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**(1992) 04 OHC CK 0026**  
**In the Orissa High Court**  
**Case No : Misc. Appeal No. 391 of 1987**

Harihar Barik

APPELLANT

Vs

Regional Director, E.S.I. Corporation

RESPONDENT

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**Date of Decision :** 21-04-1992

**Acts Referred:**

Employees State Insurance (Central) Rules, 1950 — Rule 20D  
Employees State Insurance Act, 1948 — Section 54A(2), 75(2A), 82(2)

**Citation :** (1992) 74 CLT 280 : (1993) 1 LLJ 465 : (1992) 2 OLR 257

**Hon'ble Judges :** S.K. Mohanty, J

**Bench :** Single Bench

**Advocate :** B.K. Sahoo, for the Appellant; J.K. Tripathy, for the Respondent

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## Judgement

S.K. Mohanty, J.—This appeal purporting to be one u/s 82(2) of the Employees' State Insurance Act, 1948 by the insured person, is directed against the order of the District Judge, Cuttack exercising powers of an Employees' Insurance Court under the Act.

2. The appellant served as Office Peon in the Office of Kalinga Tubes, Choudwar. On December 23, 1982 while he was standing near the Inspector's table inside the department, some foreign substance fell into his eyes. He was treated in the E.S.I. Hospital, Choudwar and thereafter in the S.C.B. Medical College Hospital, Cuttack. Ultimately he was advised to use glasses. The case of the appellant for permanent disablement benefit was referred by the E.S.I. Corporation to a Medical Board for determination of the disablement in question. The Medical Board opined that he had not suffered from any defective vision due to fall of foreign body into his eyes and the refractive error which has developed in his eyes is not related to the accident caused during employment. Being not satisfied with the decision of the Medical Board the appellant carried the matter in appeal to the Medical Appeal Tribunal who by order dated September 22, 1984, held that the decision of the Medical Board was correct, the appellant has not sustained any loss of earning capacity and that as such, no interference is called

for. Being still not satisfied, the appellant exercised his further right of appeal u/s 54-A(2)(i) of the Act to the Employees' Insurance Court, Cuttack, who has dismissed the appeal by the impugned order.

3. It reveals from the impugned order that from the E.S.I. Hospital, Choudwar, the appellant was referred to the Professor, S.C.B. Medical College, Cuttack, on December 24, 1982 where he was admitted and treated for a long time. After such long treatment, on March 3, 1983 the Professor prescribed glasses for the appellant.

4. On a construction of Section 75(2-A) of the Act the learned District Judge has held that had the insured person come directly to the Insurance Court without approaching the Medical Board, then the Court could have determined the issue relating to determination of the claim of the insured, but that course was not open to the appellant since he had approached the Insurance Court after exhausting his remedy available before the Medical Appeal Tribunal. He found no reason to displace the conclusion arrived at by the Medical Board and the Medical Appeal Tribunal that the refractive error noticed in the eye of the insured person was not related to the accident which he met in course of employment.

5. The learned counsel for the petitioner urged that the Court below has made an incorrect interpretation of the provisions contained in Section 75(2-A) of the Act and having not afforded opportunity to the appellant to adduce evidence to disprove the conclusions of the Medical Board and the Medical Appeal Tribunal, the case should be remanded for fresh hearing. The learned counsel for the Corporation, on the other hand, urged referring to Section 82(2) of the Act, that the appeal is in competent as it does not involve a substantial question of law.

6. I may first deal with the objection on behalf of the Corporation. Section 82(2) of the Act provides that an appeal shall lie to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law. The Court below refused to determine the question of disablement benefit as the appellant did not come to the Court directly against the decision of the Medical Board and had exhausted his remedy before the Medical Appeal Tribunal, on an interpretation of the provisions contained in Section 75(2-A) of the Act. The question of law arising in this case therefore, cannot be considered to be a question of law of minor importance. This apart, it was open to this Court to summarily reject the appeal u/s 82(2) of the Act on the ground that it did not involve a substantial question of law. But this Court has not done so and has admitted the appeal and therefore, it is now open to the appellant at the hearing of the appeal to attack the finding of the Court below. This has been so stated in the case of *Shyama Devi v. Employees' State Insurance Corporation*, 1964 I LLJ 725 relying on a decision of the Federal Court and I respectfully agree with the same. Consequently, the objection of the learned counsel for the respondent is not acceptable.

7. For proper appreciation of the powers of the Insurance Court, Section 75(2-A)

of the Act is extracted below:

"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 54-A in which case the Employees' Insurance Court may itself determine all the issues arising before it."

Under the aforesaid section general principle is that if in any proceeding before the Insurance Court, a disablement question arises and the question has not been decided by a Medical Board or a Medical Appeal Tribunal and decision of such question is necessary for determination of the claim or question before the Court, then Court shall direct the Corporation to have the disablement question decided by the Act and the Court shall thereafter determine the claim or question in accordance with the decision of the Medical Board or Medical Appeal Tribunal. An exception to this general rule has been carved out in the section itself to the effect that where an appeal relating to question of permanent disablement benefit has been carried to the Insurance Court u/s 54-A(2) of the Act, the Court may itself determine all the issues arising before it. In other words, the Insurance Court is required to determine 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, in all proceedings except in a proceeding u/s 54-A(2) of the Act. In the case at hand the appeal before the Court was admittedly u/s 54-A(2) of the Act read with Rule 20-D of the Employees' State Insurance (Central) Rules, 1950. Therefore, the Insurance Court had the requisite authority to determine the question of disablement benefit even though the appellant exhausted his remedy before the Medical Appeal Tribunal. For the purpose the Insurance Court was empowered to take evidence from both sides and consider the same. Consequently in the light of the above discussions, the Court below did not interpret Section 75(2-A) correctly and its conclusion that it could not determine the question of disablement benefit cannot be sustained.

8. The Court below has disposed of the appeal after hearing arguments only without recording any evidence from either side. Of course, the order-sheet maintained by the Court below does not indicate that the appellant offered at any time to adduce evidence to prove the question of disablement benefit. It is also a fact that the Court below did not call upon either side to adduce evidence and has not recorded anywhere that the parties declined to adduce evidence and therefore, arguments were heard and the appeal was disposed of. The Employees' Insurance Court is a domestic tribunal. The question relating to the

entitlement of the disablement benefit and the claim for recovery of such benefit under the Act are matters to be decided by the Employees' Insurance Court u/s 75(1)(e) and Section 75(2)(f) respectively. The Insurance Court while deciding the matters exercises original jurisdiction and does not act as a Court of appeal or as a Civil Court reviewing a decision given by a domestic tribunal. This has been so stated in Regional Director, Employees State Insurance Corporation Vs. Ram Lakhan Pandey, with which I am in complete agreement. In fact Section 78 authorises the Insurance Court to exercise all the powers of a Civil Court for the purpose of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents, administering oath and recording evidence etc. In such premises the Court below should have specifically given an opportunity to the appellant to adduce evidence in support of his claim and if he refused to avail the opportunity, this fact should have been recorded by the Court below. But such a course has not been adopted.

9. In the above premises, the appeal is allowed, the impugned order is set aside and the case is remanded for fresh hearing by the Court below. Both parties shall be afforded due opportunity to adduce evidence in support of their respective contentions. Parties are directed to appear in the Court below on May 7, 1992. Further notice shall not be sent to them. As the accident occurred 10 years back the learned District Judge is directed to dispose of the appeal by the end of July, 1992.

10. There shall be no order as to costs.