





2. Heard Mr.I.Pinayagash, learned counsel appearing for the appellants and Mr.A.Shajahan, learned counsel appearing for the respondent.

3. This Civil Miscellaneous Appeal is filed on the ground that the learned Judge ought to have dismissed the above appeal on the ground that there is a bar to file any appeal against the decision of the 2<sup>nd</sup> respondent Medical Board U/s 54A(2) of the E.S.I. Act, 1948. The learned Judge has failed to note that the Medical Board has fixed the disablement benefits as per the guidelines issued by the Government of India and the loss of earning capacity of the respondent. The learned Judge has failed to consider that there is no provision in Employees' State Insurance Act, 1948 about the report of the private Medical Practitioner being admissible and the respondent has also not produced any provision of law that the private Medical Practitioner's report being admissible. Before fixing permanent disablement benefits, the appellants corporation has paid temporary disablement benefits to the respondent on 25.07.2007 as provided u/s 51 of the E.S.I. Act, 1948 apart from the treatment and further, as per decision of the 2<sup>nd</sup> appellant's Medical Board, dated 20.02.2007 permanent disablement benefits are paid to the respondent every month. On receipt of the said case benefits, he has not raised any objection or dissatisfaction till he approached the 1<sup>st</sup> appellate tribunal and the above facts are not considered by the learned Judge.

4. The respondent herein/petitioner has filed E.S.I. C.M.A.No.1 of 2015 before the Employees State Insurance Court Cum Labour Court, Tiruchirappalli, under Section 54A of E.S.I. Act, 1948 and Rule 20 (b) of E.S.I. Act, 1950, to assess permanent disability as 100% since there was amputation of left hand below elbow due to accident occurred at the time of employment.

5. The medical board assessed the disability as 80%.

6. The ingredients of Section 54-A (2) of E.S.I. Act is extracted hereunder:

**Section 54-A(2)(ii) of Employees Insurance Court directly:**

*"Provided that no appeal by an insured person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the Medical Board and received the commuted value of such benefit.*

*Provided further that no appeal by the corporation shall lie under this Sub-section if the corporation paid the commuted value of the disablement benefit on the basis of the decision of the Medical Board.*

*In this particular case, the respondent applied for commutation of disablement benefit*



and the appellant ESI Corporation has also paid the disablement benefits as per the decision of the Medical Board. Therefore, the appellant has no right to file an appeal under the above provision of law".

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7.The relevant portion of the order, dated 20.12.2017 is extracted hereunder:

"(a) The medical board has assessed the degree of your permanent disability at 80% finally.

(b)As the assessment is not final it will be subject to view under Section 54-A of the ESI Act 1948 and the date, time and venue of the medical board to which you will be referred again will be intimated in due course."

Therefore, the assessment in permanent disability certificate dated 06.12.2017 is not final accuracy in the order.

8.But, as rightly pointed out by the appellant, a private doctor cannot be examined to prove the disability.

9.The provision of Section 54(A) (2) of E.S.I. Act, is extracted hereunder:

**"54-A. References to Medical Boards and appeals to Medical Appeal Tribunals and Employees' Insurance Courts.**

(1).....

(2)If the insured person or the Corporation is not satisfied with the decision of the Medical Board, the insured person or the Corporation may appeal in the prescribed manner and within the prescribed time to-

(i)the Medical Appeal Tribunal constituted in accordance with the provisions of the regulations with a further right of appeal in the prescribed manner and within the prescribed time to the Employees' Insurance Court, or

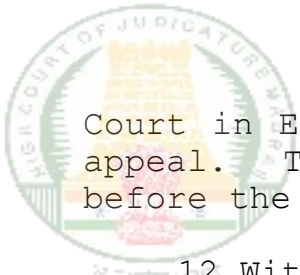
(ii)the Employees' Insurance Court directly:"

The insured person can file an appeal before the Medical Appeal Tribunal.

10.As pointed out earlier, the disability certificate is not final and the insured person may apply for further examination to Medical board.

<https://hcservices.ecourts.gov.in/hcservices/>

11.So, the respondent has filed an appeal before the E.S.I.



Court in E.S.I. C.M.A.No.1 of 2015, since, he has right to file an appeal. To fix the permanent disability he is directed to appear before the Medical Board.

12. With the above observations, this Civil Miscellaneous Appeal is disposed of. The respondent herein/petitioner is directed to appear before the Medical Board and get final report. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

TO:

1. The Employees' State Insurance Court cum Labour Court,  
Tiruchirappalli.

2. The Chairman,  
Medical Board,  
Employees' State Insurance Corporation Hospital,  
Salem.

3. The Deputy Director,  
Employees' State Insurance Corporation,  
Sub Regional Office,  
Salem.

4. The Manager,  
Employees' State Insurance Corporation,  
Sub Regional office,  
Trichy.

**C.M.A. (MD) .No.474 of 2019**

**09.11.2021**

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