
(1986) 09 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.A. No. 37 of 1975

Factory Manager, J.C. Mills

APPELLANT

Vs

Employee's State Insurance Corporation, Gwalior

RESPONDENT

Date of Decision : 23-09-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 66

Citation : (1987) J LJ 281

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : S.K. Dubey, for the Appellant; R.P. Jobri, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.—Respondent is the Employees' State Insurance Corporation, for short, the "Corporation". An application to the E. S. 1. Court was made by the Corporation u/s 66 of the Employees' State Insurance Act, 1948, for short, the "Act", claiming reimbursement from the appellants, the employers, on the basis of recommendation of the Medical Report given pursuant to Regulation 73 of the Regulations framed under the Act, Because, the Court below accepted on its face value the said recommendation and granted reimbursement to the extent of 6 5% of loss of earning capacity of the employee, the employer has come to this Court contending that the extent of reimbursement lacks legal basis.

2. A preliminary objection to the maintainability of Corporation's claim was challenged by Shri Dubey, contending that the claim was barred by limitation and, therefore, the award should be set aside in toto. However, I have already taken the view in J C. Mills Factory Manager (M.A. No. 36 of 1975, decided on 5-9-1986) that the Corporation, in similar circumstances, was entitled to invoke the aid of Section 14 (4) of the Limitation Act, which is available to it also in this case. As such, the objection, in my opinion, has no merit and is rejected.

3. Shri Dubey, appellants' counsel has drawn my attention to item No. 4 part II

of Schedule I of the Workmen's Compensation Act, 1923, to submit that at the maximum, reimbursement should have been granted to the extent of 60% of loss of earning capacity and not beyond that. It is also his contention that although the accident took place on 6-6-1967. the Corporation did not prefer application to the ESI Court, but filed a civil suit and it was, therefore, beyond the jurisdictional competence of the ESf Court to grant interest from the date of accident inasmuch as the jurisdiction to decide the dispute accrued to the ESI Court when it was approached u/s 66 of the Act on 10-2-1972 and jurisdictional competence of ESI Court to award interest could only extend to that period.

4. I propose to dispose first the second contention because I have already taken a view in favour of Shri Dubey's contention in Factory Manager J, C. Mills (supra). I have no hesitation, therefore, to hold that in so far as the award of interest is concerned, the order must be modified because ESI Court could not have jurisdiction to award interest beyond the period of the lis pending before it. Thus, interest shall be payable to the claimant Corporation only from 10-2-1972 and not beyond that. Shri Dubey contends that deposit of the amount awarded with interest, has already been made by the appellant. In that case, he may be entitled to refund in respect of which specific direction, if found necessary, will be made later in the order.

5. The first contention of Shri Dubey on merit of the award, however, has not appealed to me for more than one reason. Firstly, because, I have to read the "recommendation" which embodies in it the opinion of the Medical Board on the extent of injury which has been suffered by the employee. I extract the same :

"Post transmittic flail right elbow joint resulting in loss of all functions in the elbow joint and forearm and loss of earning capacity equal to 65% (sixty five%);

It is true that the Medical Board, while giving its opinion, also recommended the quantum of compensation payable to the employee determining the same to be 65% of the loss of earning capacity on which basis, the ESI Court granted the claim of the Corporation. It is equally true that in Factory Manager J.C. Mills (supra), I have held that the ESI Court was not bound by the ipse dixit of the Medical Board and abdicate its judicial duty and responsibility. It was therefore, the duty of the ESI Court to consider whether the claim for reimbursement was covered by item No. 3 or 4 of Part II of Schedule I aforesaid. I extract both items :

Description of injury

Percentage

of loss of

earning

capacity.

3. Amputation from 8" from tip of acromion to less than 4-1/2" below tip of

olecranon

.....

70%

4. Loss of a hand or of the thumb and four fingers of one hand or amputation from 4-1/2" below tip up of olecranon

.....

60%

5. Shri Johri, counsel for the respondent Corporation has placed implicit reliance on the statutory Note, appended to the Schedule, which is as follows :-

Note-Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member".

The question, therefore, is short and simple. Evidently, item No 4 does not fully cover the extent of the injury manifested in the opinion of the Medical Board and this position is not disputed by Shri Dubey who, however, contends that the injury is also not covered by item No 3. What, however, is decisive factor to resolve the controversy is the clue furnished by the Note. According to me, even when there is no actual "amputation" and that too from the specified points of acromion or olecranon, if there is complete loss of use of any limb or member covered by any of the two items, that would be decisive of the question of the coverage of the injury under the particular item of the Schedule. In the instant case, admittedly, there was a loss of a hand, but there was also loss of complete fore-arm and even of the elbowjoint. The opinion very clearly indicates that there was "loss of all functions in the elbowjoint and fore-arm". That being the position, although "amputation" of the elbow-joint, as contemplated under item No. 3, is not factually present, the deficiency is made up by the Note which equates amputation to loss of concerned limb or member. There fore, in my opinion, the Corporation, and the invalid employee could have validly claimed loss of earning capacity even upto 70% under item No. 3. But, the claim having been laid only at 65% and allowed also only to that extent, in my opinion, no fault with the impugned judgment in any manner, can be found. The award in that respect, on merit?, therefore, is not vitiated.

6. In the result, the appeal is allowed in part. The award of the ESI Court is modified in respect of interest only to the extent earlier indicated. In case the interest is deposited in full, proportionate refund shall be made to the appellant. There shall be no order as to costs in this appeal.