
(1988) 11 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 83 of 1987

Uchit Mulya Dukandar Sangh and others	APPELLANT
Vs	
State of Madhya Pradesh and others	RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

Employees State Insurance Act, 1948 — Section 75, 77, 77(1)(1A)(a), 82

Citation : (1989) MPLJ 188

Hon'ble Judges : S.K. Dubey, J;A.G. Qureshi, J

Bench : Division Bench

Advocate : T.N. Singh, for the Appellant; N.K. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

This is an appeal under S. 82 of the Employees' State Insurance Act, 1958 (for short the Act) against the judgment dated 27-8-87 passed in Case No. 130 of 86 E.S.I. by Shri P. R. Pendse, Judge, Employees' Insurance Court, Ujjain (M.P.), whereby the application of the appellant for grant of disablement benefit was dismissed.

Short facts, leading to this appeal, are that the appellant who was an insured person bearing No. 296529, was employed in the Bleaching Department of Vinod Mills, Ujjain, who on 4-1-1985, during the course of his employment at about 6.40 a.m. received an employment injury in the palm of the right hand. The report of the accident was sent by the employer, and the employee was treated in the Employees' State Insurance Hospital. The employee remained on sick leave upto 15-12-1985, but he was denied sickness benefit and also permanent partial disablement benefit, though, according to the appellant, he was offered for the recommendations of the Medical Board appointed by the respondent Employees' State Insurance Corporation, which is a statutory body under the Act. Hence the appellant presented an application under S. 75 of the Act before

the Employees" Insurance Court (for short the E.S.I. Court), Ujjain and claimed temporary disablement benefit of Rs. 7224/- for a period of 344 days i.e. from 5-1-1985 to 15-12-1985.

2A. After notice, respondent filed the written statement and contended that the accident report was received late on 19-2-1985 in contravention of Regulation 68 of E.S.I. (General) Regulations, 1950 (hereinafter called the Regulations). In the special pleas the respondent contended that the Court has no jurisdiction to decide the eligibility of the applicant to temporary disablement benefit under Regulation 51 of the Regulations. The respondent further contended that no cause of action arose to the appellant to approach the E.I. Court in view of the provisions of S. 77(1)(1A)(a) of the Act and Regulations 51, 61, 63 and 64. Lastly it was contended that the applicant be directed to produce prescription slip-medical treatment papers relating to the alleged injury sustained by him on 4-1-1985 to decide the question of entitlement of the appellant to temporary disablement benefit under law.

The learned E.I. Court framed issues and recorded evidence on the issues, but did not decide issue No. 2 in relation to the maintainability of the application filed by the appellant, in view of the pleas raised by the respondent. The appellant examined himself as P.W. 1 and produced prescription paper Ex.P-1, a slip issued by the Corporation Ex.P-2 and a certificate by the E.S.I. doctor Ex.P-3. No other evidence was produced either by the appellant or by the respondent. The E.I. Court dismissed the claim of the appellant holding that the appellant has failed to prove that he received injuries during the course of the employment and remained unfit to work from 15-12-1985 to 16-10-1986. Aggrieved by this order of dismissal, the appellant has preferred this appeal before this Court.

Shri R.L. Mishra, learned counsel for the appellant, contended that the E.I. Court has erred in not granting the relief of temporary disablement benefit from 4-1-1985 to 15-12-1985 for which the claim was filed and there is no finding of the E.I. Court that the appellant did not remain under treatment and on sick leave from 5-1-1985 to 15-12-1985, but on the other hand in para 6 of the order the E.I. Court held in favour of the appellant. Even after this the claim was disallowed on the assumption that the appellant has failed to prove that he remained on sick leave from 15-12-1985 to 16-10-1986, for which neither there was any issue framed by the E.I. Court nor there was any claim of the appellant. The approach of the learned E.I. Court was thus erroneous and the claim has been dismissed under some confusion.

Shri Behl, learned counsel for the Corporation contended that specific pleas were raised in the written statement about the maintainability of the application and the jurisdiction of E.I. Court to decide the claim in view of the provisions of S. 77 of the Act. Though Shri Behl supported the order of the E.I. Court, he contended that if this Court holds that the claim has been wrongly and/or illegally rejected, in that case the appellant be directed to approach the Corporation first, in view of the Regulations 51, 61, 63 and 64 and thereafter if the claim is refused by the

Corporation then only the E.I. Court will get jurisdiction to decide the matter under S. 75 of the Act.

After hearing the counsel for the parties, I am of the opinion that the order of the E.I. Court deserves to be set aside and the appellant deserves a direction to approach the Corporation first and in case his claim is refused and/or denied then the appellant can approach the E.I. Court to commence the proceedings by instituting the proceedings before the E.I. Court for his claim. My reasonings for the same are as under. If we look to Chapter VI of the Act, which deals with adjudication of dispute and claims, then it becomes abundantly clear that for a decision of the disputes as enumerated under S. 75 of the Act for the claim, which is one of the matters to be decided by the E.I. Court under S. 75 of the Act. The proceedings under S. 75 of the Act can only be initiated if the cause of action is made out. S. 77 deals with the commencement of the proceedings, which reads as under:

77. Commencement of proceedings.- (1) The proceedings before an Employees' Insurance Court shall be commenced by application.

(1 A) Every such application shall be made within a period of three years from the date on which the cause of action arose.

Explanation - For the purpose of this sub-section--

(a) The cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependants' benefit, the dependants of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period of twelve months after the claim became due or within such further period as the Employees' Insurance Court may allow on grounds which appear it to be reasonable;

(b) The cause of action in respect of a claim by the Corporation for recovering contribution from the principal employer or a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations.

(2) Every such application shall be in such form and shall contain such particulars and shall be accompanied by such fee, if any, as may be prescribed by rules made by the State Government in consultation with the Corporation.

The language of S. 77(1)(1A)(a) is unambiguous and clear and leaves no exception. Before an employee who claims benefits under Chapter III he had to approach the Corporation first in accordance with the Various Regulations as contained in Chapter III. Thereafter under Regulation 51 if the Authority certifies the eligibility of the claimant, then the benefit shall be paid in accordance with Regulation 50. Regulations 53 to 64 deal with certification and claims for sickness and temporary disablement. After the scrutiny of the claim by the Corporation, if the claim is denied by the Corporation, then only the cause of action arises to an

insured person an employee under S. 77 of the Act to commence the proceedings before the E.I. Court. In fact the application was premature and the E.I. Court acted illegally in not deciding the question of maintainability of the application first and for not directing the appellant insured person to approach the E.I. Court? The Corporation was also responsible for not inviting the attention of the Court to decide the matter in respect of cause of action and maintainability of the application. In such circumstances though the claim of the appellant has been dismissed, but the dismissal was without jurisdiction as there was no cause of action to the appellant and the application was premature. Though the matter deserves a remand for consideration of the application, but it would not be proper at this stage to remand the case to E.I. Court again for giving a finding on issue No. 2 to avoid delay and to debar the employee for his rightful claim. The application of the appellant is not dismissed by this Court on merits, but is being dismissed because there was no cause of action and the application was premature. Hence it is directed that the appellant shall approach first the E.S.I. Corporation and furnish his claim for the benefit in accordance with the Regulations contained in Chapter III of the Regulations. In case the Corporation rejects the claim, the appellant shall be free to institute the proceedings before the E.I. Court for his claim. It is also observed that the Corporation will not dismiss the claim on the ground of limitation that the claim was not made for the benefit in accordance with the Regulations made in that behalf within a period of 12 months after the claim became due. The delay, if any, in making of the claim will have no effect. It is further directed that the Corporation shall decide the claim for the benefit in accordance with the Regulations within a period of 2 (two) months from the date of making of the claim by the appellant. The E.I. Court shall return the documents i.e. Ex.P-1, Ex.P-2, Ex. P-3, to the appellant for lodging his claim before the Corporation.

The result is that the appeal of the appellant is allowed in accordance with the directions made above. The record of the E.I. Court be sent back immediately so as to reach before the said Court on 17-11-1988. The parties shall appear before the E.I. Court on 17-11-1988 for taking appropriate steps in the matter, in accordance with the directions made above. No order as to costs.