

(2013) 11 GUJ CK 0067
In the Gujarat High Court
Case No : First Appeal No. 904 of 2008

Regional Director

APPELLANT

Vs

Laxman Ruparam

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0067

Hon'ble Judges : G.R. Udhwani, J

Bench : Single Bench

Advocate : Shashikant S. Gade, No. 1, for the Appellant; Ajay L. Pandav, Advocate for Defendant No. 1, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Udhwani, J.—Aggrieved by order dated 05.12.2006 passed by the Employees' State Insurance Court, Ahmedabad (for short "E.I. Court") enhancing the percentage of disability suffered by the respondent from 23% to 30% passed in E.S.I. Second Appeal No. 22 of 2005, aggrieved respondent has invoked the jurisdiction of this Court u/s 82(2) of the Employees' State Insurance Act, 1948 (for short "E.S.I. Act"). Undisputedly, while discharging his duties, the respondent suffered loss of two phalanges of finger of his right hand. He, therefore, lodged the claim u/s 54A of the E.S.I. Act after Medical Certificate was obtained wherein the functional loss was assessed at 23%. However, in appeal as stated above, it was revised to 30%.

2. The only contention raised by the learned counsel for the appellant is that in absence of the evidence justifying the enhancement, a substantial question of law as to whether E.I. Court had the jurisdiction to enhance it arises for consideration. It was submitted that there was no complete deprivation of the limb and therefore, E.I. Court was in error in interpreting Entry No. 14 Schedule-II to the E.S.I. Act for such enhancement.

3. As against, the respondent would support the impugned order. Having

considered the rival contentions, it cannot be disputed that loss of phalanges of the right hand would certainly result into functional loss of entire hand. E.I. Court rightly took into consideration clarificatory note at the end of the Schedule-II clarifying that if the nature of injuries are such as would deprive the use of limb, notwithstanding survival of the limb, such loss has to be considered as permanent functional loss. For loss of three fingers, the percentage prescribed in Schedule-II Item No. 14 is 30%, Entry No. 14 read with note below Schedule-II would clearly suggest that loss of the use of the limb would necessarily result into 100% functional loss of the limb. It is a settled law that functional disability is not necessarily permanent disability; it can be higher or lower depending upon the loss of the limb and/or nature of injuries. Thus, taking into consideration the overall circumstances of the matter, the argument advanced by the learned counsel for the appellant does not find favour with this Court. Hence, no substance is found in this appeal. Accordingly, it is dismissed with no order as to costs.