

HON'BLE SRI JUSTICE S. RAVI KUMAR

C.M.A. No.66 of 2010

JUDGMENT:

This appeal is preferred questioning the order dated 21.10.2009 in EIA No.5 of 2007 on the file of Industrial Tribunal-I, Hyderabad.

2. Appellant herein is the Employees State Insurance Corporation represented by its Assistant Director and it preferred appeal before Industrial Tribunal-I questioning the order of Decision in Appeal No.46 of 2005 on the file of Medical Appellate Tribunal dated 11.11.2005. The Industrial Tribunal-I, Hyderabad on a consideration of the material held that appeal is devoid of merits and accordingly dismissed the appeal upholding the decision of Medical Appeal Tribunal, dated 11.11.2005.

3. Heard arguments.

4. Advocate for appellant submitted that Medical Appeal Tribunal initially passed order on 12-09-2005 holding that the Medical experts Dr Datta Tanloorker and T. Kishtaiah, Non-Technical Assessor were present and on a consideration of the injured person the medical expert was of the view that injury was to left eye and was referred to Ophthalmologist and by passing such order recorded that the appeal is disposed of accordingly. He submitted subsequently without any notice to appellant herein and without giving opportunity unilaterally passed order on 11.11.2005 by taking appeal and *suo motto passed impugned order*. He further submitted that NIL loss of earning capacity was enhanced to 30% without any material and from a reading of the

order it is not known on what date the injured was referred to Ophthalmologist and on what date he was examining and what is the report of the ophthalmologist, without all these details the Medical Appeal Tribunal passed the impugned order dated 11.11.2005. He submitted that when order is questioned before Appellate Court taking a specific ground that Medical Appeal Tribunal without taking ophthalmologist opinion and without knowledge of appellate corporation passed the order dated 11.11.2005 and the same is bad in law and that decision was taken without considering the provisions of ESI, lower court without looking into these objections simply confirmed the order of Medical Appeal Tribunal. He submitted that the orders of Medical Appeal Tribunal and the Industrial Tribunal are liable to be set aside.

5. On the other hand advocate for claimant/respondent No.3 submitted that appellant has every knowledge of the proceedings and they have produced evidence and only on consideration of evidence, Medical Appeal Tribunal has passed the order considering the report of ophthalmologist. He submitted that appellate court i.e., Industrial Tribunal-I, on a consideration of such reasoned order passed by the Medical Appeal Tribunal confirmed the same and that there are no grounds to interfere with the order of Industrial tribunal-I, Hyderabad. He further submitted that this being a Second Appeal no substantial question of law is involved and appeal is liable to be dismissed. In support of his argument, he has cited a decisions of this Court reported in ***Chairman, the Employees State Insurance Corporation, Hyderabad v. Swaminath Singh***^[1] and in ***Regional Director, E.S.I. corporation, Hyderabad v. K.Eswar Rao***^[2].

6. I have perused the material papers including the impugned orders dated 12.09.2005 and 11.11.2005. As rightly pointed out by advocate for appellant on 12.09.2005 the Medical Appeal Tribunal passed the following order :

“The appeal was considered by the Medical Appeal Tribunal on 12.09.2005 Dr Datta Tamloorker, Medical Expert and Sri T. Kishtaiah, Non-Technical Assessor was present. On examination of the Injured Person the medical expert expressed his view that “Injury to left eye, refer to ophthalmologist”

The appeal is accordingly disposed of.”

7. A reading of the above order, it is clear that by referring the injured to ophthalmologist the appeal was disposed of; That itself is not a correct order having referred the injured to ophthalmologist, the lower tribunal ought to have kept the proceedings pending for the receipt of report of ophthalmologist but surprisingly it is recorded that appeal is disposed of. The main objection of appellant is that the Medical Appeal Tribunal without any notice and without any opportunity arbitrarily *suo motto* taken up the case again on 11.11.2005 and passed the impugned order enhancing the loss of earning capacity from NIL to 30%.

8. As seen from the order dated 11.11.2005 nothing is recorded as to why disposed of appeal is again taken up for consideration. It is also not clear from the order whether Dr C. Premprakash referred in the order is Ophthalmologist or any other expert. It is recorded in the impugned order by taking the opinion of medical expert loss of earning capacity was enhanced to 30%, it does not speak as to what happened after the injured claimant was referred to Ophthalmologist. The order is silent as to when the injured was examined by Ophthalmologist and when the Appeal Tribunal received the report of Ophthalmologist, the entire order of

the appeal tribunal was vague. As rightly pointed out by Medical appeal Tribunal and unilaterally enhanced loss of earning capacity to 30% without any supporting material. When such order is challenged before the Industrial Tribunal, the learned Presiding officer without examining these aspects mechanically upheld the Medical Appeal Tribunal order as if the tribunal has considered the evidence and material on record. But from a bare perusal of order dated 11.11.2005, it is clear that nothing is perused by the Medical Appeal Tribunal and no opportunity was given to appellant herein before passing such order. Further when it is recorded that appeal is disposed of on 12.09.2005 what made the Medical Appeal Tribunal to reopen the case to take up the proceedings again on 11.11.2005 is not known.

9. On a consideration of entire material, I am of the considered view that the Medical Appeal Tribunal has not followed the principles of natural justice like giving opportunity and considering the material evidence for arriving at the conclusion and such order cannot be upheld. But the presiding officer of the Industrial Tribunal erroneously upheld such order, therefore the same has to be set aside. With regard to decisions referred to and relied on by learned counsel for 3rd respondent, those cases are decided on material available on record but not without any material as happened in this case. Therefore those decisions have no application.

10. Considering these aspects, I am of the view that it is a fit case to remit back the matter to Medical Appeal Tribunal to decide the same in accordance with law after giving opportunity to both parties. As it is an old matter of the year 2005, I feel that some time has to be fixed to the Medical Appeal Tribunal for

disposal of the same.

11. Accordingly, this Civil Miscellaneous Appeal is allowed and the impugned order dated 11.11.2005 is set aside and the matter is remitted back to the Medical Appeal Tribunal for fresh consideration and that the Medical Appeal Tribunal shall dispose of the same within three (03) months from the date of receipt of this order in accordance with law without being influenced by any of the observations made in this order. No costs.

Miscellaneous Petitions, if any pending, in this Appeal, shall stand closed.

S. RAVI KUMAR, J

Date: 25-02-2016.

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[\[1\]](#) 2007 (TLS) 435473

[\[2\]](#) 2008 (TLS) 436916