

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.03.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No. 3409 of 2014

1.The Director General,
ESI Corporation, New Delhi.

2.The Regional Director,
ESI Corporation, Chennai - 34.

..Appellants

Vs

1.S. Arul

2.The Managing Director of TANPAC
SIPCOT Complex, Cuddalore

3.K.Elango

...Respondents

Appeal filed under Section 82 (2) of the Employees State Insurance Act, 1982 against the order of the Employees State Insurance Court, Cuddalore dated 20.05.2013 made in ESIOP No. 2 of 2002.

For Appellants : Mr.G.Bharadwaj

For Respondents: Mr.N.Balasubramanian for R1
R2 & R3 - exparte

JUDGMENT

The order dated 20.05.2013 passed in ESIOP No. 02 of 2002 is under challenge in the present civil miscellaneous appeal.

2. The ESI Corporation is the appellant and the substantial questions of law raised are as under:

"a. Whether the ESI Court is correct in holding that the disability of the first respondent is 100% when the opinion of the Medical Board of ESI Hospital is only 80%?

b. Whether the ESI Court is correct in relying upon the evidence of private Doctor examined as PW2 when the Doctors of the ESI Hospital have submitted their opinion with regard to disability of the first respondent?

c. Whether the finding of the ESI Court in fixing the salary of the first respondent at Rs.150/- per month based upon the oral evidence of PW1 when the appellants have filed Exs.R1 to R2 to establish that the salary of the first respondent is Rs.90/- only?"

3. The substantial questions of law raised are relatable to the facts of the case which were already adjudicated both by the appellate Court as well as the ESI Court elaborately. The claim petition was filed seeking compensation on the ground that the employee was suffering from mental illness due to the accident. The facts and circumstances were not disputed between the parties. Thus, this Court need not consider those admitted facts with reference to the accident as well as the treatment undergone and the nature of injuries suffered by the claimant.

4. The only dispute raised in the present appeal is that the competent medical board assessed the permanent disability at 80% and the ESI calculated the loss of earning capacity as 100%. Therefore, the ESI Court has committed an error in granting 100% disability over and above the disability fixed by the competent medical board.

5. Learned counsel for the appellants reiterated that the suo motu enhancement of disability by the ESI Court is improper and the loss of earning capacity assessed as 100% is also not in accordance with law.

6. This Court is of the considered opinion that the Courts are bound to grant 'just compensation'. To arrive a just compensation, the principles established are to be followed. It is not as if that each case is to be granted merely on the basis of certain arithmetic calculation. The loss of earning capacity in reality must be assessed in a pragmatic manner so as to compensate the victims in a rightful manner. Therefore, the Courts are expected to apply its mind while calculating the compensation to be awarded.

7. Learned counsel for the appellants reiterated that when the competent medical board assessed the permanent disability as 80%, there is no reason to assess the loss of earning capacity as 100% by the ESI Court. Such an argument deserves no merit, considering the fact that the petitioner sustained grievous injuries and suffered mental illness. The learned counsel further submitted that he is unable to do any manual work as his earning capacity has totally gone and cannot contribute anything to his family when the medical board assessed the mental illnesses as 80%. Thus, it is to be construed that he is not fit for earning and therefore he cannot contribute any means to the

family members. This being the practical aspect of the matter, the ESI Court rightly considered that the loss of earning capacity is to be assessed as 100%. Permanent disability may be 80%. 80% permanent disability resulted in 100% loss of earning capacity. Thus, the loss of earning capacity as 100% assessed by the ESI Court is in accordance with the established principles and there is no infirmity as such.

8. Thus, the order dated 20.05.2013 passed in E.I.S.O.P.No. 2 of 2002 stands confirmed and the civil miscellaneous appeal is dismissed. No costs. Connected M.P.No. 1 of 2014 is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ssm

To

The Presiding Officer,
Employees State Insurance Court,
Cuddalore.

+1 cc to M/s.G.Bharadwaj Advocate sr15116

C.M.A.No. 3409 of 2014

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