
(2013) 11 GUJ CK 0018
In the Gujarat High Court
Case No : First Appeal No. 582 of 2008

Regional Director ESIC

APPELLANT

Vs

Kantilal Jeshaji Rana

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0018

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

Bench : Single Bench

Advocate : Shashikant S. Gade, No. 1, for the Appellant; Shailesh C. Sharma, Advocate for Defendant No. 1, for the Respondent

Final Decision : Allowed

Judgement

G.R. Udhwani, J.—Despite repeated calls, the respondent is absent. The appellant-original respondent questions the judgment and order dated 08.06.2007, whereby the Employees' State Insurance Court, Ahmedabad (for short "E.I. Court") in E.S.I. Second Appeal No. 18 of 2005 enhanced the percentage of disability fixed by the Medical Appeal Tribunal (for short "M.A.T.") from 10% to 20%. The respondent sustained injuries including left hand fracture while discharging his duties. He, therefore, obtained Medical Certificate from the Medical Board and lodged the claim. The Medical Board assessed zero percent functional disability whereas in appeal to Medical Appellate Tribunal, it was assessed at 10% and in the Second Appeal, E.I. Court enhanced to 20%.

2. The only argument advanced by the learned counsel for the appellant is that the impugned judgment and order was based upon no evidence at all and against that expert body comprising of doctor and medical expert had made assessment after thoroughly examining the respondent. It was argued that in absence of other medical evidence questioning such assessment, E.I. Court was in error in enhancing disablement as aforesaid.

3. It cannot be disputed that M.A.T. consisting of medical expert relied upon the

assessment made by the Assessing Officer and to dislodge such considered opinion, the medical evidence was necessary. The Courts cannot substitute its views or opinions ipse dixit in absence of reliable material. The Courts can pass the orders only within the bounds of law. The finding rendered by the E.I. Court that functional disability of the respondent was 20% has no medical basis neither any evidence was adduced to establish that against anatomical disability of 10%, actual functional disability was 20%. In absence of such evidence, E.I. Court had no jurisdiction and thus, substantial question of law as above does arise for resolution by this Court. In above view of the matter, the appeal succeeds. The impugned judgment and order passed by the E.I. Court is quashed and set aside. The appellant will comply with the order passed by the M.A.T.