
(2013) 06 GUJ CK 0050
In the Gujarat High Court
Case No : First Appeal No. 122 of 2006

Regional Director, E.S.I.C.

APPELLANT

Vs

Rajesh Laljibhai

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 139 FLR 513 : (2013) 5 LLN 583

Hon'ble Judges : R.D. Kothari, J

Bench : Single Bench

Advocate : Shashikant S. Gade, for the Appellant; Biren A. Vaishhav, for the Respondent

Final Decision : Dismissed

Judgement

R.D. Kothari, J.—On 7.11.1998, the respondent workman has received injury on his left eye. The respondent- workman was working in Budhalal & Co., Shaktinagar. The respondent was duly insured under the Employees State Insurance Company. On occurrence of accident and on receiving of injury by him, the respondent was referred to the Medical Board for assessment of disability. The Medical Board found that the respondent has incurred 10% disability. The Medical Board recorded that the said disability is on account of "eye traumatic cataract". Being aggrieved by the order passed by Medical Board, the appellant had preferred appeal being No. 125/2000 before the Medical Appeal Tribunal, wherein, the Appeal Tribunal was pleased to believe that the respondent-workman has incurred 22% permanent disablement. The said order was challenged by the respondent-workman before the E.S.I. Court being Second Appeal No. 14/2003. The said E.S.I. Court was pleased to allow the appeal and has found that the respondent-workman has incurred 30% disability. Being aggrieved by the said order, the State Insurance Corporation has preferred present appeal.

At the time of hearing, Mr. Shashikant Gade, learned advocate for the appellant has submitted that learned E.S.I. Court has committed serious error in law in

considering 30% disability. It was pointed out during the course of hearing that the respondent- workman had received injury on account of stitching a tobacco sack on the day of incident as in the course of his duty, the needle had gone to the left eye and that is how the respondent-workman had received injury on his left eye. Mr. Gade, learned advocate for the appellant has submitted that the workman has no normal eye and he had already cataract problem. The present accident may have occurred on account of poor vision and cataract problem. It was submitted that occurrence of incident cannot be attributed to doing of duty by him. Secondly, it was submitted that even Medical Appeal Board had not applied its mind in assessing disability inasmuch as the said board has filled up the blank space by using printed/cyclostyle form. The last and alternate submission made by relying 2nd Schedule of Employees' State Insurance Corporation that partial loss of vision of one eye should be believed as 10% disability. In support of this last submission, it was submitted that the workman had cataract problem and due to that he had poor vision, this deficiency should be read with assertion of appellant about workman's own negligence - considered cumulatively - it would lead to conclusion that-loss of vision to the extent of "20%" is on account of reasons outside the purview of the Act and only "10%" disablement may have taken place during the course of his duty and on the grounds available under the Act to the workman.

In the judgment under appeal, the ESI Court has passed elaborate order. In the order, the said Court has referred E.S.I. Corporation Vs. Raju, The Court has referred the meaning of "traumatic" "pertaining to" a "dimness" etc. The Court has referred medical dictionary and other dictionary meaning for the purpose of considering the meaning of said words. In the order, the ESI Court after briefly referring the history of the case, on the percentage of disability incurred by workman, it has reached to the conclusion as provided under relevant entry in the 2nd Schedule of Employees' State Insurance Corporation Act.

2. It is not possible to agree with the submission of Mr. Gade, learned advocate for the appellant that the workman had cataract problem prior to the injury also and the loss of vision in the left eye is to the considerable extent is on account of this pre-existing cataract problem. The ESI Court has disbelieved this theory. The ESI Court has considered mat birth-date of workman is 16.10.1968 and the incident has occurred in the year 1998. Thus, the workman would have be barely 30 years of age at the time of accident. Mr. Gade, learned advocate for the appellant has submitted that nowadays man and woman of any age can have problem of cataract and it is not necessary that only person of old age can have such problem. It is difficult to agree with this submission. It cannot be denied that generally the man and woman have cataract only at the advance age. If the appellate corporation relying on assertion that the workman had cataract problem prior to the accident then it was the duty of the corporation to lead the evidence in this regard. Mere submission to believe contrary cannot be accepted. It may also be stated that receiving of initial treatment by the workman before the private doctor was also objected and commented upon by the learned

advocate for the appellant. It was submitted that in order to have reliable assessment of disability, the workman ought to have received treatment in the Government hospital. The workman had filed an appeal before the Medical Appeal Board and thereafter, before the ESI Court. It is too late in a day to advance the submission before the High Court, that private doctor ought not to have examined the workman. The appellate corporation ought to have raised this objection at earlier stage and further, the appellate corporation could have asked the concerned authority/Court to get workman examined by their own doctor or by some Government doctor. This submission therefore at this level cannot be accepted.

3. The other submission is that Medical Appeal Board had assessed the disability by filling the blank space in printed/cyclostyled form and that being so assessment stated in this form is unreliable inasmuch as the same can be said to be suffering from non-application of mind. This proposition as an abstract proposition and as a principle can be said to be a good, attractive and sound but in order to succeed on the plea of non-application of mind by the authority, the party has to show that how the act of authority suffers from non-application of mind. For instance, the party can show that infact the workman has not suffered any loss of vision in the left eye or the certificate issued by the authority is clearly exaggerated statement. It is for the appellant to establish such exaggeration. For this, there should be some material on record. Mere submission cannot help. The medical expert at the end of the certificate has signed the said certificate and the hand-written blank space are filled up presumably by the said authority in their own handwriting. Therefore, prima facie form is reliable. Use of printed/cyclostyle form makes way for the other side to attack the case of party who relied on such material but use of printed/cyclostyle form - perse - cannot be condemned as bad, unreliable and illegal. Once reliance is sought to be placed on printed cyclostyle form and if in the opinion of other side, it is unreliable and bad then it is upto the other side to avail this opportunity by pointing out how and why form produced is unreliable. To put it differently, the objection based on use of such form can be pressed into service successfully if it is glaring and apparently clear from the record that the authority has filled up the blank space with close mind, or - writing - i.e. contents of blank space - should be so inconsistent and/or mismatch with the printed/cyclostyle columns of the form, that writing and columns in prescribed form both cannot stand together. In absence of any contrary material on record, it cannot be said that assessment arrived by the authority and the certificate issued by them suffers from non-application of mind.

4. It should be bear in mind that 30% disablement arrived by the ESI Court is based on loss of vision suffered by the workman in left eye and the same is in accordance with 2nd Schedule of the Act. For the disablement that suffered by the workman by such injury, in the schedule of the Act itself 30% disability is prescribed. Thus, it is not the subjective or arbitrary assessment arrived at by the ESI Court. Referring to the order of the ESI Court, it may also be noted that

the ESI Court has rightly pointed out that if the workman had only problem of cataract then such problem could have remedied by the operation. But now even if the workman undergoes operation of cataract, the difficulty in left eye would persist because he had received injury in left eye during the course of duty as the needle has damaged the eye of the workman. The learned ESI Court has not committed any error in its conclusion. The said Court has given reasons in its order and has also, referred the relevant case laws. Therefore, the submission of learned advocate for the appellant cannot be accepted. Therefore, the appeal fails and dismissed. Rule is discharged.