stated that there was post-traumatic residual hemi paresis and amnesia. Insurance Court after appreciating the evidence had found that Respondent cannot be treated as a normal person to carry on any work and this is to be treated as a case of 100% disability. In the impugned order itself the Insurance Court gave permission to the Regional Director for periodical review of the Respondent's case.

14. In view of the facts proved, I do not find any reason to interfere with the order passed by the Insurance Court, There is no merit in this appeal and the same is only one dismissed.

In the result the Insurance Appeal is dismissed.

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