
(2013) 04 GUJ CK 0013
In the Gujarat High Court

Case No : First Appeal No. 2506 of 2012 and C.A. No. 8939 of 2012

Regional Director, E.S.I.C.

APPELLANT

Vs

Radha Krishna Prabhakar

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Employees State Insurance Act, 1948 — Section 54, 55, 82
Limitation Act, 1963 — Section 12, 5

Citation : (2013) 138 FLR 876 : (2013) 2 GLR 1226 : (2013) LabIC 3846 :
(2013) 4 LLN 627

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Shashikant S. Gade, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present First Appeal has been filed by the appellant-Regional Director, Employees" State Insurance (original respondent) being aggrieved with the impugned judgment and order passed by the E.S.I. Court in E.S.I. Second Appeal No. 5 of 2011 dated 11-4-2012 quashing and setting aside the order of the Medical Tribunal assessing permanent disability at Zero per cent (0%) and instead of, it has accepted 10% for the purpose of compensation. Heard learned Counsel, Shri Shashikant Gade for the appellant.

2. Learned Counsel, Shri Gade has referred to the record of E.S.I. Second Appeal, which has been called for from the E.S.I. Court and submitted that as observed by the Medical Appellate Tribunal in Appeal (M.A.T.) No. 54 of 2006, the finding has been given that there was no functional loss sustained by the applicant, and therefore, the Medical Appellate Tribunal has confirmed the assessment of the Medical Assessor regarding the injury on the right eye sustained by the applicant. However, learned Counsel, Shri Gade submitted that the Court below has failed to consider this aspect. He pointedly referred to the written statement filed by the appellant in Second Appeal No. 5 of 2011 filed by

the applicant before the E.S.I. Court. Learned Counsel, Shri Gade submitted that two medical authorities i.e. the Medical Board and Medical Appeal Tribunal examined the applicant and awarded Zero per cent (0%) disability holding that there is no functional loss. Therefore, learned Counsel, Shri Gade submitted that the opinion of the expert could not have been set aside by the E.S.I. Court as two expert bodies have after examining the applicant assessed the disability at Zero per cent (0%) that there is no functional loss, which could not have been disturbed by the E.S.I. Court without any basis. He referred to the provisions of Sec. 54 of the Employees' State Insurance Act, 1948, which provides for determination of question of disablement. He also referred to Sec. 55 of the said Act, which provides review of decisions by Medical Board or Medical Appeal Tribunal. Therefore, he submitted that E.S.I. Court had no jurisdiction to reverse the finding and come to a conclusion about the disability contrary to the opinion of two medical authorities i.e. Medical Board and Medical Appeal Tribunal, which is an expert body for the purpose of assessment of such disability.

3. Though, the submissions have been made much emphasising on the jurisdiction of the E.S.I. Court, few facts are relevant. The original applicant has suffered injury while he was working in the department while repairing shutter on 5-3-2003, and therefore, the injury has been caused by an accident in the course of his employment. He was treated as indoor patient for the treatment of injury received in right eye, the vision was confined to 6/36. Therefore, he was examined by the Medical Board on 24-2-2006 for the purpose of assessment of disability. It is the specific case that the Medical Board without considering the papers and the fact that the vision is confined to 6/36 came to a conclusion that there is Zero per cent (0%) disability. Thereafter, the appeal was preferred before the Medical Appellate Tribunal as per the provisions of E.S.I. Court being M.A.T. Appeal No. 54 of 2006. The Tribunal also confirmed the order of the Medical Board, which has led to filing of the proceeding by way of E.S.I. Second Appeal No. 5 of 2011 before E.S.I. Court. The case paper referred to an endorsement on his case paper on 6-2-2003, history of falling of chemical yesterday. The case paper record as to the characteristic of the ailment and it is recorded vision 6/36. The impugned order, which has been passed in E.S.I. Second Appeal No. 5 of 2011, has made a note of the fact that though the assessment has been made by the Board, the form, which is required to be filled in i.e. B.I.I. 2. Form for the purpose of such medical verification has not been produced either in the Medical Appeal Tribunal or before the E.S.I. Court. It has been specifically finding that therefore, the assessment of the disability has been made without proper verification and the assessment of the disability and it has been stated to be Zero percent (0%) disability. It is also required to be mentioned that as per the case-paper, the vision is 6/36. The E.S.I. Court has also specifically given finding that if the partial loss of function is 6/36 only, it would normally reflect about the partial disablement. E.S.I. Court has also recorded in the finding that B.I.I. 2 Form of the Medical Board is not produced. Further B.I.I. 2 Form No. 3 also does not reflect about any such verification.

There is no evidence that whether in the Medical Appeal Tribunal, Special Ophthalmologist was present or not. As against that, Dr. Umesh Parikh, who had treated and examined the applicant-victim has stated that vision is 6/36 of the right eye and 6/9 of the left eye. It is in this background, the E.S.I. Court has specifically observed that as the forms as required under the law, are not placed before the Medical Appeal Tribunal or before the E.S.I. Court, the E.S.I. Court has referred to Schedule-II with regard to the assessment of the partial disablement and loss of one eye would be 40%. Section 32A refers to the loss of partial vision, the disability would be 10%. In the circumstances, therefore, the E.S.I. Court has made assessment 10%. Further, reliance placed by learned Counsel, Shri Gade about the provision of Secs. 54 and 55 is required to be considered in light of the background of the facts. The injury has been sustained by the applicant-victim during the course of his employment. Admittedly, he has been treated at E.S.I. Hospital. He has been examined by doctor. Admittedly, the case papers are there but necessary forms as required under the Statute are not placed on record by the Corporation either before the Medical Appeal Tribunal or E.S.I. Court, which would lead to an adverse inference that deliberately same has not been produced. Further, Sec. 82 of the Act provides as:-

82. Appeal:- (1) Save as expressly provided in this Section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

(3) The period of limitation for an appeal under this Section shall be sixty days.

(4) The provisions of Secs. 5 and 12 of the Limitation Act, 1963 (36 of 1963) shall apply to appeals under this Section.

4. Therefore, it clearly provides that no appeal shall lie from an order of an Employees' Insurance Court. Further, Sec. 82 of the Act also clearly provides that an appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial questions of law. In the facts of the case, it can hardly be said that there is any substantial question of law involved in the matter inasmuch as the assessment of the disability is based on medical evidence and appreciation of evidence. In the facts of the case, as there is no medical evidence like proper forms, which have been placed before the competent authority, the assessment of the disability has not been correctly made as found by the E.S.I. Court. Therefore, the E.S.I. Court referring to the injury and the disability as provided in Schedule of the Act has clearly given finding that admittedly when the vision is affected and it is reduced to 6/36 as against the normal vision, it is partial disability. Therefore, referring to the Schedule, the E.S.I. Court has come to a conclusion that assessment of such partial disablement could be made as 10% as provided in Schedule itself. In other words, the statute and Schedule attached to the Statute like E.S.I. Act specifically provides with regard to the nature of injuries and when such injury is

suffered, what could be an extent of partial permanent disability has been stated in the Schedule. The Court was justified in arriving at a conclusion based on such Schedule to the Act. Therefore, it cannot be said that E.S.I. Court has come to a conclusion about the disability without any basis and has come a conclusion contrary to the opinion of two expert bodies. In fact, the Court below has specifically recorded in the finding that admittedly the vision is affected and it is 6/36 as recorded in the case papers itself. It is in this background when there is no dispute about the injury and the effect on the vision, reliance can be placed on the Schedule for the purpose of assessment of the disability. It is required to be mentioned that on the contrary the findings have been specifically recorded that necessary B.I.I. 2 Forms have not been placed on record with regard to the assessment made by the Medical Board, for which, there is no explanation. It leads to an adverse inference that if the Medical Board case papers have been placed on record, it would have revealed the exact nature of injury and disablement. Further the evidence of Dr. Umesh Parikh, which is also an expert doctor, has clearly opined about the vision. Therefore, it cannot be said that there is any error made by the E.S.I. Court in assessing the disablement at 10% instead of Zero per cent (0%) assessed by the Medical Appeal Tribunal or Medical Board.

5. Therefore as it is a matter of appreciation of evidence with regard to the injury and the medical evidence, it can hardly be said that there is any substantial question of law has arisen or raised as required under Sec. 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 the present appeal deserves to be dismissed in limine and accordingly, stands dismissed. Notice is discharged. In view of dismissal of main First Appeal, Civil Application for stay does not survive and stands disposed of accordingly. Rule is discharged.