

Employees State Insurance Corporation

Vs

Ameer Hasan

Petition For Special Leave to Appeal (Civil) No. 1584 of 1980

(Syed M. Fazal Ali, D. A. Desai JJ)

05.09.1980

ORDER

ORDER BY DESAI, J.

1. While we are all agreed that this special leave petition must be dismissed, it is time to express my distress on the frittering away of hard earned money of workman by a Corporation, whose principal source of income is workman's contribution, by undertaking futile, fruitless and ill-advised litigation. Such exercise in futility by the Corporation presents an irreconcilable paradox inasmuch as the poor workman is being fought by a mighty Corporation even though the workman has to fend for himself and the Corporation fights unprincipled litigation at the cost of the very workman.

2. To illustrate this, a few facts may be stated. The respondent-workman was employed in M/s. Elgin Mills No. 1, an industrial undertaking to which the provisions of the Employees' State Insurance Act, 1948 ('Act' for short) apply. Petitioner-Corporation was set up to implement the Act. Amongst various objects for which the Corporation was set up, the principal one was to provide for certain benefits to employees in case of sickness, maternity and employment injury etc. the main, if not the only source of funds of the Corporation, would be the contribution of workmen deducted from their hard earned and meager salary month to month to which employer's contribution is added (see Section 39). Respondent-workman while working suffered an injury to his eye. The Medical Appellate Tribunal constituted under Regulation 76 of the Regulations enacted by the petitioner-Corporation gave an expert opinion that the respondent has suffered loss in his earning capacity on account of injury to the eye. The loss assessed by the Medical Appellate Tribunal according to the respondent was not correct with the result that the respondent approached the court set up under the Act styled as Employees' Insurance Court for assessing his loss. The court under the Act after hearing both the sides and taking evidence of experts adjudicated the loss of earning capacity suffered by the respondent to the extent of 30 per cent. This was purely a finding of fact and wholly covered by Entry 32 in Part II of Second Schedule to the Act which reads as under :

#-----	S. No.	Description of injury	Percentage of loss of earning capacity-----
-----	32.	Loss of vision of one eye without 30 complications or disfigurement of eyeball, the other being normal.-----	-----
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3. An obviously correct decision was challenged by the Corporation by way of an appeal to the High Court. It may be recalled here that the decision of the court set up under the Act can be challenged by way of an appeal to the High Court as provided by sub-section (2) of Section 82 of the Act if the appeal involves a substantial question of law. Even with the aid of a magnifying glass

and a powerful microscope I could not find any substantial point of law involved in this appeal which the Corporation carried to the High Court. The High Court by an elaborate judgment held that the decision of the court was correct on all points and affirmed the decision.

4. What more justice did the Corporation seek ? Save and except to satisfy its own ego it carried the matter to this Court by way of the present petition seeking special leave against the decision of the High Court.

5. An attempt was made to urge that there was conflict of decisions in the view taken by the Calcutta High Court and the view taken by the Allahabad High Court. The judgment under appeal has considered the Calcutta judgment which is unfavorable to the workman. Such minor conflicts need not provide a fruitful ground to the Corporation to rush to this Court. One cannot appreciate this too legalistic approach in the name of some conflict in decisions to force a workman whose misfortune was that he was governed by the Act and a beneficiary of the beneficent provisions of the Act to be dragged to this Court to fight for a meagre compensation with his own funds against a powerful Corporation trying to thwart his claim with the funds obtained from the very workman. The glaring paradox is that the workman suffers deduction from his wages so that the Corporation can fight him with his own money. This has led to mounting disaffection amongst industrial workmen against the Corporation. What faith the workman will have in the Corporation set up to ameliorate his misery multiplying it by appeal to court after court compelling the workman to follow in the footsteps of the Corporation to save his meagre benefit ? A time has come to cry a halt to this litigious mentality on the part of public corporations set up to achieve the goals enumerated in the Constitution. This approach is destructive of the purpose for which Corporation was set up. What then is the difference between a private employer who was liver for compensation under Workmen's Compensation Act and a public sector Corporation set up to replace the private employer for providing the much needed medical relief ? In fact such an approach needs to be disapproved and that is why a speaking order.

6. I agree that the special leave petition be dismissed.

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