

HON'BLE RI JUSTICE D.V.S.S.SOMAYAJULU

CMA.No. 612 of 2007

J U D G M E N T:

This appeal is filed against the order dated 15.06.2005 in E.I.Appeal No.14 of 2003 by the Employees Insurance Court and Industrial Tribunal-I, Hyderabad.

The applicant before the ESI Court was an employee of the 5th respondent, who sustained an injury while he was working in his job. According to the applicant, the Medical Board has assessed the loss of earning capacity as 20%, but the Appellate Tribunal has reduced it to Nil. Therefore, he challenged the said findings before the ESI Court. Respondents 1 and 4 contested the matter only and the other respondents did not contest the matter. After hearing the submissions made, the ESI Court came to a conclusion that the loss of earning capacity is only 5% as observed by the Medical referee and not 20% as claimed. Therefore, the present appeal is filed praying this Court to set aside the said order and to decide the disability/loss of earning capacity as 20% only.

This Court has heard Sri L.Prabhakar Reddy, learned counsel for the appellant and Sri B.G.Ravinder Reddy, learned counsel for the respondents.

The facts which are not in dispute essentially are that the accident, which is the reason for all these litigation occurred on 30.05.1998. The applicant was examined on 01.06.1998 and the injury was noted as simple. This assessment was done by the Medical Officer. The applicant submitted an application for revaluation. The Medical Board examined him and gave its report on 16.07.1999 fixing the loss of earning capacity as 5%. Thereafter, the matter went before the Medical Board of the ESI hospital. On 28.09.1999, the Medical Board gave a decision fixing the percentage of loss of earning capacity as 20%. This was communicated to the applicant on 03.11.1999. The Employee State Insurance Corporation felt that the fixation of loss of earning capacity at 20% for the mild disability appeared to be high. This was the opinion of the part time medical referee. Thereafter, the ESI Corporation appears to carry the matter to the Medical Appellate Tribunal under the ESI Regulations by filing Appeal No.99 of 1999. This Medical Appellate Tribunal reduced the loss of earning capacity at 20% to 0%/nil. This decision was further challenged by filing E.I.Appeal No.14 of 2003 before the ESI Court. The ESI Court passed the impugned order dated 15.06.2005 deciding that the loss of earning capacity is 5%. This order is now challenged in this appeal.

The respondent states that 5% is a correct assessment, whereas the appellant says 20%, which was ordered by the Medical Board is correct.

This Court on an examination of the material on record finds that none of the Officers entrusted with the assessment have given any clear or cogent reasons for deciding the percentage of loss of earning capacity. Despite the long and protracted history from 1998, none of the Doctors or Medical Board entrusted with the job had actually given cogent reasons that would enable this Court to decide the issue. Even the Appellate Medical Board that came to a conclusion that 20% is the loss of earning capacity, did not give any cogent reasons. Apparently, the worker states that there is a fracture to the wrist, but the part time medical referee refers to a fracture at the lower end of left radius. The Medical Appellate Board consisting of a Doctor and non-technical assessor held that there is an injury to the left wrist, but there is no evidence of fracture, deformity or restriction of moment. Therefore, the Medical Appellate Tribunal came to a conclusion that the earning capacity is “nil”. The employee also did not bring any material to show which of the assessments was correct.

In the light of the peculiar facts and circumstances of the case and the lack of adequate evidence, particularly from the employee’s side, this Court is of the opinion that the lower Court did not commit any error in the assessment of loss of earning capacity. The lower Court rightly relied upon the first and foremost examination by the Civil Assistant Surgeon on 01.06.1998, who classified the injury as simple. This was

confirmed by order dated 16.07.1999 wherein the loss of earning capacity is fixed at 5%. The Lower Court also rightly observed, in the absence of adequate data or reasons, the first assessment of loss of earning capacity at 5% is the most approximate and correct assessment of loss of earning capacity. There is no material available to show that the Medical Appellate Tribunal has correctly assessed the loss.

In this case, on an examination of the entire material, this Court finds that there are no adequate or cogent material available on record to show that the loss of earning capacity is 20%. The Employees State Insurance Act and the schedule are also not very helpful and the worker could not demonstrate that the injury he sustained fits into any one entry in the schedule.

For all these reasons, this Court holds that there is no error committed by the lower Court and the impugned order is correct.

In the result, the order is confirmed and the appeal is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU,J

Date: 16.04.2018
KLP