Employees'' State Insurance Corporation Vs Ganapat Lohar

Court: Calcutta High Court

Date of Decision: Feb. 6, 1984

Acts Referred: Employees State Insurance (General) Regulations, 1950 â€" Regulation 72
Employees State Insurance Act, 1948 â€" Section 54, 54A, 54A(2), 75(2A), 82

Citation: (1985) ACJ 646 : 88 CWN 445

Hon'ble Judges: N.G. Chaudhuri, J; Chittatosh Mookerjee, J

Bench: Division Bench

Advocate: Debesh Ch. Mukherjee, for the Appellant;Tarak Nath Banerjee and Bibhas Ch. Majumdar, for the Respondent

Final Decision: Dismissed

Judgement

N.G. Chaudhuri, J.
This appeal u/s 82 of the Employees'' State Insurance Act, 1948 (hereinafter to be referred to as ''the Act'') is directed

against order passed by the Judge, Employees Insurance Court, West Bengal.

2. The Respondent, a permanent employee under M/s. Calcutta Glass and Silicate Works (1936) Pvt. Ltd. and a contributor to Employees'' State

Insurance Fund while working on the grinding machine operated with electrical power met with an accident on 21.3.1968 at the time of sharpening

scissors on the said machine, when particles sparkled therefrom struck his right eye-ball causing an injury. On 22.3.68 he went to the Panel Doctor

at his clinic and under his instructions went to Mayo Hospital and got himself examined by Dr. H.K. Indra who has since died. The Respondent

was admitted in the hospital on 26.3.68. He underwent an operation on 29.3.68 and was discharged on 10.4.68. Inspite of the operation he totally

lost his vision lathe right eye. After consideration of the entire evidence accused by the parties and hearing arguments advanced on their behalf the

learned Judge concluded that the Respondent was entitled to permanent disablement benefit and passed an order in his favour awarding partial

disablement benefit to the extent of 40% of the full rate for life.

3. Mr. Debesh Mukherjee, the learned advocate for the Appellant Employees'' State Insurance Corporation attempts to make out a substantial

question of law as required u/s 82(2) of the Act. He contends that the ''''disablement question'''' contemplated in Section 54 of the Act arose in this

case and in view of the provisions of Section 75(2A) of the Act it was the incumbent duty of the Insurance Court to have the question decided by

a Medical Board. He argues that the Insurance Court acted illegally in ignoring the provisions of the said Section 75(2A) and arriving at a decision

on the question himself without having a report; from the Medical Board. Provisions of Section 75(2A) of the Act are quoted below:

75 (2A)--If in any proceeding before the Employees'' Insurance Court a disablement question arises and the decision of a Medical Board or a

Medical Appeal Tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or

question before the Employees'' Insurance Court, that Court shall direct the Corporation to have the question decided by this Act and shall

thereafter proceed with the determination of the claim or question before it in accordance with the decision of the Medical Board or the Medical

Appeal Tribunal, as the case may be, except where an appeal has been filed before the Employees Insurance Court under Sub-section (2) of

Section 54-A in which case the Employees'' Insurance Court may itself determine all the issues arising before it.

Further argument advanced by Mr. Mukherjee is that the Court should have awarded 30% loss in earning capacity under item No. 32 of the

Second Schedule of the Act in place of 40% under item 31 of the said Schedule.

4. The sheet anchor of Mr. Mukherjee''s argument is Section 75(2A) of the Act as already noticed. He contends that the Court was to determine

the claim on the basis of the decision of the Medical Board or the Medical Appeal Tribunal. Relying on Exh. ''C the opinion of the medical referee,

he contends that the Respondent had nature cataract of the right eye which was a degenerative condition due to age and had no relation with any

injury. He points out that the medical referee was examined as OPW 1. He deposed that it took about six months or a year for a senile cataract to

nature and the time required for formation of traumatic cataract depends upon the nature of injury. He further deposed that traumatic cataract

cannot be formed within a day or two even in the case of serious injury to the inner vital part on the eye. He, however, candidly admitted that he

did not examine the Respondent. Mr. Mukherjee accordingly contends that there was no evidence, worthy of reliance, to warrant a conclusion that

the employment injury the Respondent suffered caused traumatic cataract in his right eye and led eventually to his permanent disability arising from

loss of vision. Unfortunately for all concerned Dr. Indra, who operated the cataract in the right eye of the Respondent being dead at the time of

trial, was not available for examination as a witness. It is not known whether the cataract operated upon could have been caused by the injury

complained of. A medical expert, namely Dr. D.K. Roy examined as PW 2 however deposed that cataract may form from injury and usually the

injured eye may be affected with cataract. There is no chance of recovery of the vision of the right eye. From the above evidence it is abundantly

clear that the traumatic cataract may be caused by an injury. In the instant case the undisputed facts are that the Respondent suffered injury on

21.3.68, went to the Panel Doctor on 22.3.68, had himself examined under instruction of the Panel Doctor in Mayo Hospital on 26.3.68, had his

right every operated by Dr. Indra on 29.3.68 got himself discharged from hospital on 10.4.68 and inspite of the operation he did not get back his

vision. Against the above admitted facts in the case under consideration a question of disablement to be determined by a Medical Board

contemplated in Section 54-A of the Act, it was for the Corporation to refer the question for determination by the Medical Board. The

Corporation did not do that.

5. On the contrary we find that Bengal Glass Workers'' Union taking up the case of the Respondent by letter dated 4th July, 1968 addressed to

the Regional Director, Employees'' State Insurance Corporation raised the question of permanent disablement of the Respondent and requested

the Corporation to take appropriate step. The Corporation, however, by its letter marked Exh. 1 (c) and 1 (f) refused to refer the matter to a

Medical Board. So we find that the Corporation did not discharge its part of statutory duty. In paragraph 9 of its claim petition the Respondent

expressly pleaded that he was totally disabled and was not in a position to discharge his normal duties in the workshop because of the disablement

and was entitled to receive total disablement benefit under the Act. The employer of the Respondent impleaded as Defendant No. 2 in paragraph 5

of his written statement stated, ""By letter dated 1.8.68 this Defendant sent one letter directing Defendant No. 1 to treat the injury as permanent

disablement caused due to an accident while the Plaintiff was working on the grinding (sic)"". The conclusion is therefore inescapable that the

employer of the Respondent admitted that permanent disablement was caused to the Respondent during the course of his employment in the shape

of cataract in his right eye which after removal by operation did not restore eye sight of the Respondent. The Defendant No. 1, ESI Corporation in

its pleadings did not raise the question regarding disablement of the Respondent as required u/s 75(2A) of the Act, although the said section was

inserted into the Act by amending Act No. 44 of 1966 with effect from 28.1.68. If the Employees'' State Insurance Corporation really intended to

contend that the Respondent did not suffer any disablement on account of any employment injury as alleged, it was for the Corporation to proceed

according to Section 54-A of the Act or to obtain a direction from the Court as contemplated under the aforesaid Section 75(2A). The

Corporation did not do what was expected of it. Now Mr. Mukherjee contends that the Court itself should have given appropriate direction in this

behalf and the omission of the ESI Court can be made good by this Court exercising its appellate powers. This argument does not impress us. The

injury we have noticed was caused in March 1968, we are now in January, 1984. A very long time has elapsed from the date of injury. We are

afraid that no useful purpose will be served at this distant date by directing the determination of the question on disablement to be decided by the

Medical Board. In this connection we may refer to Regulation No. 72 of the Employees'' State Insurance (General Regulations), 1950, which

broadly lays down that reference to Medical Board is to be made within 12 months from the date of disablement. We mean to say that if a

reference to the Medical Board was made within a reasonably short time it might have been possible for the Medical Board to give a precise

opinion on the question of disablement from an examination of the affected organ; but if reference to Medical Board is not made in time

degenerative conditions may ensue and the Medical Board may be handicapped in giving a precise opinion. In the present case a direction for

reference to the Medical Board would be much too belated and would serve no purpose at all. We conclude, therefore that on the materials on

record and in the state of pleadings and in view of the conduct of the Employees'' State Insurance Corporation the court below was justified in

concluding that there was a permanent disablement to the Respondent; in course of his employment he suffered injury in the right eye-ball causing

cataract which inspite of removal by operation did not restore him his vision.

6. Regarding the second point urged by Mr. Mukherjee we may not disagree that PW 2 examining the Respondent on 26.12.68 deposed right eye

vitreous capacities and muscular oedema, left eye early sign of cataract. He opined that in his opinion the condition of the right eye was due to

injury. He opined further that there was no chance of recovery of the vision of the right eye and the vision of the left eye has been affected from the

injury of the right eye. This is not a case of loss of vision of one eye without complication or disfigurement of eyeball attracting item No. 32 of the

Second Schedule. So the argument that 30% loss of earning capacity prescribed under item No. 32 of the Second Schedule applied cannot be

accepted.

7. In the result we conclude that the appeal has no merit and should fail. Accordingly the appeal is dismissed on contest. We make no order as to

costs.