

(1997) 09 GUJ CK 0015
In the Gujarat High Court
Case No : First Appeal No. 259 of 1996

Regional Director E.S.I. Corporation

APPELLANT

Vs

Ramjivan Shriram

RESPONDENT

Date of Decision : 01-09-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(8)

Citation : (1998) ACJ 905 : (1998) 79 FLR 928 : (1998) 1 GLR 712

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : S.R. Shah, for the Appellant; D.S. Vasavada, for the Respondent

Judgement

S.D. Shah, J.—Admit. Mr. D. S. Vasavada appears and waives service of admission for and on behalf of the respondent. With the consent of the learned Advocates appearing for both the parties, the matter is finally heard today.

2. This First Appeal under S. 82 of the Employees' State Insurance Act, is preferred by the Regional Director, E.S.I. Corporation against the judgment and order passed in Workman Compensation Application No. 63 of 1994. By judgment and order dated 12th December, 1995, the Employees' State Insurance Court held that the employee received on 22nd of March, 1993 on his right hand and left leg and that such injuries were employment injuries. The Court also found that the employee having received employment injuries, was entitled to temporary disablement benefits and that after deducting such amount, if it is already paid, the employee should be paid the balance amount which was awarded by the Court.

3. It appears that the employee viz, Ramjivan Shriram, who is the respondent before the Court was serving with New Shorrock Mills at Nadiad while he residing at Ahmedabad. He was undertaking and fro journey daily and while travelling from Ahmedabad to Nadiad by train, while alighting from the train at Nadiad station, he received injuries. It appears that he was treated at Bapunagar

Employees" State Insurance Hospital and medical benefits for treatment and sickness benefit as per Schedule was given to him. However, employee was not satisfied and he claimed that he ought to have been awarded temporary disablement benefits and since such benefit was not awarded to him, he moved the E.S.I. Court. By impugned order, the E.S.I. Court has given certain direction which includes that he should be sent to the Medical Board for examination as to what disablement he has suffered and to what extent his earning capacity is reduced. Against the aforesaid judgment and order of the E.S.I. Court, the Regional Director has preferred this First Appeal and Mr. D. S. Vasavada appears on instructions on behalf of the employee.

4. It is not a seriously disputed fact before this Court that on the date of the incident, the employee was traveling from Ahmedabad to Nadiad by train to reach New Shorrock Mills at Nadiad where he was serving as Badli worker. This Court is not giving any serious effect to the fact that he was serving as a Badli worker but the fact remains that while alighting from the train at Nadiad station, he fell down and received certain injuries, for which he was treated at E.S.I. Hospital. The question which is raised before this Court is as to whether he is entitled to receive the temporary disablement benefit in view of the fact that the injury received by him cannot be said to be employment injury. No grievance is made by the E.S.I. Corporation before this Court about the medical benefit for treatment as well as sickness benefit as per Schedule granted to him.

5. This Court would have seriously considered the submission made by Mr. D. S. Vasavada that the worker who has proceeded from one town to another town to reach the place of his work is said to be an employee who has already set himself in process of reaching the place of employment and therefore, he ought to have been covered as an "employee", and was entitled to temporary disablement benefit. However, the serious contention which Mr. D. S. Vasavada would like to press before this Court is no longer open to him in view of the fact that the matter is no longer res integra and is covered by a three Judge Bench decision of the Supreme Court reported in 1996 2 CLR 812 Regional Dir., E.S.I. Corporation v. Francis D"Costa wherein Justice S. S. Sen speaking for the three-Judge Bench has while interpreting the provision of this very Act and considering the scope of "employment injury", taken the view that an employee who is on his way to factory or place of employment if he meets with an accident one kilometre away from the place of employment, an injury sustained by him cannot be said to be caused by accident arising out of and in the course of his employment. This view which is taken by a three-Judge Bench of the Apex Court is in every respect binding for this Court and after considering the meaning of the term "in the course of employment" the three-Judge Bench of the Supreme Court has taken the aforesaid view and this Court is bound by such view, cannot accede to a possible and plausible contention which is sought to be advanced by Mr. D. S. Vasavada before this Court. It is unfortunate that he was at pains to point out to this Court that situation should also be included so as to give the protection and the benefits enshrined by the Legislation to the employees, but

this Court shall have to keep in mind the fact that the Apex Court has very recently considered the entire position of law by considering the judgment of the various High Courts and taken the aforesaid view.

5A. In view of the aforesaid settled legal position, the judgment and order of the E.S.I. Court is required to be quashed and set aside and the claim of the employee for temporary disablement benefit is liable to be rejected and is hereby rejected and consequent direction issued to the E.S.I. Corporation to send the employee to the Medical Board is also quashed and set side.

6. In the result, appeal succeeds to the aforesaid extent. There shall be no order as to costs.

7. Appeal allowed.