

(2004) 04 OHC CK 0019
In the Orissa High Court
Case No : M.A. No. 368 of 1999

Regional Director, Employees' State Insurance Corporation	APPELLANT
Vs	
Prafulla Kumar Padhee	RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Constitution of India, 1950 — Article 41, 42
Employees State Insurance Act, 1948 — Section 2(9), 82(2)

Citation : (2004) 98 CLT 46 : (2004) 102 FLR 705 : (2004) 3 LLJ 437 : (2004) 2 OLR 637

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : P.P. Ray, for the Appellant; K.P. Misra, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Das, J.

This is an appeal by the Employees State Insurance Corporation (hereinafter referred to as the "Corporation") u/s 82(2) of the Employees State Insurance Act, 1948 (in short the "Act") challenging the order passed by the District Judge-cum-Employees Insurance Court, Sambalpur in Misc. (ESI) Appeal No. 8 of 1995 dated 5.2.1999.

2. The respondent was an employee under the Orient Paper Mills, Brajarajnagar and in course of his employment he sustained injuries on 8.8.1991 causing fracture of his arms. During treatment, nailing of bones of his right forearm was done and movement of his left arm was also considerably restricted due to the injuries sustained. He was examined by the Medical Board at the instance of the Corporation and the loss of earning capacity was assessed at 25%. Being aggrieved by the said report of the Medical Board, the employee-respondent filed an appeal before the Medical Appeal Tribunal alleging that there has been low assessment of his loss of earning capacity. The Medical Appeal Tribunal after examining the employee-respondent and on the recommendation of the Member

(Medical) of the Tribunal (the then Director of Health), enhanced the percentage of loss of earning capacity to 40%. The appellant Corporation preferred an appeal before the E.I. Court-cum-District Judge, Sambalpur against the decision of the Medical Appeal Tribunal on the ground that the respondent is not covered within the Scheme under the Act as his wage was Rs. 1600/- or more per month. The respondent in reply justified the findings of the Medical Appeal Tribunal and his right under the Act stating that he is not only covered within the Scheme under the Act, but also suffered almost total loss of earning capacity as his right hand was severely injured.

3. On a perusal of the impugned judgment I find that the learned E.I. Court after taking into consideration all the points raised by the appellant - Corporation dismissed the appeal, confirming the order of the Medical Appeal Tribunal. Section 82 of the Act provides for an appeal to this Court from an order of the E.I. Court, only if, it involves a substantial question of law. The present appeal has been admitted on the questions of law as mentioned in Grounds "B, C, E, and F" in the memorandum of appeal. Substantially the points of law raised in the said grounds are that, as the respondent-employee is not covered under the definition given in Section 2(9) of the Act read with Rule 50 of the E.S.I. (Central) Rules, 1950, the claim of the employee should have been rejected and that the E.I. Court should have exercised powers of a civil Court and should have afforded opportunity to the parties to adduce evidence in support of their respective cases.

4. Mr. Misra, learned counsel for the respondent contended that none of the above questions on which the appeal has been admitted are substantial questions of law as envisaged u/s 82(2) of the Act. Mr. Ray for the appellant, in reply, submitted that once the appeal has been admitted by this Court on the substantial questions of law, it is not open for the respondent to contend that the appeal is not maintainable on the ground that it does not involve any substantial question of law.

5. On consideration of the above submissions, this Court is of the view that in spite of the fact that the appeal has been admitted, the respondent who had no opportunity of being heard at the time of admission is free to agitate at the time of hearing that no substantial question of law arises in the appeal. However, the appellant has raised the question that, as the respondent was getting wage of Rs. 1600/- or more per month, he does not come under the definition of "employee" as per the proviso to Section 2(9)(iii)(b) of the Act, and the claim of the respondent under the Act was not entertainable. This is a substantial question of law which involves the question of jurisdiction of the Tribunal and the E.I. Court.

6. Mr. P.P. Roy, learned counsel for the appellant submitted that the respondent being not an "employee" as defined u/s 2(9) of the Act, as he was receiving monthly wage of more than Rs. 1600/-, he was not covered under the Scheme of the Act and as such the learned E.I. Court should have rejected the claim made

by the respondent. He further submitted that the question relating to entitlement of the disablement benefit and the claim for recovery of such benefit under the Act are matters to be decided by the Employees' insurance Court u/s 75(1)(e) and Section 75(2)(i) respectively and the said Court while deciding the matters exercises original jurisdiction and does not act as a Court of appeal or as a civil Court reviewing a decision given by the domestic Tribunal. In support of his contention he relied upon a decision of this Court reported in Harihar Barik Vs. Regional Director, E.S.I. Corporation, and on a judgment of this Court dated 12.3.2001 passed in Misc. Appeal No. 383/98. In both the above cases, it would be seen that the said cases arose out of judgments of the E.I. Court passed in appeals u/s 54-A(2) of the Act where the percentage of the disablement suffered by the employee, due to the accident in course of employment, as determined by the Medical Appeal Tribunal, was under challenge.

7. In the present case, however, on examining the records of the E.I. Court it would be seen that the appellant- Corporation filed the appeal before the E.I. Court u/s 54-A of the Act read with Rule 20(B) of the Employees State Insurance (Central) Rules, 1950, solely on the ground that the alleged injury of the respondent is not an "employment injury" as defined u/s 2(8) of the E.S.I. Act and the respondent cannot be termed as an "employee" as defined u/s 2(9) of the Act, as his monthly wages exceeded Rs. 1600/- from 1.4.1991 to 30.9.1991 covering the date of accident, i.e., 8.8.1991 and as such he was not entitled to the benefit u/s 51 of the Act. Learned Counsel for the respondent, on the other hand, sought to sustain the impugned judgment of the E.I. Court on the ground that the said Court has not committed any illegality nor has committed any error in procedure in deciding the appeal.

8. In view of the sole contention raised by the appellant that the respondent being not an "employee" as defined under the Act, on the ground that he was receiving wages of more than Rs. 1600/-per month, I am of the view that it is not necessary to decide the question as to whether the E.I. Court committed, an error by not exercising the original jurisdiction and not fixing the appeal for the parties to adduce evidence and I leave the same open. To decide the point in issue it would be profitable to quote the following definitions from the Act.

"2(9). "employee" means any person employed for wages in or in connection with the works of a factory or establishment to which this Act applies and :

*** ** (iii)(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

*** ** (14) "insured person" means a person who is or was an employee

in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act;"

The wage as given in Section 2(9)(b) of the aforesaid Act has been prescribed under Rule 50 of the Employees State Insurance (Central) Rules as amended in 1991 to be Rs. 1600/- (Rupees One thousand six hundred) per month and proviso to the said Rule is as follows :

"50. Wage limit for coverage of employee under the Act.:

The wage limit for coverage of an employee under Sub-clause (b) of Clause (9) of Section 2 of the Act shall be one thousand and six hundred rupees a month;

Provided that an employee whose wages (excluding remuneration for overtime work) exceed one thousand and six hundred rupees a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of that period"

9. The learned E.I. Court while dealing with the above question raised by the appellant found that the reasoning given by the Medical Appeal Tribunal is justified, as the wage was inclusive of other benefits including bonus and also fluctuates from month to month. Though I find that the reasoning given by the E.I. Court may not be insufficient, but the finding arrived at by the said Court cannot be interfered with, as because, it is an admitted case that the respondent was an "insured person" as defined in the Act, in respect of whom contribution was accepted by the appellant- Corporation. Thus applying the proviso to Section 2(9)(b) of the Act as well as the proviso to Rule 50 of the E.S.I. (Central) Rules, I find that the respondent was an "employee" on the date of accident, as defined in the Act and the appellant-Corporation cannot escape its liability under the Act *Benignius leges interpretandae sunt quo voluntas earum conservatur*. It is seen that the purpose, object and policy of the Statute are that the victims of accidents during the course of employment should be able to secure compensation by the speedier remedy before the Tribunal. It has also been well established that the Employees' State Insurance Act, 1948 is a social security legislation and is required to be interpreted liberally for the benefit of the employees. It therefore, being a welfare legislation should receive liberal construction to promote its objects, keeping in view the directive principle under Articles 41 and 42 of the Constitution of India. I am, therefore, of the view that the corporation should desist from litigative attitude with an aim to defeat the just and honest claim of an employee and its approach in going against a small benefit awarded to an employee should be deprecated. Hyper-technical grounds taken by the corporation for defeating the object of the Statute should not be entertained in an appeal u/s 82(2) of the Act.

10. I, therefore, confirm the judgment impugned in this appeal and dismiss this appeal as devoid of merit, but in the circumstances, without cost.