



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1059 OF 2024

Employees State Insurance
Corporation.

...Appellant.

Versus

Sudhakar B. Kotkar and Another.

...Respondents.

Mr. Shailesh S. Pathak for the Appellant.

Mr. Sudhakar B. Kotkar Respondent in-person.

Coram : Sharmila U. Deshmukh, J.

Date : March 11, 2025.

P. C. :

1. First Appeal has been preferred against the judgment and order dated 7th October 2023 passed by the Employees' State Insurance Court [for short "***ESI Court***"] directing payment of interest @ 6% p.a. and releasing the original bank guarantee.

2. Learned Counsel appearing for the Appellant would submit that as the Application was one for the purpose of recovery as per the judgment and order dated 26th October 2016 passed in ESI Application No.3 of 2014, which did not grant any interest, the Recovery Court which was in the nature of Executing Court could not have granted interest.

3. The following substantial question of law would arise in the present case :

Whether the ESI Court while adjudicating recovery proceedings could have granted interest @6% p.a. when in the judgment rendered in original Application did not grant interest.

4. In the present case, by order of even date, the First Appeal which challenged the judgment and order dated 26th October 2016 passed by the ESI Court directing 40% disablement benefits for the period till 15th January 2010 and further 100% disablement benefits from 16th January 2010 onwards came to be dismissed. Therefore, the judgment and order dated 26th October 2016 has attained finality.

5. Perusal of the said judgment and order dated 26th October 2016 indicates that ESI Court had not granted any interest on the disablement benefits. The recovery Court was executing the impugned judgment and order of 2016 and being an Executing Court does not have power to grant interest on the said amount. Perusal of the said judgment and order dated 26th October 2016 would indicate that the ESI Court has considered that when the claim is allowed, it has the effect of money decree and it is just and proper to award interest. The Executing Court failed to notice that firstly no statutory provision has been demonstrated to show that any interest could have been granted

by ESI Court. Even if that be so, the Executing Court is powerless to grant any interest while executing the judgment and order dated 26th October 2016. Substantial question of law is accordingly answered.

6. This Court is informed that the amount of Rs.8,95,161/- was deposited and was permitted to be withdrawn and thus the Applicant has recovered the entire amount, however, upon furnishing original bank guarantee. Hence, the order of 7th October 2023 is modified to read as under :

Original bank guarantee furnished by the Applicant, if not already released, to be released to the Applicant. Clause (ii) of the operative part of the order granting interest is quashed.

7. First Appeal is allowed in above terms.

8. In view of the disposal of First Appeal, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]