

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HONOURABLE Mr. JUSTICE R.SUBRAMANIAN

CMA.No.299 of 2014
and
M.P.No.1 of 2014

The Regional Director,
Regional Office,
Employees State Insurance Corporation,
Bouvankare Street, Mudaliarpeta,
Puducherry-4. ..Appellant/1st Respondent

..Vs.

1.K.Pazhaniraja .. Respondent/Petitioner

2.The Manager,
Pondicherry Co-operative Spinning Mills,
Thirubhuvanai,
Puducherry-605 102. ..Respondent/2nd Respondent

PRAYER:- Appeal filed under Section 82(2) of Employees State Insurance Act, to set aside the order dated 31.07.2013 in E.S.I.OP.No.12/2010 on the file of the E.S.I.Court, Puducherry.

For Appellant : Mrs.G.Narmadha

For R-1 : Mr.P.R.Thiruneelakandan

For R2

:Mr.R.Sridhar

(Appearance included as per being mentioned order dated 30/08/2017)

JUDGEMENT

This appeal is directed against an order of the E.S.I.Court holding that the petitioner would be entitled for 60% of disablement benefit as per the Employees State Insurance Act, 1948 [hereinafter referred to as "the Act"].

2.This is a peculiar case, where the workmen had suffered from "Guillain-Barre syndrome" because of an accident. The E.S.I. Court referred the employee to the Medical Board, under Section 54 of the Act. The Medical Board had examined the employee and assessed the permanent disability at 60%. Based on the report the E.S.I.Court held that the employee would be entitled to disablement compensation. The E.S.I.Court, however, held that there was no loss of earning capacity, suffered by the employee due to the disability.

3.Mrs.G.Narmadha, learned counsel appearing for the appellant/Employees State Insurance Corporation would vehemently contend that it is for the claimant to prove the loss of earning capacity and in the absence of proof of loss of earning capacity payment of disablement compensation would not arise.

4.Mr.P.R.Thiruneelakandan, learned counsel appearing for the respondent/employee would submit that the E.S.I.Court has assessed the loss of earning capacity at 60%. The E.S.I.Court has just gone by the report of the Medical Board.

Section 54 of the Act reads as follows:

[54. Determination of question of disablement-

Any question -

- (a) Whether the relevant accident has resulted in permanent disablement; or
- (b) Whether the extent of loss of earning capacity can be assessed provisionally or finally; or
- (c) Whether the assessment of the proportion of the loss of earning capacity is provisional or final; or
- (d) in the case of provisional assessment, as to the period for which such assessment shall hold good,

shall be determined by a Medical Board constituted in accordance with the provisions of the regulations and any such question shall hereinafter be referred to as the "disablement question" (emphasis supplied).

A reading of Section 54 would show that the duty cast upon the Medical Board not only to assess the disability caused by the accident, but also the extent of loss of earning capacity.

5.Admittedly, the injury suffered is not an injury covered by the Schedule to the Act. A Division Bench of Karnataka High Court in Regional Director, ESI Corporation .Vs. S.Saravanan reported in [1991 II LLJ 494] had held that if the loss of earning capacity that relates to the injury suffered which are not covered by the Schedule to the Act, has to be necessarily assessed by the Medical Board.

6.In the instant case, it is concluded that the employee had suffered 60% of permanent disability. Therefore, I find that the E.S.I.Court was not right in taking 60% as loss of earning capacity. The Medical Board should have decided the actual loss of earning capacity.

7.In the light of the above, the order of the E.S.I.Court is set aside and the matter is remitted to the E.S.I.Court. The E.S.I.Court will take the opinion from the Medical Board as to the loss of the earning capacity likely to be caused to the workmen, because of the injury and on the basis of the report decide, the actual loss of earning capacity and proceed further in accordance with law.

8.Hence, the order of the E.S.I.Court dated 31.07.2013 is set aside and the matter is remitted back to the E.S.I. Court, Puducherry, with a direction to take opinion from the Medical Board as to the loss of earning capacity and thereafter, decide the disablement of the employee under the Act. In view of the fact, that the accident had occurred in 2003 the E.S.I.Court is directed to complete the proceedings within a period of four months from the date of receipt of a copy of the order. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KP

To

1. The E.S.I.Court, Puducherry.
 - 2.The Manager,
Pondicherry Co-operative Spinning Mills,
Thirubhuvanai, Puducherry-605 102.
 - 3.The Section Officer, VR Section, High Court, Madras.
- +1cc to Mr.G.Bharadwaj, Advocate SR.No.58480
+1cc to Mr.P.R.Thiruneelankandan, Advocate SR.No.58711

CMA.NO.299 of 2014

GN(06/09/2017)