

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. No.1715 OF 2004

JUDGMENT:

The 1st respondent in E.I.A. No.14 of 2002 on the file of Employees Insurance Court and Chairman, Industrial Tribunal-1, Hyderabad, is the present appellant.

2. He preferred the aforesaid appeal under Section 82 (2) of the Employees State Insurance Act, 1948 (for brevity, 'ESI Act'), assailing the order dated 31.12.2003 by the Employees Insurance Court and the Chairman, Industrial Tribunal-I (for short, 'E.I. Court'), erstwhile Andhra Pradesh, Hyderabad, whereby and whereunder the appeal preferred by the 1st respondent herein was allowed setting aside the order dated 11.10.2001, passed by the Medical Appeal Tribunal (for short, 'MAT') fixing loss of earning capacity as 'Nil'. It, thus, confirms the order passed by the Medical Board, which assessed that the 1st respondent herein has sustained loss of earning capacity to the extent of 35%.

3. The Regional Director (Appellant) herein questioned the said order on the following grounds:

(i) The report of the Medical Board which assessed loss of earning capacity as 35% relied on by the respondent-employee was not signed by anybody and ought to have signed by the Civil

Surgeon/ENT Specialist, and, hence ought not to have relied upon the said document in law.

(ii) The E.I. Court ought to have remitted the matter to the State Government for reappreciation of evidence by properly constituted MAT when it observed that constitution of MAT is not in accordance with Regulation 76 of ESI (General) Regulations, 1950.

(iii) The E.I. Court ought to have observed that hearing possibility is always considered keeping both the ears in picture.

4. In paragraph-6, the appellant has formulated the substantial question of law under Section 82 of the ESI Act, thus:

“that in a case where the E.I. Court has observed that the order of the M.B. has been set aside by an improperly constituted MAT, then it is not proper for the E.I. Court to direct the State Government to constitute a proper Tribunal in accordance with the Regulation 76 of the E.S.I. Act and re-examine the 1st respondent, instead of mechanically setting aside the order of MAT on the said ground? Should the E.I. Court rely upon the unsigned report of the M.B. and set aside the order of MAT which is valid and legal.”

5. The appellant agitates that constitution of MAT is in accordance with Regulation 76, but, otherwise, also even if for any reason it is not constituted in accordance with the said Regulation, the E.I. Court ought to have remitted the matter for reappreciation of facts instead of setting aside its matter and allowing assessment made by the Medical Board's report, which is unsigned, invalid and illegal.

Reserving right to urge the other grounds at the time of hearing of C.M.A., sought to allow the appeal.

6. Heard Smt. Pushpinder Kaur, the learned counsel for the appellant, and Sri P. Ramabhupal Reddy, learned counsel for the 1st respondent. Since the appellant has endorsed that the respondents 2 to 5 are not necessary parties, service on them was not taken out.

7. The learned counsel for the 1st respondent places reliance in **B. Ramakrishna Reddy v. Regional Director, E.S.I. Corporation & Ors.**, rendered by the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No.30697 of 2011, arising out of the impugned final judgment and order dated 17.3.2010, in C.M.A. No.3249 of 2004 passed by this Court. The learned counsel would submit that the order of MAT, dated 11.10.2001, determining loss of earning capacity was 'NIL' as MAT was not properly constituted as per Regulation 76 of ESI Act and in absence of a judicial officer of the State, the order is bad.

8. In an alike situation, the aforesaid ruling was rendered by the Hon'ble Apex Court holding that the constitution of MAT was not in accordance with Regulation 76, and, therefore, there is no need to adjudicate upon in the present appeal.

9. Turning to the facts that are relevant, the 1st respondent is an employee in M/s. Madanapally Spinnng Mills Limited, Madanapally Mandal, Chittoor District as Assistant Fitter in Spinning Department. While he was working, he met with an accident when OSC Machine pipe hit on his left ear, causing injury to the left ear.

He was shifted to ESI Dispensary, Madanapally and later he was admitted as inpatient in ESI Hospital, Sanathnagar, Hyderabad on 18.2.1997 and discharged on 29.2.1997. He was referred to the Medical Board duly constituted under ESI Act. The Medical Board referred him to E.N.T. Hospital, Koti, Hyderabad, where further tests were conducted at the instance of the Medical Board, and the Medical Board having taken into consideration the entire evidence on record concluded that the appellant has sustained loss of earning capacity to the extent of 35%.

10. The ESI Corporation preferred appeal against the said order before the MAT which passed order dated 11.10.2001, determining loss of earning capacity as "Nil".

11. Aggrieved by the aforesaid order of the MAT, the respondent preferred an appeal before the E.I. Court. Having heard the parties, the E.I. Court, set aside the order of Appeal Tribunal on the ground that the Appeal Tribunal has not been constituted properly as per Regulation 76 of the Employees State Insurance (General) Regulations, 1950 and the impugned decision was neither valid nor binding. The E.I. Court also expressed its opinion that the 1st respondent herein was not furnished medical opinion of the E.N.T. Hospital authority and, thus, he was deprived to raise his objection if any on the opinion of ENT Hospital authority and to adduce evidence on his behalf and thereby held that the decision of the MAT, dated

11.10.2001 is not legally valid, and set aside the same by allowing the appeal by its order dated 31.12.2003.

12. In **B. Ramakrishna Reddy v. Regional Director, E.S.I. Corporation & Ors.**, (Special Leave to Appeal (C) No.30697 of 2011) the Hon'ble Supreme Court, while observing that Regulation 76 stipulates appeal tribunal shall consist of judicial officer of the State Government being a person other than the judge of E.I. Court, who shall be assisted by the following persons to be selected by him as assessors and opining that the E.I. Court noticed the right provisions of Regulation 76 and rightly set aside the order passed by the Appeal Tribunal, in absence of judicial officer of the State Government, held thus:

“The 1st respondent being aggrieved by the aforesaid order preferred an appeal under Section 82 of the E.S.I. Act before the High Court of Andhra Pradesh. In the said case, the 1st respondent pleaded that Regulation 76 of the Employees State Insurance (General) Regulations, 1950 (hereinafter referred to as ‘Regulation’ for short), as noticed by E.I. Court is not the correct provision. It was contended that a clarification was there or not and on that the ESI Corporation issued a clarification on 2nd January, 2004 wherein Regulation 76 was shown as follows:

“76. Medical Appeal Tribunals: For the purposes of the Act, the State Government shall constitute as many Medical Appeal Tribunals as it thinks fit. Each such Medical Appeal Tribunal shall consist of such persons, exercise such jurisdiction and follow such procedure (Save for the manner in which and the time within which the appeals may be filed as may be prescribed by rules framed by the Central Government under the Act) as the State Government in consultation with in Corporation may, from time to time, decide. Notwithstanding the amendments hereby made, all appeals pending before the Appeal Tribunal at the date of coming into force of the provisions of the Act relating to Medical Appeal Tribunal shall be disposed of by the Appeal Tribunals.”

In view of the aforesaid clarification, the High Court by impugned judgment dated 17th March, 2010 held that the Appeal Tribunal need not consist of judicial officer and set aside the order dated 31st December, 2003 passed by the E.I. Court.

Learned counsel appearing on behalf of the appellant submitted that clarification issued on 2nd January, 2004 does not reflect proper language of Regulation 76, as noticed by the High Court. He further contended that

as per original Regulation 76 for the purposes of Regulation 74 the Appeal Tribunal shall be constituted by the State Government and shall consist of a judicial officer of the State Government being a person other than the judge of E.I. Court, who shall be assisted by one or more medical experts, one or more officials or members of the trade unions or unions to be selected by him. The correct provision was rightly relied upon by the E.I. Court, which reads as follows:

“76. Appeal Tribunals: For the purposes of Regulation 74, appeal tribunal shall be constituted by the State Government and shall consist of a judicial officer of the State Government being a person other than the Judge of Employees Insurance Court, who shall be assisted by the following persons to be selected by him as assessors. (a) One or more medical experts (b) One or more officials or members of trade union or unions.”

On 23rd July, 2014, the respondents, were directed to produce the Gazette Notification under which the Employees State Insurance (General) Regulations, 1950 was published to find out the correct language of Regulation 76. In spite of repeated orders, respondents failed to produce the said Gazette Notification.

From the Employees' State Insurance Act, 1948 (Bare Act) and the Employees State Insurance (General) Regulations, 1950 as amended by (Amendment) Regulations, 2012 published by Universal Law Publishing Co. Pvt. Ltd., New Delhi, we find that Regulation 76 was substituted by Notification No.Genl./Amdt./14 dated 3rd October, 1962 which reads as follows:

“76. Appeal Tribunals: For the purposes of regulation 74, an Appeal Tribunal shall be constituted by the State Government and shall consist of a judicial officer of the State Government being a person other than the Judge of an Employees' Insurance Court, who shall be assisted by the following persons to be selected by him as assessors. (a) One or more medical experts (b) One or more officials or members of Trade Union or Unions.”

There is nothing on the record to suggest any other language of Regulation 76, as quoted by the High Court in the impugned judgment pursuant to so called clarification letter dated 2nd January, 2004.

Regulation 76, as published and noticed above, stipulates Appeal Tribunal shall consist of a judicial officer of the State Government being a person other than the judge of an E.I. Court, who shall be assisted by the persons to be selected by the judicial officer from the experts mentioned therein as assessors. The E.I. Court noticed the right provisions of Regulation 76 and rightly set aside the order passed by the Appeal Tribunal, in absence of judicial officer of the State Government. The High Court wrongly set aside the order dated 31st December, 2003 passed by the E.I. Court in E.I.A. No.12 of 2002 by wrongly quoting the provision.

In view of the aforesaid finding, we set aside the impugned order dated 17th March, 2010 passed by the High Court of Judicature of Andhra Pradesh and upheld the order dated 31st December, 2003 passed by the E.I. Court.

The respondents are directed to refund the amount, if any, which has been recovered from the appellant pursuant to the High Court's order with 6% interest from the date of recovery within two months.

The appeal is allowed with the aforesaid observations and directions.”

13. There is no real controversy that exists to adjudicate upon in view of the aforesaid ruling.

14. The learned Standing counsel for the appellant, however, would submit that there has been an amendment in 1968 and the original Regulation 76 was substituted by Notification No.Genl/Amend/20, dated 20.1.1968. The amended regulation, according to the learned Standing Counsel, reads thus:

“76. Medical Appeal Tribunals: For the purposes of the Act, the State Government shall constitute as many Medical Appeal Tribunals as it thinks fit. Each such Medical Appeal Tribunal shall consist of such persons, exercise such jurisdiction and follow such procedure (save for the manner in which and the time within which the appeals may be filed as may be prescribed by rules framed by the Central Government under the Act) as the State Government in consultation with the Corporation may, from time to time, decide. Notwithstanding the amendments hereby made, all appeals pending before the Appeal Tribunal at the date of coming into force of the provisions of the Act relating to Medical Appeal Tribunal shall be disposed of by the Appeal Tribunals.”

15. The learned Standing Counsel supplied the extract containing Regulations 73, 74, 75, 76, 77 and 78, as per the instructions tendered by the Corporation. It appears that the Corporation has taken extract from the text “The Employees’ State Insurance Act, 1948 with Employees’ State Insurance (General) Regulations, 1950 – Employees’ Insurance Court Rules, 1958 – Comments & Case Law etc.”, authored by Ramanuj Das, 1971 Edition published by Law Publico, Kothi, Hyderabad.

16. Proceeding further, what all Regulation 76 now presented, would show that the State Government in consultation with the Corporation has to decide from time to time prescribing qualifications of the persons eligible to be members of the Medical Appeal Tribunal and the jurisdiction they are supposed to exercise and the procedure which the Medical Appeal Tribunal has to follow. Thus, the relevant details are wanting. The learned Standing Counsel expresses inability as instructions are only to the extent of supplying the said extract. Therefore, it is difficult to conclude from the Regulation 76 now placed before this Court, whether the Judicial Member is also a Member of the Tribunal or other than the Judicial Member the Tribunal shall consist of such persons as the State Government to decide in consultation with the Corporation.

17. On the other hand, the Employees' State Insurance Act, 1948 (34 of 1948) as amended upto 2017 containing Employees' State Insurance (General) Regulations, 1950 would contain Regulation No.76 as amended by Notification No. Genl./Amdt./14 dated 3rd October, 1962, which reads thus:

“76. Appeal Tribunals: For the purposes of regulation 74, an Appeal Tribunal shall be constituted by the State Government and shall consist of a judicial officer of the State Government being a person other than the Judge of an Employees' Insurance Court, who shall be assisted by the following persons to be selected by him as assessors. (a) One or more medical experts (b) One or more officials or members of Trade Union or Unions.”

18. The said Regulation also contain amendments made to Regulations 73, 74, 75 and 76-A with relevant Notification Numbers and the dates of amendments.

19. So far as Regulation 73 is concerned, the same was amended by the very same Notification, which the learned Standing Counsel has submitted so far as Regulation 76 is concerned. But Regulation 74 was subsequently amended with Notification No.Genl./Amdt./33, dt. 27.4.1978 and even subsequent amended Regulations have been clearly show the Notifications numbers and the dates of amendments. But, so far as Regulation 76 is concerned, it does not depict the Notification No.20, dated 20.1.1968, but it shows the Notification No.Genl./Amdt./14, dated 3.10.1962. When Regulation No.76 as amended by Notification No. Genl./Amdt./14, dated 3.10.1962 still remained in the text published by Universal Law Publishing, New Delhi – India, there is no other option except to follow what was held by the Hon'ble Supreme Court in Special Leave to Appeal (C) No.30697 of 2011, arising out of the impugned final judgment and order dated 17.3.2010 in C.M.A. No.3249 of 2004, dated 29.8.2014.

20. When viewed thus, certainly, there is no merit in the present Appeal and the Appeal is, therefore, dismissed confirming the order passed by the learned E.I. Court. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Civil Miscellaneous Appeal shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 22.08.2017
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