

(2012) 08 CAL CK 0025
In the Calcutta High Court
Case No : C.O. No. 3580 of 2004

Manjoor Alam

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Citation : (2012) LLR 1254

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Sourav Chowdhury, for the Appellant; Tilak Mitra, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the appellant and is directed against the judgment and order dated September 29, 2004 passed by the learned Judge, Employees" Insurance Court, West Bengal in Appeal No. 17 of 2012. The petitioner instituted the aforesaid appeal against the decision of the Medical Board which assessed the loss of earning capacity of the appellant/petitioner herein at 5 per cent in respect of the employment injury sustained by him on January 28, 2000. The petitioner was not satisfied with such quantum of injury as assessed by the Medical Board and so, the appeal was filed.

2. While disposing of the appeal, the Employees" Insurance Court allowed the appeal in part raising the extent of loss of earning capacity from 5 per cent to 7 per cent. The petitioner was not satisfied with such judgment and order of the Appellate Court and according to him, he should get at least 30 per cent of the loss of earning capacity. So, this application has been preferred.

3. Having heard the learned Counsel for the parties and on going through the materials-on-record, I find that there is no dispute that the concerned Medical Board had assessed the loss of earning capacity of the appellant/petitioner herein at 5 per cent in respect of employment injury sustained by the appellant on the right side of his head. Three eminent doctors were the Members of the Medical

Board and they, upon consideration of the papers and the examination of the appellant/petitioner herein, came to the conclusion that the loss of earning capacity of the appellant/petitioner herein would be to the extent of 5 per cent. There is a clear note that no neuro deficit was detected.

4. So far as eyes are concerned, there is no evidence that the petitioner suffered any injury on eyes but it was found by the Eye Specialist watery discharge from the eyes. The appellant/petitioner herein was referred to Neurology Department. The X-Ray reports revealed the outer and inner tables of vaults of skull were intact and that there was no abnormality therein. The petitioner was directed to undergo CT Scan, but the petitioner did not agree. Under the circumstances, the enhancement of loss by the learned Appellate Court from 5 per cent to 7 per cent, I hold, cannot be said to be justified.

5. Anyway, the respondent did not file any application for change of the assessment by the Employees' Insurance Court. The claim of the petitioner for extending the loss to the extent of 30 per cent has no basis at all and so, I am of the view that there is no scope of allowing such loss as prayed for by the petitioner.

6. In the above facts and circumstances, I am of the view that there is no scope of interference at all with the judgment and order of the Employees' Insurance Court, West Bengal.

7. This application fails to succeed and is, therefore, dismissed.

8. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.