
(1994) 11 AHC CK 0102
In the Allahabad High Court
Case No : F.A.F.O. No. 978 of 1984

Ram Awadh

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 16-11-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 54A(2), 54A(2)(1)

Citation : (1995) 1 ACC 188 : (1995) ACJ 996 : (1995) 70 FLR 579 : (1995) 2 LLJ 869

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : A.K. Sachan, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—This appeal u/s 82 of the Employees State Insurance Act, 1948 (in short "the Act") is directed against the order dated September 29, 1984 of the Employees Insurance Court, Kanpur and raises substantial question as to scope and ambit of the appellate power of the Employees Insurance Court u/s 54A(2)(i) of the Act.

2. Brief facts necessary to highlight the question involved in this appeal may be stated as thus: the appellant Ram Awadh, who is admittedly an insured person for the purpose of the Act, on August 19, 1982 sustained employment injury in his right eye which according to him resulted into permanent partial loss of vision of the injured eye to the extent of 6/24 as reported by Eye Specialist and accordingly he claimed 30% Permanent disablement benefit under the Act. The Medical Board in its decision dated February 28, 1983 found "no functional loss" in the injured eye and further "malingering test positive" and accordingly it held that the appellant was not entitled to any appreciable disablement benefit. Aggrieved against the decision of the Medical Board, the appellant preferred an appeal before the Medical Appellate Tribunal u/s 54A(2) of the Act. The Medical Appellate Tribunal, by its order dated July 28, 1983 allowed the appeal holding

that the appellant suffered permanent disability and was accordingly entitled to be awarded 30% loss of earning capacity. The Medical Appellate Tribunal in support of its conclusion aforesaid, placed reliance on the opinion of Dr. B.M.D. Verma, Medical Expert-assessor, contained in his report dated February 18, 1983 which report was found consistent with the report of the Eye-Specialist of E.S.I. Hospital, Pandu Nagar, Kanpur. The Medical Appellate Tribunal gave adequate valid reasons for accepting the report submitted by Doctor in preference to the opinion of the Medical Board in as much as the decision of the Medical Board was not found based on any suitable examination or test. The Corporation went up in appeal before the E.S.I. Court against the decision taken by the Medical Appellate Tribunal. The E.S.I. Court being of the view that "court cannot assume the role of medical expert especially when the opinions of the medical experts are contradictory on the same point" remanded the matter to the Medical Board with a directive to get the injured eye of the insured person re-examined by medical experts or by Joint Director, so that the assessment of loss of earning capacity of the insured person be awarded accordingly.

3. Having heard the learned counsel for the parties, I am of the view that if the Medical Appellate Tribunal has, on proper self direction to the relevant factors, arrived at a conclusion as to the extent of disablement suffered by an insured person due to an employment injury then such conclusions arrived at by the Medical Appellate Tribunal are not liable to be interfered with by the E.S.I. Court. It is true that insured person or Corporation, as the case may be, has a right to file appeal against the decision of the Medical Board to the Medical Appellate Tribunal with a further right to appeal to the Employees Insurance Court, but the E.S.I. Court while exercising the appellate powers u/s 54A(2)(i) has to attach due value to the conclusions arrived at by the Medical Appellate Tribunal on the question of extent of disability. The E.S.I. Court should normally not interfere with the conclusions arrived at by the Medical Appellate Tribunal except where it finds that the conclusions are based on no valid material or they are perverse or otherwise vitiated by reason of any mistake of law or of fact. In the present case no such eventuality exists and the E.S.I. Court, in my opinion had, in the facts and circumstances of the case, no jurisdiction to interfere with the conclusion arrived at by the Medical Appellate Tribunal.

4. Before parting with the judgment, it may be observed that the legislature has itself provided the extent of the percentage of loss of earning capacity in the case of injuries specified in the schedule appended to the Act. A Division Bench of this Court in E.S.I. Corporation v. Amir Hassan 1980 (41) Fac. L.R. 224, has held that "where the injury sustained by an insured person answers the description of an injury mentioned in the Second Schedule, the percentage of loss in earning capacity has to be assumed to be one mentioned against that injury in the said schedule irrespective of the actual percentage of loss in earning capacity which may have been caused on account of injuries sustained by an insured person." Since the Medical Appellate Tribunal had determined the loss of earning capacity on the basis of valid material placed on record, it was not open

to the E.S.I. Court to interfere with the view taken by the Medical Appellate Tribunal. It may be observed that E.S.I. Court seems to have decided the appeal as if it was an appeal directly preferred to it u/s 54A(2)(ii) of the Act against the decision of the Medical Board. The fact of the matter is that the appeal before the E.S.I. Court was not preferred directly against the decision of the Medical Board rather it was preferred against the decision of the Medical Appellate Tribunal under Clause (i) of Sub-section (2) of Section 54A of the Act which provides for a second appeal against the decision of the Medical Appellate Tribunal. In my opinion, the appellate power under Sub-clause (i) of Sub-section (2) that the E.S.I. Court exercises is to some extent narrower in its ambit and scope than its power under sub-Clause (ii) of Sub-section (2).

5. In view of the above discussion the appeal succeeds and is allowed. The order dated September 29, 1984 passed by the E.S.I. Court, Kanpur is set aside and that of the Medical Appellate Tribunal is restored.

Parties shall bear their own costs.