
(2007) 03 AP CK 0096
In the Andhra Pradesh High Court
Case No : CMA No. 3570 of 2007

Regional Director, ESI Corporation

APPELLANT

Vs

J. Krishna and Others

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 75, 76
Employees State Insurance Act, 1948 — Section 2(8), 54(A), 54A(2), 82, 82(2)

Citation : (2008) 1 ALD 499 : (2008) 3 ALT 540

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Pushpinder Kaur, for the Appellant; L. Prabhakar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Smt. Pushpinder Kaur, the learned Counsel representing the appellant and Smt. Radhika, representing Sri L. Prabhakar Reddy, the Counsel for the first respondent.

2. The following substantial question of law was pointed by Smt. Pushpinder Kaur, the learned Counsel representing the appellant—the Regional Director, E.S.I. Corporation, Hyderabad.

Whether in an appeal u/s 54-A(2)(ii) of the ESI Act, 1948 against the decision of the Medical Appeal Tribunal, is it proper for the Employees Insurance Court to determine the percentage of disablement, overriding the decision of Medical Appeal Tribunal in the absence of any specific provision as to the manner in which the Court is to examine the correctness or otherwise of the report of the Medical Appeal Tribunal?

3. Smt. Pushpinder Kaur, the learned Counsel representing the appellant had taken this Court through the contents of the decision of the Medical Appeal Tribunal preferred under the Employees State Insurance [General] Regulations,

1950 and would point out that normally when the Medical Appeal Tribunal had expressed an opinion the same not to be disturbed by the Employees Insurance Court. The learned Counsel placed strong reliance on the decision of the Allahabad High Court in Ram Awadh Vs. Employees State Insurance Corporation, .

4. Per contra, Smt. Radhika, the learned Counsel representing the first respondent would submit that there is no substantial question of law as such involved in the present civil miscellaneous appeal. Even otherwise, the learned Counsel would maintain that at Para 2 cogent reasons had been recorded and in the light of the same, it is not a fit matter to be interfered with.

5. Heard the Counsel.

6. The Regional Director, E.S.I. Corporation, Hyderabad, being aggrieved of the orders made in EIA. No. 1 of 2002 on the file of the Employees' Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, the first respondent herein, a workman, as appellant filed an appeal u/s 54-A(2)(ii) of the Employees State Insurance Act, 1948 (hereinafter referred to for short "the Act" for the purpose of convenience), as against the decision of the Chairman Medical Appeal Tribunal, dated 11.10.2001 in Appeal No. 90 of 1998 fixing the loss of earning capacity as "nil", the aforesaid Employees Insurance Court in the light of the evidence of PW. 1, RW. 1 and Exs. P1 to P6 and Exs. R1 and R2, after recording reasons allowed the appeal in part setting aside the decision of the Medical Appeal Tribunal in Appeal No. 90 of 1998 dated 11.10.2001, fixing the loss of earning capacity at 20% from the date of the order and 10% from the date of the decision of the Medical Board and directing the present appellant to pay disablement benefits to the workman and further directed the parties to bear their own costs, had filed the present CMA.

7. The present civil miscellaneous appeal is filed u/s 82 of the Act. Section 82 of the Act deals with appeal and Section 82(2) specifies that an appeal shall lie to the High Court from an order of Employees Insurance Court if it involves substantial question of law. Section 54(A) of the Act, deals with reference to Medical Boards and appeals to Medical Appeal Tribunals and Employees' Insurance Court.

Section 54-A(2) of the Act reads as hereunder:

If the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to--

(i) the Medical Appeal Tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or

(ii) the Employees' Insurance Court directly:

Provided that no appeal by an insured person shall lie under this sub-section if

such person has applied for commutation of disablement benefit on the basis of the decision of the Medical Board and received the commuted value of such benefit;

Provided further that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the Medical Board.

8. In the light of the provisions of Section 54(A)(2)(ii) of the Act referred to supra, it appears EIA. No. 1 of 2002 had been preferred to the Employees Insurance Court. The Employees State Insurance (General) Regulations, 1950 were made in exercise of the powers conferred by Section 97 of the Employees State Insurance Act, 1948 (XXXIV of 1948) and Regulation 75 deals with constitution of Medical Boards and Special Medical Boards and Regulation 76 deals with Appeal Tribunals. The Medical Appeal Tribunal under Employees State Insurance Regulations in Appeal No. 90 of 1998 made the following decision:

This is an appeal filed by Sri J. Krishna, Insurance No. 56-177356, C/o. Jarjapaueta (v), Nellimarla Mandal, Vizianagaram District against the decision of the Medical Board, Sanathnagar. The Medical Board assessed the PHC as 10% for the employment injury sustained by him on 27.9.1997.

2. The injured worker was directed to report at ENT Hospital, Koti on 28.7.2001 at 11:00 a.m. The case was examined by Dr. K. Dwarakanath, Member and Medical Expert and Sri V.H. Nandur, Speech Pathologist and Audiologist. In the report, the experts opined "speech well developed. Voice NAD. Bilateral mixed hearing loss can use hearing aid to overcome the hearing loss. With user of hearing aid, he would have normal communication skills. There is no loss of earning capacity".

3. The report was placed before the Medical Appeal Tribunal on 11.10.2001. Dr. K. Dwarakanath, Medical Expert, Sri V.U. Nandur, Speech Pathologist and Audiologist and Sri P. Kistaiah, Non-Technical Assessor were present.

4. Taking into consideration the facts and circumstances of the case and the opinion expressed by the Medical Expert, it is decided that the loss of earning capacity may be treated as "nil".

5. The appeal is accordingly rejected.

9. The said decision referred to supra, had been questioned by the Workman in EIA. No. 1 of 2002 before the Employees Insurance Court and it may be relevant to have a look at the reasons which had been recorded by the said Court at Para No. 13, which reads as hereunder:

Ex. P6 certificate issued by the District Medical Board, Vizianagaram goes to show that the appellant was examined by the Medical Board on 30.9.2002 and also by the Audiologist. According to this certificate, the appellant sustained right ear 35 D/B hearing loss and left ear 30 D/B hearing loss. Ex.P6 certificate was

issued subsequent to the decision of the Medical Appeal Tribunal. The Medical Appeal Tribunal has not given any reason for deviating from the decision of the Medical Board especially when the appellant has been suffering from the same disablement i.e., loss of bilateral mixed hearing loss. In view of the above facts and circumstances, it is evident that the Medical Appeal Tribunal has not considered the entire material on record including the expert opinion and other facts and circumstances of the case properly before deciding that the appellant has not sustained any loss of earning capacity. In my considered view the decision of the Medical Appeal Tribunal is not correct and valid. Hence, it is liable to be set aside.

The appellant claimed that he sustained 50 per cent of the loss of earning capacity, but no cogent evidence is adduced in proof of the same. However, in view of Ex. P6 the appellant sustained 35% of loss of earning capacity. The appellant has not stated anything in his evidence as to whether his earnings are reduced due to the disability sustained by him. Under these circumstances, it is reasonable to hold that the appellant sustained 20% of loss of earning capacity. Hence, both the points are answered accordingly, in favour of the appellant and against the respondent.

10. At the outset, it may be stated that the civil miscellaneous appeal is preferred as against the order made in EIA No. 1 of 2002, which in fact had been preferred by the workman as against the decision of the Chairman, Medical Appeal Tribunal, dated 11.10.2001 in A. No. 90 of 1998. The first respondent herein, the appellant in EIA No. 1 of 2002 preferred an appeal as against the order made by the Chairman, Medical Appeal Tribunal in A. No. 90 of 1998 fixing the loss of earning capacity as "nil". For the purpose of convenience hereinafter the first respondent in the present civil miscellaneous appeal to be referred to as "worker" and the appellant to be referred to as "corporation". It is the case of the worker that he has been working in Jute Mills and he was covered under the Act bearing Insurance No. 56-177356 by working on a machine on 27.9.1997, empty pipe of the machine came out and hit against the worker's right ear and immediately he was shifted to dispensary located in the Jute Mills and after first aid he was shifted to ESI Dispensary at Nellimarla and he had taken treatment there for sometime and thereafter he was shifted to ESI Hospital, Visakhapatnam. As per the direction of the Medical Board, ESI Hospital, Sanathnagar, Hyderabad, the worker was admitted and he was discharged. The Medical Board had examined the worker and assessed the loss of earning capacity as 10% on the basis of the recommendation of Doctors of ENT Hospital, Koti. Aggrieved by the said decision of the Medical Board, the worker preferred an appeal, A. No. 90 of 1998 before the Medical Appeal Tribunal and the Medical Appeal Tribunal directed the worker to go to ENT Hospital, Koti on 28.7.2001 for expert examination and the said Tribunal sent more than 100 members to ENT Hospital, Koti for the purpose of assessing deformity and the worker was not examined even for five minutes at the said ENT Hospital, Koti on 28.7.2001. It is also stated that after examination, the worker appeared before the Medical

Appeal Tribunal on the same day and the said Tribunal informed the worker that he would be informed to appear before it. But without intimation to the worker, the Medical Appeal Tribunal constituted on 11.10.2001 and in the absence of the worker took a decision and fixed the loss of earning capacity unilaterally as "nil". Hence specific stand was taken that the order made by the Tribunal is contrary to the provisions of the Act and violating the principles of natural justice and as per second schedule and Serial No. 6 of the Act, the absolute deafness carries 100 per cent loss of earning capacity and the worker sustained complete deafness to his right ear and hence the Medical Board ought to have fixed the loss of earning capacity at 50% instead of 10% as fixed by the Board and it is also stated that the same is disproportionate. In view of the same, the decision made in Appeal No. 90 of 1998 by the Medical Appeal Tribunal dated 11.10.2001 had been questioned in EIA. No. 1 of 2002. The appellant herein, the first respondent in the said EIA No. 1 of 2002 denied the material allegations and had averred that the worker submitted an application for referring his case to assess the loss of earning capacity due to the injury sustained by him and accordingly the worker's case was referred to the Medical Board and the Medical Board which met on 5.5.1988 had examined the injured person and assessed the loss of earning capacity at 10% though the loss of earning capacity is on high side the Corporation had accepted the same and paid the benefits as per the Medical Board's assessment. The worker filed an appeal before the Medical Appeal Tribunal against the decision of Medical Board. The Medical Appeal Tribunal has got the worker examined by the Medical Expert and faculty while directing him to report to ENT Hospital, Koti at 11:00 a.m. The injured person was examined by Speech Pathologist and Audiologist of ENT Hospital, Koti. The doctor gave a report opining that the speech was well developed and voice NAD and that the bilateral mixed hearing loss can use hearing-aid to overcome the hearing loss and by using of hearing aid, the worker, would have normal communication skills and hence there is no loss of earning capacity. Later the Medical Appeal Tribunal met on 11.10.2001 and after taking into consideration the facts and circumstances of the case and opinion expressed by the Medical Expert, unanimously came to the conclusion that there was no loss of earning capacity and the loss of earning capacity is treated as "Nil" as against the 10% loss of earning capacity assessed by the Medical Board. Hence, the decision of the Medical Appeal Tribunal dated 11.10.2001 is just and valid.

The respondents 2 to 4 in EIA No. 1 of 2002 remained ex parte.

11 The worker examined himself as PW. 1 and Exs. P11 to P6 were marked and on behalf of the Corporation R.W. 1 was examined and Exs. R1 and R2 were marked.

12. The following points were framed for consideration:

(1) Whether the decision taken on 11.10.2001 in Appeal No. 90 of 1998 by the Medical Appeal Tribunal is liable to be set aside ?

(2) If so, whether the appellant sustained 50% of loss of earning capacity as per second schedule, S. No. 6 of the ESI Act?

(3) To what relief?

13. The Employees Insurance Court recorded the findings commencing from Para No. 7 and ultimately allowed the appeal in part.

14. The main ground of attack in the present civil miscellaneous appeal urged by the learned Counsel for the Corporation is that when the Medical Appeal Tribunal had expressed its opinion the Employees' Insurance Court is not expected to disturb the same. Strong reliance was placed on the decision in *Ram Awadh v. Employees State Insurance Corporation* referred (*supra*), wherein it was held that:

The Employees State Insurance Court while exercising the appellate powers u/s 54-A(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 Employees State Insurance 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 instant case, no such eventuality exists and the Employees' State Insurance Court had, in the facts and circumstances of the case, no jurisdiction to interfere with the conclusion arrived at by the Medical Appellate Tribunal.

15. The learned Judge also in the said decision observed that the appellate power under Sub-clause (i) of Sub-section (2) that the Employees State Insurance Court exercises, is to some extent narrower in its ambit and scope than its power under Sub-clause (ii) of Sub-section (2).

16. The fact that the worker had met with the accident on 27.9.1997 and sustained injury to his right ear as per the accident report dated 4.10.1997 is not in serious dispute. There is no serious controversy that the said accident would fall within the employment injury u/s 2(8) of the Act. The worker was also paid temporary disablement benefits for the period from 28.9.1997 to 20.1.1998 and the worker was also treated at ESI Dispensary, Nellimarla and ESI Hospital, Vishakhapatnam. On his application, the worker was referred to the Medical Board for determining the loss of earning capacity due to the injuries sustained by him. The Medical Board met on 5.5.1998, examined the injured person and the loss of earning capacity was fixed at 10%. The Corporation accepted the same and paid the benefits as per the Medical Board's assessment and the worker being dissatisfied had preferred an Appeal No. 90 of 1998 before the Medical Appeal Tribunal against the decision of the Medical Board and the Medical Appeal Tribunal on 11.10.2001 unanimously came to the conclusion that there was no loss of earning capacity and the loss of earning capacity was treated as "nil" as against 10% of the earning capacity assessed by the Medical Board. Aggrieved by the said decision of the Medical Appeal Tribunal, the worker

preferred EIA. No. 1 of 2002. The worker was examined as PW. 1, Exs. P1 is the discharge card issued by the ESI Hospital, Sanantnagar, Ex. P2 is the xerox copy of the certificate dated 11.5.1998 issued by Dr. A.P. Reddy, Superintendent and Dr. V.V. Nandu, Member, Audiologist, Medical Board, Government ENT Hospital, Hyderabad. These documents would go to show that the worker sustained bilateral mixed hearing loss and normal conversation level was affected. Ex. P3 is the decision of the Medical Appeal Tribunal, dated 11.10.2001. Ex. P4 is the letter dated 14.12.2001 sent by the Corporation to the worker in pursuance of Ex. P3 asking to repay the amount received at 10% from the date of the accident. Ex. P5 is the xerox copy of the ESI Identity Card issued in favour of the worker and Ex. P6 is the xerox copy of the certificate dated 30.9.2002 issued by the District Medical Board, Vizianagaram. On the reverse of Ex. P6, the report of the Audiologist is given to the effect that the worker sustained right ear 35% D/B hearing loss and sustained left ear 30% D/B hearing loss. The Inspector (Legal) in the Regional Office, ESI Corporation, Hyderabad was examined as RW. 1 and Ex. R1 is the xerox copy of the opinion of the Medical Referee dated 6.2.1998, Ex. R2 is the xerox copy of the letter dated 9.6.1998, Ex. R3 is the decision of the Medical Appeal Tribunal. The Employees Insurance Court at Para No. 12 clearly observed that "from the opinion, it is evident that the appellant (worker} sustained bilateral mixed hearing loss due to employment injury and the same cannot be cured though it can be overcome by using hearing aid". It is therefore obvious that the appellant (worker) sustained hearing loss due to employment injury and the same cannot be cured, though it can be overcome by using hearing aid. No doubt a contention had been raised by the worker that no proper hearing was given while deciding the Appeal No. 90 of 1998 by the Medical Appeal Tribunal and in that view of the matter, the principles of natural justice also had been violated. In the ordinary course of events, normally, this Court would have remitted the matter again to the Medical Appeal Tribunal for the purpose of affording opportunity to the workman and then make appropriate order. But however, in the light of Ex. P6 certificate and also in the light of the reasons recorded by the Employees Insurance Court at Para No. 13, which had already been referred to supra, this Court is of the considered opinion that when the order of Medical Appeal Tribunal is challenged before the Employees Insurance Court, a broad proposition cannot be laid down and under no circumstances the Employees Insurance Court can come to a different conclusion. It is needless to say that the Employees Insurance Court may have to decide each matter depending upon the facts and circumstances of a particular given case. Hence, no proposition can be laid down in this regard that under no circumstances the Employees Insurance Court can differ from the view expressed by the Medical Appeal Tribunal. Hence, in the light of the reasons recorded at Para No. 13 by the Employees Insurance Court, the said reasons being just and reasonable and convincing reasons based on the appreciation of evidence placed before the said Employees Insurance Court. This Court is of the considered opinion that the impugned order in the present civil miscellaneous appeal does not suffer from any legal infirmity. Hence, this Court is not inclined even to remit

the matter again to the Medical Appeal Tribunal. It is also pertinent to note that it appears that the Medical Appeal Tribunal had not followed the proper procedure when negating the relief of the worker while deciding the matters of this nature. The object of the Act may also have to be kept in mind.

17. Hence, viewed from any angle, the order impugned in the civil miscellaneous appeal does not suffer from any illegality and accordingly the civil miscellaneous appeal shall stand dismissed. No order as to costs.