

(1991) 06 KL CK 0021
In the High Court Of Kerala

Vasudevan Nair

APPELLANT

Vs

Regional Director E.S.I. Corporation

RESPONDENT

Date of Decision : 26-06-1991

Acts Referred:

Employees State Insurance Act, 1948 — Section 54A

Citation : (1993) 1 ACC 264 : (1992) ACJ 387

Hon'ble Judges : Varghese Kalliath, J;G.H. Guttal, J

Bench : Division Bench

Judgement

Varghese Kalliath, J.—This is an appeal against the order of the Employees' Insurance Court, Alleppey. The subject-matter of the appeal was a dispute as regards the disability benefit of the appellant herein.

2. Appellant is an insured employee. He met with an accident in the course of his employment. This happened on 25.7.1985. Appellant is a loading helper. As we understand from the terminology of his work, viz., loading helper, it must be a strenuous work, which requires physical exertion. There was no dispute that as a result of the accident, he sustained a compound fracture at his right hand. He has undergone a long treatment, for about 144 days. Even at the time when the certificate of disability was issued, it was revealed that a steel plate has been inserted for the purpose of uniting the fractured bone. From the fact that the appellant has undergone treatment for a period of 144 days and from the nature of the fracture, we feel that there is possibility of suffering a substantial disability, particularly in view of the fact that he has to do strenuous work which involves physical exertion.

3. The ESI Medical Board had occasion to examine the appellant. The Board found 10 per cent provisional disability and after one year, on an examination on 23.6.1987, it was found that the appellant has 4 per cent permanent disability. A certificate was issued showing disablement benefit at 4 per cent.

4. Appellant submits that the assessment of disability by the Board is absolutely

unjustifiable in the circumstances and facts disclosed in the case. The Board has not taken into account all the relevant facts before issuing the certificate. According to him, one of his arms is practically rendered unfit to do any work. This aspect of the matter has not been taken into account in fixing 4 per cent disability.

5. Before the Employees' Insurance Court, appellant herein tendered evidence. He deposed that while undergoing treatment, a steel plate was inserted in his body and that he is not in a position to do any work, which requires physical exertion. Of course, he has stated that he is still working as a helper. The Employees' Insurance Court has not considered the question whether the 4 per cent disability found by the Board is correct or not. The Court has considered his potentiality to do work and found that his monthly salary is enhanced to Rs. 1,710/-. This happened on 19.10.1989. It may be due to inflation and spiralling rise in prices of commodities. This has nothing to do with the case.

6. The question of a rise in the wages on account of certain circumstances should not enter in the consideration of the decision as to the correctness of the disability determined and the consequential benefit the insured worker is entitled to. The benefit the worker is entitled to, has to be assessed on the basis of the disablement he has to carry throughout his life and not on any other materials or fortuitous circumstances.

7. The jurisdiction of the Employees' Insurance Court in the matter also has to be considered in this case. Disablement is a matter which has to be ascertained by an expert body like a Medical Board. If a Medical Board gives a disability certificate and if that certificate would not enable the insured worker to receive his legitimate benefit under the insurance scheme and if he approaches in such circumstances the Employees' Insurance Court, what is the area of investigation assigned to the Employees' Insurance Court? Is it possible for the Employees' Insurance Court on the basis of the evidence tendered before it to say that assessment of the Medical Board as to the disability of the insured worker is incorrect? We feel that though the Insurance Court may not have the expertise, the statute has empowered the Insurance Court to examine the correctness of the certificate issued by the Medical Board. The system of rendering justice by establishing Courts and Tribunals in all matters of controversy, whether it is medical, scientific or technological, naturally has to make the Court the arbiter even in all matters where expert opinion is necessary. It does not mean that the Court is only a rubber stamp to accept what an expert says before it. How to assess expert's evidence is a matter which has been the subject-matter of discussion by several Courts and precedents are not wanting on this subject. But, a special statute like Employees' State Insurance Act, with an avowed purpose of protecting and promoting the welfare of the workers and to give assistance and aid when they are in distress on account of sickness and other invalidating circumstances, has provided provisions for compulsory insurance to give medical benefits, sickness benefits, maternity benefits, disablement benefits and

dependants" benefits etc. The provisions concerning these matters should get a purposive interpretation by Courts against literal and grammatical interpretation.

8. Section 54A of the Act provides that the case of any insured person for permanent disablement benefit shall be referred by the Corporation to a Medical Board for determination of the disablement question. If the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation may file an appeal to the Medical Appeal Tribunal constituted in accordance with the provisions of the regulations. Apart from this right of appeal to the Tribunal, the aggrieved party has the right of a further appeal before the Employees' Insurance Court. The Corporation or the insured person can also bypass the Medical Appeal Tribunal and can file an appeal before the Employees' Insurance Court directly. These beneficial provisions must be made meaningful by the authorities manning the Tribunal and the Insurance Court, always keeping in mind the avowed object and purpose of the whole welfare scheme of the Act.

9. We say all these, since we feel that in this case, the Employees' Insurance Court has forgotten to decide the correctness of the determination of the disability by the Medical Board. In fact, the focus of the appeal is the question of the correctness of the determination of disability by the Medical Board. Section 54A of the Act is the power source of the Employees' Insurance Court to decide the question of disability.

10. In this case, the Employees' Insurance Court has not considered the question whether the determination of the Medical Board as to the disability of the insured is correct or not. It directed its attention to find out whether there is any economic loss sustained by the insured worker and came to the conclusion that when the matter was decided, the insured worker was getting a higher remuneration. Why he was able to get a higher remuneration and what are the circumstances which made it possible for the insured worker to get a higher remuneration were not adverted to by the Employees' Insurance Court. The Employees' Insurance Court has not discussed the evidence regarding the disability.

11. Counsel for appellant has taken us to the evidence in the case. Of course, we are not very much satisfied with the evidence tendered by the insured worker, particularly the cross-examination of the doctor, who has issued the certificate. Since there was no decision as to the correctness of the certificate by the Employees' Insurance Court, we feel that the decision is liable to be set aside. We are of opinion that a fresh look of the matter by the Employees' Insurance Court is absolutely necessary, considering the nature of the injury sustained by the appellant. We remit the case for a fresh disposal of the matter. Both sides are given the liberty to adduce necessary evidence in the matter, so that the Employees' Insurance Court can come to a correct conclusion. The Court has to decide the matter on the basis of the observation made in this judgment. We direct the Employees' Insurance Court to dispose of the matter as expeditiously

as possible.

M.F.A. is disposed of as above. No order as to costs.