

(1961) 01 P&H CK 0014
In the Punjab And Haryana At Chandigarh

Naubat	Vs	APPELLANT
Employees' State Insurance Corporation		RESPONDENT

Date of Decision : 10-01-1961

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75, 80, 82

Citation : (1961) 2 LLJ 606

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Judgement

Falshaw, J.—This appeal has been filed by Naubat u/s 82 of the Employees' State Insurance Act of 1948 against the order of the Employees' Insurance Court dismissing the application of the appellant filed u/s 75 of the Act.

2. The appellant was employed in the factory of the Delhi Cloth Mills, Delhi, and there seems to be no doubt that between 6 and 6-30 a.m. on 11 October 1953, while at work he received some injury, which was described as minor injury at the time, on his left index finger. According to the appellant he developed some kind infection later as a result of which he was admitted and operated upon in the Irwin Hospital and finally his left index finger was amputated by the Civil Surgeon, Gurgaon, on 27 July 1954. He filed his application with the Employment Insurance Court almost a year later on 25 July 1955.

3. His claim was opposed on behalf of the Employees' State Insurance Corporation which raised the plea that the application was barred by time, and also raised the defence on the merits that the loss of the appellant's finger was not due to an "employment injury" as defined in Section 2(8) of the Act, i.e., a personal injury to an employee caused by an accident arising out of and in the course of his employment in a factory or establishment to which the Act applies. Both the defence pleas were accepted and his application was dismissed.

4. As regards the question of limitation, it appears to be doubtful whether the view of the Court is correct. Section 80 of the Act provides that the Court shall

not direct the payment of any benefit to a person unless he has made a claim for such benefit in accordance with the regulations made in that behalf within twelve months after the claim became due. The Court has taken the view that since the accident occurred on 11 October 1953, the claim became due on that date, and not on 27 July 1954, when the finger was amputated. My attention has however been drawn to the regulations drawn up under the Act and Regulation 45 deals with the question of when a claim becomes due. This is a case of disablement benefit for permanent disablement and under Clause (c) such a claim becomes due on the date on which an insured person is declared as permanently disabled in accordance with these regulations. This would appear to be on the report of a medical board under Regulation 73. It is not clear in the present case whether any such report of a medical board was obtained, but it is at any rate quite clear that no such report confirming the permanent disablement could have been obtained until after the amputation of the finger had taken place.

5. It must, however, be held that on the merits the appellant has failed to establish his case. There is no doubt that the injury was sustained in the course of his employment in the sense that it was at a time when he was on duty in the factory, but it is very doubtful whether it can be said to arise out of his employment. The appellant himself alleged that he was carrying bobbins when he was pushed by another employee, and fell. The two workers produced by him did not support his story and stated that they were not present at the time when he sustained his injury. On the other hand Ram Kishen, R.W. 1, the clerk who maintained the accident register of the Delhi Cloth Mills, has stated that when the accident was reported to him in due course it was reported that the appellant had injured his left finger in the course of a fight with a co-worker, and even the statement of the appellant himself appears to indicate that the injury was sustained in the course of a scuffle, and to my mind there can be no doubt about the correctness of the view of the Court that fighting does not arise out of workers' employment although it may occur in the course of it. Apart from this, the evidence produced appears to be quite inadequate since no doctor has been examined and it cannot be said to be proved that the loss of the finger was directly due to the injury sustained on 11 October 1953, and it may well be that other causes supervened. I must, therefore, hold that the appellant has been rightly held to have failed to establish his case on the merits and I accordingly dismiss the appeal, but leave the parties to bear their own costs.