

(2013) 10 GUJ CK 0014
In the Gujarat High Court

Case No : F.A. No. 2934 of 2013 and C.A. No. 10888 of 2013

Regional Director

APPELLANT

Vs

Natvarbhai Virabhai

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 4 LLJ 753

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Shashikant S. Gade, for the Appellant; Nirav V. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Vora, J.—Present first appeal u/s 82 of the Employees' State Insurance Act, 1948 (for short the Act) has been filed by the appellant Regional Director, Employees State Insurance Corporation being dissatisfied with the impugned judgment and order passed by the ESI Court in ESI Second Appeal No. 26 of 2012 dated 2.5.2013, whereby it assessed disability of the respondent at 4%. Heard learned Advocates appearing for the parties to the present proceedings and perused the impugned judgment and order.

2. Briefly stated the respondent employee met with an accident on 6.3.2009 during his service and sustained injury on his left leg. The Medical Board assessed 0% disability and therefore, the respondent preferred appeal before the Medical Appellate Tribunal (for short the Tribunal) vide Appeal No. 160 of 2011, where the disability was assessed at 4%. Again being dissatisfied with the said decision, the appellant preferred second appeal before the learned ESI Court, Ahmedabad.

3. Learned Advocate Mr. Gade for the appellant submits that substantial question of law as to enhancement of percentage of disability without evidence is involved in this appeal and therefore, the appeal requires consideration. In nutshell, a

grievance has been raised that the learned ESI Court in second appeal wrongly and illegally confirmed the order passed by the Tribunal assessing 4% disability, as the learned ESI Court cannot go beyond the opinion of the Medical Board or the Tribunal.

4. The Act is enacted for the benefit and welfare of the employees and various benefits contemplated under the Act are of various types ranging from extending medical facility for providing continuous monetary benefit. Chapter V of the Act defines different kinds of benefit that can be extended to the employees and procedure to be followed in this regard. As and when question of determination of benefit to be extended to the employee arises, the nature and extent of disability suffered by the employees becomes an important factor and for that purpose, Schedule II of the Act contains list of various injuries that are per se treated as those resulting in permanent total disablement and permanent partial disablement. Needless to say that the list of injuries contained in Part I, II and III of Schedule II is not exhaustive but illustrative in nature. While assessing the disablement, the Court is required to keep in mind definition of permanent partial disablement as defined by sub-section (15A) and (15B) of section 2 of the Act.

5. Section 82 of the Act clearly provides that an appeal shall lie to the High Court from an order of an Employees Insurance Court, if it involves a substantial question of law. In the present case, it can hardly be said that there is any substantial question of law involved in the present appeal so as to consider by the High Court as the assessment of disability is based on medical evidence and also appreciation of evidence. Therefore, the ESI Court while referring to the injury and the disability as provided in second Schedule of the Act, gave categorical finding that the respondent suffered disability to the extent of 4%. No fault can be found in arriving at a conclusion based on medical evidence led before the Court below. So, it cannot be said that the ESI Court has come to the conclusion about the disability without any basis and has come a conclusion contrary to the evidence led before the Board confirming the order passed by the Tribunal below. The learned ESI Court has recorded detailed reasons in para No. 6 of the impugned order so as to arrive at 4% disability.

6. Needless to say that the effort of the Tribunal and the Court in the matter of calculation of such damages may be objective, because it would be impossible to evolve a full proof formula to cover all possible situations. The loss of earning capacity resulting out of the injuries is depending upon so many factors like nature of injury, nature of employment and the impact of injury on the efficiency of the employee. On perusal of the impugned judgment of the ESI Court, it appears that the Court discussed the injuries objectively and stated its conclusion with cogent reasons and facts confirming the order passed by the Tribunal. Therefore, this Court does not find any basis to interfere with the finding of facts recorded by the ESI Court.

7. It would be appropriate to refer to the observations recorded by the Hon"ble Apex Court in case of Employees State Insurance Corporation Vs. Ameer Hasan,

and more particularly, para 3 thereof, which introduced as under:

What more justice did the Corporation seek? Save and except to satisfy its own ego it carried the matter to this Court by way of the present petition seeking special leave against the decision of the High Court.

An attempt was made to urge that there was some conflict of decisions in the view taken by the Calcutta High Court and the view taken by the Allahabad High Court. The judgment under appeal has considered the Calcutta judgment which is unfavourable to the workman. Such minor conflicts need not provide a fruitful ground to the Corporation to rush to this Court. One cannot appreciate this too legalistic approach in the name of some conflict in decisions to force a workman whose misfortune was that he was governed by the Act and a beneficiary of the beneficent provisions of the Act to be dragged to this Court to fight for a meagre compensation with his own funds against a powerful Corporation trying to thwart his claim with the funds obtained from the very workman. The glaring paradox is that the workman suffers deduction from his wages so that the Corporation can fight him with his own money. This has led to mounting disaffection amongst industrial workmen against the Corporation. What faith the workman will have in the Corporation set up to ameliorate his misery multiplying it by appeal to Court after Court compelling the workman to follow in the footsteps of the Corporation to save his meagre benefit? A time has come to cry a halt to this litigious mentality on the part of public corporations set up to achieve the goals enumerated in the Constitution. This approach is destructive of the purpose for which Corporation was set up. What then is the difference between a private employer who was liable for compensation under Workmen's Compensation Act and a public sector Corporation set up to replace the private employer for providing the much needed medical relief? In fact such an approach needs to be disapproved and that is why a speaking order.

8. For the sake of repetition, it emerges from the record that the Medical Board assessed 0% disability, whereas in first appeal before the Tribunal, the disability was assessed at 4%, which, in turn, confirmed by the learned ESI Court. In this factual background, the ESI Court appreciated the findings of both the Medical Board and the Tribunal and after appreciation of evidence, the ESI Court confirmed the order of the Tribunal assessing disability of 4%. So, it can hardly be said that there is any substantial question of law arising u/s 82 of the Act. Therefore, as there is no substantial question of law which can be said to have been raised, no such appeal can be entertained and therefore, the present appeal deserves to be dismissed in limine and accordingly, it stands dismissed. Notice is discharged. In view of dismissal of First Appeal, the civil application does not survive and stands disposed of accordingly.