



CMA(MD).No.1028 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2023

PRONOUNCED ON : 28.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1028 of 2017

A.Jabamalaimani

... Appellant

VS.

1.The Branch Manager
Employees State Insurance Corporation
Kovilpatti Branch
Kovilpatti and Post
Thoothukudi District

2.The General Manager
Loyal Textile Mills Ltd.,
Kovilpatti and Post
Thoothukudi District

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 82 of the Employees State Insurance Act, to set aside the order passed by the learned Employees State Insurance Court (Labour Court), Tirunelveli in ESI OP.No.21/2015 on 14.09.2017 and to direct the first respondent to issue full sick earn leave amount of Rs.1,54,753.60 and disabled pension.



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For Appellant : Mr.T.Murugan
For R1 : Mr.R.Ravindran
For R2 : Mr.M.E.Ilango

J U D G M E N T

The present appeal has been filed challenging the order of E.S.I. Court, Tirunelveli wherein the prayer of the appellant for declaring his disability at 100% and for consequential permanent pension was rejected.

Factual Matrix:

2.The appellant/employee was working in the second respondent Mill as an Electrician and on 01.08.1998, he sustained injuries in his head and neck due to an industrial accident. In view of the said industrial accident, the employee was paid temporary disablement benefit for a period of 230 days between 02.08.1998 and 20.03.1999 to a sum of Rs.33,166/-. Thereafter, at the request of the employee, he was referred to Medical Board for examination to find out whether there is any permanent disablement as a result of the industrial accident or not. The Medical Board by way of their report dated 27.05.1999, concluded that there is no permanent disablement. The Board further found that the symptom will not cause any incapacity for his work. Based upon the said



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Medical Board report, cash benefit was not extended to the employee.

The decision of the Medical Board was communicated to the employee by the Regional Office of E.S.I. Corporation, Madurai on 11.08.1999.

3.The employee had rejoined the second respondent industry. Thereafter, he resigned with effect from 6.11.2003. In the year 2015, the employee has chosen to file E.S.I.O.P.No.21 of 2015 to declare that he has sustained 100% disability and he is entitled for pension.

4.The E.S.I.Court found that the employee had continued in his service for nearly 5 years after the industrial accident and there is no allegation that he was paid lesser wages due to his disablement. The E.S.I Court further found that the petition has been filed after a period of 16 years from the date of accident. His resignation application has been accepted by the employer and the retirement benefits have been disbursed. Therefore, there is no record to establish that there was any disability at any point of time. The E.S.I. Court further found that there is no reason whatsoever to interfere in the report of the Medical Board dated 27.05.1999 and to set aside the same. Based upon the said findings, the E.S.I.Court has dismissed the petition. Challenging the same, the present second appeal has been filed.



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5. According to the learned counsel appearing for the appellant/employee, there are sufficient evidences to prove that the appellant has suffered 100% disability and hence, he is entitled to pension from the E.S.I. Corporation.

6. The learned counsel had further contended that in view of injury to the cervical bone, he could not stand or work before heavy machines and therefore, he is entitled to receive full compensation amount. He had further contended that the E.S.I. Hospital which had referred the employee to the Medical Board before have found that the appellant had not yet cured from the injury.

7. The learned counsel for the appellant had further contended that the appellant had resigned from service even 7 years before attaining superannuation only due to his poor health condition that arose out of the industrial accident. The learned counsel had further contended that the Labour Court has not properly appreciated the certificates issued by the Doctor of the Government Medical College Hospital, Tirunelveli in which he has specifically mentioned that he is unfit to work near machinery. The concerned Doctor who had given certificate has also been examined and he has clearly expressed that the appellant has not



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recovered from the accident disablement.

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8.The learned counsel for the appellant had further contended that the injury sustained by the employee in the industrial accident is permanent total disablement and he could not perform the normal work and its amounts to 100% disablement leading to loss of earning capacity. Therefore, the appellant sought to set aside the order of the Labour Court and to allow the claim petition.

9.Per contra, the learned counsel appearing for the respondents had contended that the appellant had sustained injuries by way of an industrial accident on 01.08.1998 and he was paid temporary disablement benefit for the period of 230 days amounting to a sum of Rs.33,166/-. When the E.S.I.Corporation refused to extend further benefit beyond 20.03.1999, the employee himself has requested that he may be referred to the Medical Board. Based on such request, he was referred to the Medical Board at Tuticorin Medical College Hospital on 27.05.1999. The Medical Board has arrived at a finding that the symptom will not cause any incapacity for the employee to work. Based upon the Medical Board report, the benefits extended to the employee were discontinued.



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10.The learned counsel for the respondents had further contended that once the benefits were discontinued, the employee rejoined the duty and he was in service for another 5 years till 06.11.2003. No reason has been assigned by the employee for resigning from his service. The employer in his counter had stated that the entire terminal benefits have been disbursed to the employee. This would clearly show that the resignation is not based upon any disablement, but it was on a voluntarily basis due to some other personal reasons.

11.The learned counsel for the respondents had further contended that the accident has taken place in the year 1998 and the benefits were discontinued in March 1999 itself. Thereafter, the petitioner had not chosen to challenge the report of the Medical Board dated 27.05.1999. He continued in service till 2003 receiving the same wages without any reduction and thereafter, resigned in 2003. The petition was not filed immediately in the year 2003, but it was filed only in the year 2015 and therefore, it is clear that the petitioner has not suffered any permanent disablement from the industrial accident and he had recovered from the same. Hence, he prayed for sustaining the order of E.S.I.Court.



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12.I have considered the submissions made on either side and perused the materials available on record.

13.There is no dispute that the employee had sustained injuries in an industrial accident that had taken on 01.08.1998. He was paid temporary disablement benefits from 02.08.1998 to 20.03.1999 under E.S.I.Act. Thereafter, at the request of the employee, he was referred to the Medical Board in Tuticorin Medical College Hospital. The Board has submitted a reported on 27.05.1999 which is marked as Exhibit R6. The said report has also been communicated to the employee by way of a letter from the Insurance Corporation on 11.08.1999. A perusal of the report indicates that the symptom exhibited by the employee will not cause incapacity for his work.

14.As per Section 54-A(2) of the E.S.I.Act, if the injured person or Corporation is not satisfied with the decision of the Medical Board, they can file an appeal before the Medical Appeal Tribunal or to the Employees' Insurance Court directly. However, in the present case, the employee has neither chosen to file an appeal before the Medical Appeal Tribunal or the E.S.I.Court challenging the decision of the Medical Board.



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15.A perusal of the present petition will indicate that without challenging the decision of the Medical Board, the employee has sought for an order granting permanent pension on the basis that he has sustained 100% disablement. The question of paying permanent disability benefit would arise only in cases where such a decision is arrived at by the Medical Board or by the Appellate Tribunal. Therefore, without challenging the decision of the Medical Board, the present application filed seeking permanent disablement benefit is not maintainable.

16.The employee had rejoined service in the industry in the year 1999 itself. There is no allegation that he was employed for a lesser salary due to his disablement. Therefore, it is clear that he was drawing the same salary even after the industrial accident. The employee had worked for nearly 5 years and thereafter, he had resigned with effect from 06.11.2003. As per the counter filed by the employer, the retirement benefits have also been disbursed. Therefore, it is clear that it is only a case of voluntarily resignation by the employee due to personal reasons and not on the ground of any disablement arising out of an industrial



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accident. That apart, the present petition has been filed in the year 2015 nearly 12 years after the date of resignation. If really the petitioner had resigned due to his disablement, he would have been immediately approached the E.S.I.Court or E.S.I.Corporation. Therefore, viewed from any angle, the petition filed by the employee seeking permanent disablement benefit under the E.S.I.Act is not sustainable in the eye of law.

17.In view of the above said facts, this Court does not find any illegality or infirmity in the order of the E.S.I.Court in dismissing the said application. All the substantial questions of law are answered as against the appellant and this Civil Miscellaneous Appeal stands dismissed. No costs.

28.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To
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- 1.The Judge
Employees State Insurance Court (Labour Court),
Tirunelveli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.1028 of 2017

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