

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

CIVIL MISCELLANEOUS APPEAL No.76 OF 2006

JUDGMENT: (Per Hon'ble Dr.SA,J)

This Civil Miscellaneous Appeal, under Section 82(2) of the Employees State Insurance Act, 1948 (for short 'E.S.I. Act'), is filed by the appellant/respondent No.1 aggrieved by the order, dated 06.12.2004 passed in E.I. Appeal No.38 of 2002 by the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad, wherein the subject E.I.A. filed by the respondent No.1/appellant under Section 54(A)2(i) of the ESI Act, was allowed holding that the respondent No.1/appellant sustained injury while in employment and he is entitled for disability benefit. Further, the Court below fixed the disablement at 25%.

2. Heard the learned counsel for the appellant/respondent No.1 and perused the record.

3. In spite of service of notice, there is no representation on behalf of the respondents.

4. Learned counsel for the appellant would vehemently contend that the Employees Insurance Court has no

jurisdiction to entertain the appeal. Moreover, fixing of disability of respondent No.1 at 25% is without any basis and ultimately prayed to set aside the impugned order, dated 06.12.2004 and allow the appeal as prayed for.

5. In view of these circumstances, it is appropriate to refer Section 54A(2) of the Act.

Section 54A. References to Medical Boards and appeals to Medical Appeal Tribunals and Employees' Insurance Courts

(1) xxxx

(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.

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.

6. As per Section 54(2) of the Act, the insured person may file an appeal before the Employees Insurance Court directly. Therefore, in view of the mandate given under sub-section 2 of Section 54 of the Act, it cannot be said that Employees Insurance Court has no jurisdiction to entertain the appeal. As far as fixing the disability of respondent No.1 at 25% is concerned, the Employees Insurance Court has placed reliance over Ex.P1-discharge card issued by ESI Hospital, Sanatnagar and Ex.P2-decision of the Medical Board dated 02.08.2002. The said documents reveal that the respondent No.1 sustained disability to the extent of 25% as the disability was "Lumber Canal Stenosis Compresive Mycroper" to the hip region and the spinal chord is effected. So, looking at the documentary evidence and the nature of injury, the Employees Insurance Court fixed the disability of respondent No.1 at 25%. The finding recorded by the Employees Insurance Court is based on the material placed on record. There are no merits to interfere with the impugned order. The appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the appeal is dismissed.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 26.10.2022
ssp