
(1987) 07 MP CK 0038
In the Madhya Pradesh High Court
Case No : M.A. No. 47 of 1986

Munshigiri

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 08-07-1987

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(15A)

Citation : (1988) ACJ 932

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

Bench : Single Bench

Advocate : Aneja, for the Appellant; Johri, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—The quantum of disablement benefit" determined payable to the Appellant under the Employees" State Insurance Act, 1948, (for short, "the Act"), by the E.I. Court is challenged in this appeal. Counsel"s submission shortly is that the law laid down by this Court in the decision rendered in the case of Factory Manager, J.C. Mills v. Employees" State Insurance Corporation 1987 Jab LJ 281, decides the fate of this appeal. This position is disputed by Respondent"s counsel, Mr. Johri, but I am of the view that the submission of Mr. Aneja, Appellant"s counsel, is not without merit.

2. However, few admitted facts first. The Appellant suffered "employment injury" on 15.4.1977 while working in the Cimmco Steel Foundry, Gwalior. That he was under treatment for that injury from 16.4.1977 to 31.7.1977 and on that account he was prevented from attending to his duties are also admitted facts manifested by Exh. D-I. In part II of the said report of the Medical Board is recorded claimant"s statement that after the accident, his right hand had become useless and he was not able to do anything with that hand. Part III of the report contains findings, opinion and recommendations of the Medical Board. In col. No. 5 are "recommendations" and in Clause (1) the fact stated is that there was an "appreciable disablement" of the claimant Clause (2) (b) unambiguously

suggests that the disablement was declared to be of a permanent nature. In the remarks column (6) is stated "Operated for II head radius Rt. (Excession done). Analgesic of Rt. elbow with appreciable disablement and hence loss to earning capacity equal to 10 (ten) per cent.

3. In the E.I. Court, two doctors gave evidence. CW 2, Dr. K.V. Sharma, was a medical practitioner who had then twelve years" practice to his credit and indeed he was qualified as M.B.B.S. and M.D. He deposed of the operation referred in the Medical Board"s report and stated that the movement in the elbow-joint of the Appellant remained negligible even after the operation. It is also in his evidence that the injury also affected his shoulder-joint as a result of which he was unable to lift his hand completely. His opinion was also that the claimant had suffered a permanent disability which was incurable. He categorically opined that the right hand of the claimant had become useless and it was as good as amputated. The witness examined by the Respondent (E.S.I. Corporation) is Dr. B.L. Jain. He deposed that he was Member of the Medical Board of E.S.I. Corporation besides being Reader in Surgery in JA Group of Hospitals. He deposed that when the claimant was examined by the Medical Board, he was also on the Board and he had examined the claimant. I have no doubt that the evidence of this witness, whatever worth it is, cannot be accepted without reservations inasmuch as he was naturally bound to support the view which he had already expressed. It is true that he has deposed to the extent that the shoulder-joint of the claimant had not been affected and that there was only 5 to 7 per cent loss in movement in the elbow-joint. Indeed, he also deposed further that the claimant was able to lift his hand completely. Unfortunately in the report Exh. D-I signed by all the members of the Medical Board these facts being not mentioned and no record being proved by the witnesses for his findings, it is difficult to accept his opinion given in court on pure guesswork.

4. However, Mr. John, having submitted that the claimant could not even prove his own case in his evidence, it is necessary also to read claimant"s evidence. His evidence is that he was not able to bend his right hand beyond 90° and indeed, he could not bring it to a straight line. He also deposed that he was not able to lift any weight with that hand and indeed, he could not use that hand properly for taking his food or for dressing. In short, he deposed, he was unable to use any kind of force with that hand which was lost to him for the rest of his life. Surprisingly, nothing has been brought out in his cross-examination to demolish his case and I have to regretfully say that the tall claim of Mr. John made in that regard is merit less. The only thing brought out is that there was movement in the fingers of the hand and that he was drawing a total emolument of Rs. 500/- at the time of his examination, while at the time of accident, the emoluments received by him were Rs. 275/- . He also stated, however, that he was working in the same post of helper which he was holding at the time of accident. There is nothing else in his evidence.

5. In J.C. Mills" case, 1987 Jab U 281, this Court, inter alia, held that the E.I.

Court was not bound by the recommendation and opinion of the Medical Board as to the loss of earning capacity which had to be determined judicially. It was further held, construing items 3 and 4 of part II of Schedule I of the Workmen's Compensation Act, 1923, which Schedule is in same terms as the one appended to the "Act" (Employees' State Insurance Act) that despite absence of actual amputation, the claimant was entitled to be granted 60 per cent loss of earning capacity contemplated under item No. 3 as it was proved that there was, in fact, "loss of functions" of the concerned limb, namely, the elbow-joint and the forearm, in that case.

6. Because Mr. Johri stressed the point that there was no actual loss in the earning of the claimant who was, in fact, earning more than what he did at the time of accident and the claim was, therefore, misconceived, I am required to refer to another decision of this Court rendered in the case of Ram Swamp v. E.S.I. Corporation MA No. 41 of 1982; decided on 10.12.1985. In that case, the view taken was that the provisions of the Schedule and the interpretation of the relevant entries thereof are to be traced and related to the parent provisions of the Act, namely, clauses 15-A and 15-B of Section 2 of the Act. Indeed, Mr. Johri has also relied on Clause 15-A to claim support for his submission, which I accordingly quote:

(15-A) "permanent partial disablement" means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in his disablement:

Provided that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement;"" (Emphasis added) I have no doubt that the purport of the aforequoted provision is very clear because primacy must be attached to the key expression "capacity" by which the word "earning" is qualified therein. It is clear that it is not the reduction of the actual earning, but it is reduction in the "earning capacity" which is contemplated under Clause 15-A This position is made further clear by the fact that the "capacity" itself is determined with reference to "every employment which (the employee) was capable of undertaking at the time of the accident.

7. True it is that the word "employment" is not defined in the Act and as such, it must be given its natural or dictionary meaning but it is equally true that the word would take its colour from the words which precede or follow it, namely, "every" and "which he was capable of undertaking". Thus, the expression "employment" is not to be so construed that its scope is confined to the job which the person injured or disabled was doing or carrying on at the time of the accident It is difficult to accept Mr. Johri's contention to that effect The expression is evidently referable to his capability generally of doing any job to earn his livelihood at the time of the accident What job he was doing at the place of employment at the time of accident evidently could not be decisive of his general capabilities or earning capacity. What is further necessary to be stressed

is the import of the proviso which explicitly contemplates that the injuries described in Part II of Second Schedule neither conclusively nor exhaustively determine the question as to whether a particular injury has resulted in "permanent partial disablement" inasmuch as those injuries are explicitly stated as to "deemed to result in" such disablement. The necessity of admitting flexibility in the statutory construction and of expanding the specified description of specified injuries the legislature has itself recognised by adding a "Note" about which J.C. Mills' case, 1987 Jab LT 281, is vocal. Indeed, it was not possible for the legislature to conceive every kind of employment injury" that could be caused under varying circumstances. In Black's Law Dictionary, the term "employment" is stated to mean: "Act of employing or state of being employed; that which engages or occupies; that which consumes time or attention; also an occupation, profession, trade, post or business". Importantly, Black also says that it "does not necessarily import an engagement or rendering services for another". The collocation of the word "employment" in its context and setting in Section 2(15A) bears, accordingly, the construction I have already placed on it, even according to Black's Law Dictionary.

8. On the evidence, I am fully satisfied that there can be no doubt that as a result of the injury suffered, the Appellant having admittedly been partially disabled permanently as per Medical Board's opinion also, it is not possible to deny him the benefit of the decision in J.C. Mills' case, 1987 JLJ 281. True it is that in that case, the view taken was on the authority of the statutory "Note" appended to Part II of the Schedule which speaks of "complete and permanent loss of the use of the concerned limb and in the instant case, it is not possible to say that there was a "complete and permanent loss of use" of Appellant's right hand. As such, strictly speaking, item No. 10 of Part II of the Second Schedule of the Act concerning, inter alia, "loss of a hand", on the basis of which claim is laid at 60 per cent loss of earning capacity in this case by Appellant's counsel Mr. Aneja, does not apply in terms even with the aid of the "Note". However, as earlier alluded, the question has to be resolved with reference to the parent provision, namely, Clause 15-A aforequoted. Therefore, the question to be posed and decided can only be, whether as a result of permanent disablement occasioned by the injury impairing use of his hand, the "earning capacity" of the Appellant had been reduced because of his incapacity to take up any employment which he could have taken in future at any place had he not suffered the injury resulting in his disablement. A man who was able to do every type of physical work with his right hand but who is not able to do with that hand even small but important things like taking food and dressing, who is not able to exert any pressure with that hand, is definitely a person who can claim that his general capabilities had been affected and his earning capacity was reduced as he is not able to take up each and every employment which he could have taken if he had not suffered the injury. I do not think, there can be any doubt about this. Accordingly, I would hold that though there was no loss of hand or amputation thereof in terms as per entry No. 10 and though there was no

"complete" loss of use of the hand, the hand had become useless for all practical purposes in so far as it concerned Appellant's "earning capacity" and general capabilities in terms of Clause 15-A. The mere fact that there was some movement in the fingers of the hand or that he continued in the same post at the same place of employment without actual loss of earning could not take Appellant's case out of entry No. 10. Because, not the fingers separately or collectively, but the hand, as the particular limb as a whole, had become useless for all practical purposes affecting his capabilities generally, resulting in potential loss to him of earning capacity. The question of actual loss of earning of the affected person is relatable, it may be pointed out, to his special circumstances while the question of potential loss is determinable with reference to his general capabilities.

8A. Accordingly, I am of the view that the E.I. Court erred in law in accepting the recommendations of the Medical Board and holding that the Appellant was not entitled to claim compensation for loss of earning capacity at more than 10 per cent. I am of the view that the claim of the Appellant is covered by item No. 10 of Part II of Second Schedule of the Act and he is entitled to get compensation for 60 per cent loss of earning capacity. He shall be paid accordingly and the claim is allowed to that extent.

9. In the result, the appeal is allowed to the extent indicated, but there shall be no order as to costs in this Court.