

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 3098 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI****Sd/-**

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Approved for Reporting	Yes	No
		No

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EMPLOYEES STATE INSURANCE CORPORATION

Versus

DILIP DHARMASHINH

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Appearance:

MR SACHIN D VASAVADA(3342) for the Appellant(s) No. 1

ADVOCATE NOTICE SERVED for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 06/08/2026****JUDGMENT**

1. On raising the following substantial question of law, the ESI Corporation has filed the appeal under Section 82 of the ESI Act, 1948 (hereinafter referred to as the “ESI Act”) challenging the judgment and order dated 28.08.2009 in ESI Second Appeal No.5 of 2005, by which the appeal was dismissed confirming the order passed in MAT Appeal No. 5 of 2004 dated 30.04.2005 and held that since the date of the decision in MAT Appeal No. 5 of 2004, the original claimant is entitled to receive the compensation from the ESI Corporation:-

“(a) In facts of the present case and in view of the ESI Act,

Rules and Regulations made thereunder, WHETHER it is open for the MAT to enhance the % of disability without there being any application for enhancement filed by the Respondent as per the provisions of ESI Act?

(b) In facts of present case and in view of the ESI Act, Rules and Regulations, WHETHER the ESI Court is right and justified not setting aside the order/judgment of the MAT? AND can the opponent be given the 20% of the permanent disability ignoring the provisions of the section 2(15A) & 2(15B) and without any application filed by the Respondent as per the statutory provisions contained in ESI Act and without leading any evidences and without considering the vital aspect viz. reduction in earning efficiency and without considering the nature of work and only on assumption and presumption?

(c) WHETHER the ESI Court as well as MAT is right and justified in upholding the views of the Medical Board, and wrongly interpreted the provisions of the Act and confirmed the view of MAT in enhancing the % of disabilities without reading and referring the clear and unambiguous language of the schedule II of the Act?

(d) WHETHER the diverse findings and conclusions of the ESI Court are right and justified and based on without leading evidences or they are contrary to the weight of evidence on record AND WHETHER the ESI Court is right and justified in ignoring the genuine views of the Medical Board, which are based on evidences and the provisions of the Act?"

2. The briefly stated facts of the case are that, Dilip Dharmasinh - the respondent herein, who was working in Arunoday Mills Limited, Morbi, having holding the ESI Insurance Insurance No. 37-711-4507, during the employment met with an accident and sustained the injury in the fingers and became temporarily disabled for a period commencing from 23.12.2000 to 25.12.2000. The ESI Corporation has paid temporary

disablement benefit in view of the provision contained in the “ESI Act”.

2.1 The claimant requested to refer his injury and disablement to the Medical Board duly constituted under Regulation 75 of the Employees' State Insurance (General) Regulations, 1950 (hereinafter referred to as the “Regulations, 1950”) for the assessment of loss of earning capacity.

2.2 The Medical Board examined the respondent on 07.05.2004 and found healed injury over the right index, middle and ring finger with the deformity of the pulp of ring finger's and Bontonnier deformity of middle and index finger, stiffness of PIP with poor grip and awarded 8% disability.

2.3 The assessment of the Medical Board was prepared before the State Medical Commissioner to confirm the loss of earning capacity. The State Medical Commissioner has opined that the award of assessing the 8% disability is on a higher side.

2.4 Being aggrieved, the ESI Corporation filed the appeal being MAT Appeal No. 5 of 2004 before the Medical Appeal Tribunal (MAT, for short), Rajkot, which came to be dismissed. However, at the time of dismissing the ESI Corporation's appeal, the disability was raised from 8% to 20%.

2.5 Being aggrieved, the ESI Corporation has preferred the second appeal *inter alia* on the aforesaid questions, raising them as a substantial question of law.

3. Heard learned advocate Mr. Sachin D. Vasavada appearing for the appellant. Respondent is served but none remained present.

4. The record indicates that, on the previous occasion, when the delay condonation application was heard, respondent appeared in person and submitted that the Court may pass the necessary order.

5. Mr. Sachin D. Vasavada, learned advocate, mainly raised the contention that the MAT appeal was filed by the ESI Corporation against the finding of the Medical Board under Section 54A of the “ESI Act”.

5.1 He would further submit that the MAT either may allow the appeal or may dismiss it, but in absence of any appeal at the instance of the original claimant, the MAT has no jurisdiction to enhance the percentage of the disability.

5.2 He would further submit that, thereby, the MAT has committed jurisdictional error in assessing the issue before it, which has perjured, as the ESI Court has dismissed the appeal. Therefore, he submits that this appeal involves a substantial question of law.

5.3 He would further submit that MAT, who is acting under the provision of law, has no right to enhance the disability in absence of any appeal preferred by the claimant.

5.4 He would further submit that looking to the impugned order, whereby MAT has committed serious

jurisdictional error, the ESI Court was expected to intervene with such an erroneous order, but ESI Court has committed serious error in dismissing the appeal. Therefore, he submitted to allow this appeal and to quash and set aside the aforesaid order and to remand the matter to the learned ESI Court for fresh consideration.

6. As stated herein above, respondent did not remain present in the matter.

7. Before I discuss the merit of the argument canvassed by learned advocate Mr. Sachin D. Vasavada, let me refer the relevant judgment of the Supreme Court in the case of ***Daivshala & Ors. v. Oriental Insurance Company Limited & Anr.***, reported in **2005 LiveLaw (SC) 748**. In this judgment, the Supreme Court examined the nature of the “ESI Act”, the famous judgment of ***Bombay Anand Bhavan Restaurant v. Deputy Director, Employees’ State Insurance Corporation & Anr.***, reported in **(2009) 9 SCC 61** was taken assistance of to interpret the nature of the “ESI Act”. In no uncertain terms, it has been held that the the “ESI Act” is social security legislation and canons of interpreting social legislation are different from the canons of interpretation of taxation laws, and the Act, therefore, must receive a liberal construction so as to promote its object. Para 18, 19 and 20 of this judgment reads as under:-

“18. The ESI Act was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury as well as for making provisions for certain other matters in relation thereto. Section 46 deals with the

benefits that the insured persons, their dependents and other persons mentioned in the Act are entitled to. This Court in **Bombay Anand Bhavan Restaurant v. Deputy Director, Employees' State Insurance Corporation and Another**, (2009) 9 SCC 61, while rightly characterizing the ESI Act as a beneficial legislation and a law intended to provide for social security, held as follows: -

"20. The Employees' State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. **The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social legislation are different from the canons of interpretation of taxation law.** The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. **The Act, therefore, must receive a liberal construction so as to promote its objects.**"

(Emphasis supplied)

19. It was further held that the Act was intended to ameliorate various risks and contingencies which the employees face while working in an establishment or factory. This Court held that the Act was intended to promote the general welfare of the workers and, as such, called for a liberal interpretation: -

"21. This Court (sic The High Court), in *ESI Corpn. v. Jayalakshmi Cotton and Oil Products (P) Ltd.* [1980 Lab IC 1078 (A.P.)] has observed that the ESI Act is a social security legislation and was enacted to ameliorate the various risks and contingencies which the employees face while working in an establishment or factory. **It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted.**"

(Emphasis supplied)

20. What is important to note is that the ESI Act applies to all factories, including factories belonging to the Government and also to establishments or class of establishments, industrial, commercial, agricultural or otherwise notified in the official gazette under Section 1(5) of the Act. In fact, the principal difference between the ESI Act and the EC Act is that while the ESI Act applied to the employees of factories and notified establishments as mentioned above, the EC Act applied to employees under all other employers as defined.”

8. The principal argument of learned advocate Mr. Sachin D. Vasavada that the MAT, in absence of the appeal of claimant, has no right to enhance the percentage of disablement. Section 54 of the “ESI Act” is an enabling provision for the Medical Board to decide the disability provisionally or finally. Section 54A is enabling provision for reference to Medical Board and appeal to the MAT and Employee Insurance Board. These are the relevant provisions, which requires to be noticed. They read as under:-

“54A. References to medical boards and appeals to medical appeal tribunals and Employees’ Insurance Courts.

(1) The case of any insured person for permanent disablement benefit shall be referred by the Corporation to a medical board for determination of the disablement question and if, on that or any subsequent reference, the extent of loss of earning capacity of the insured person is provisionally assessed, it shall again be so referred to the medical board not later than the end of the period taken into account by the provisional assessment.

(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.]”

9. Therefore, the Medical Board which is constituted under Regulation 75 of the “Regulations, 1950” is expected to decide any question that whether accident has resulted in a permanent disablement, extent of loss of earning capacity, provisional or final assessment of the proportion of loss of earning capacity, provisional or final, and in case of provisional assessment, the period for which such assessment shall hold good.

10. The Appeal Tribunals are constituted for the purpose of Regulation 74. The Regulation 74 is in regards to occupational disease, which reads as under:-

“74. Occupational Disease.

Any question whether an employment injury is caused by an Occupational Disease specified in the Third Schedule to the Act shall be determined by a Special Medical Board

which shall examine the disabled person and send a report in such form as may be prescribed by the Director General in this behalf to the appropriate Regional Office stating: —

(a) whether the disabled person is suffering from one or more of the diseases specified in the said Schedule;

(b) whether the relevant disease has resulted in permanent disablement;

(c) whether the extent of loss of earning capacity can be assessed provisionally or finally;

(d) the assessment of the proportion of loss of earning capacity and in case of provisional assessment, the period for which such assessment shall hold good. All assessments which are provisional may be referred to the Special Medical Board for review by the appropriate Regional Office not later than the end of the period taken into account by the provisional assessment. Any decision of the Special Medical Board may be reviewed by it at any time. The disabled person shall be informed in writing of the decision of the Special Medical Board by the appropriate Regional Office and the benefit, if any, to which the insured person shall be entitled.”

11. In view of Regulation 74, the Special Medical Board is required to decide that disabled person is suffering from one or more diseases specified in the Third Schedule, whether it has resulted into the permanent disablement, extent of loss of earning capacity and assessment of proportion of loss of earning capacity and in case of provisional assessment, the period for which the assessment shall hold good. Reading the Section 54A(2)(i) of the “ESI Act”, it appears that the duty of MAT is to reassess the provisional or final disablement as well as the loss of earning capacity.

12. Coming back to the case on hand, learned advocate Mr. Sachin D. Vasavada appearing for the appellant raised the contention that in a appeal filed by the ESI Corporation to the MAT, the MAT has no right to enhance the percentage of the disablement.

13. What could be noticed that the Section 54A provides for reference. The adjudication at the MAT is not in nature of adversarial adjudication. Here, MAT consists of one or more medical expert, one or more official of or member of trade union has to assess the extent of disablement sustained by the employee, be it provisional or final and what is the loss of earning capacity.

14. Had it been the appeal before MAT is in nature of adversarial litigation, the MAT cannot reassess the provisional or final disability as well as loss of earning capacity and can either allow or disallow the appeal. Here, nature of the litigation is completely different. It is the unfortunate employee, who lost his earning capacity on receiving a disablement due to occupational disease or due to accident in the employment, has to be compensated, and therefore, the issue has to receive a liberal construction so as to promote the very object of the “ESI Act”.

15. Coming back to the facts of the case, what is noticeable from the medical certificate prepared by the Medical Board signed by Dr. S.P. Chaudhari dated 18.06.2001 records *‘highly deformed index finger and pulp of middle and ring finger were also, sorry, highly deformed index, ring and middle fingers’*.

16. However, the Medical Board assessed a limited disability of 8%. The MAT re-examined the employee, who has also placed on record the certificate issued by Dr. Bhaumik Bhayani, a plastic surgeon. The injuries on the fingers of right hand and his earning capacity has been reassessed by the MAT and then, arrived at the conclusion of granting 20% disablement.

17. Considering the nature and object of the “ESI Act”, which is essentially a beneficial piece of legislation, the employee, who suffered a injury out of the employment, must get a true and righteous compensation. The ESI Corporation cannot dwell upon the technicalities and argue that the MAT has no right to enhance the percentage of the disability.

18. As stated herein above, MAT is not constituted for the purpose of deciding or adjudicating the adversarial litigation. It is a duty of the MAT to find out that what personal or provisional or final disability the employee has sustained, in an accident which took place during the work hours during employment, and what occupational disease he has sustained and how his loss of earning is affected or reduced.

19. In wake of aforesaid reasons, according to this Court, no substantial question of law is involved in the matter.

20. ESI Corporation, who is expected to deal in favor of the employee, put the employee in adversarial litigation and unnecessarily carried and entangled him in litigation.

21. In ***Subrata Roy Sahara v. Union of India***, reported in **(2014) 8 SCC 470**, the Supreme Court noticed that the

Indian judicial system is grossly afflicted with frivolous litigation and observed that the ways and means need to be evolved, to deter litigants from their compulsive obsession towards senseless and ill-considered claims. The observation of the Supreme Court in para 150 reads as under:-

“150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part.”

22. Reiterating the aforesaid finding, Supreme Court in the case of **Pandurang Vithal Kevne v. Bharat Sanchar Nigam Limited and another**, reported in **AIR Online 2024 SC 955**, held that right to access Court is not absolute and must be exercised reasonably. It is observed by the Supreme Court that the repeated and frivolous litigation has wasted the Court's precious time and resources, and imposed a cost of Rs. 1 lakh for a petitioner, who has wasted the Court's precious time.

23. Apt to note that the resource of Court are finite and must be preserved for genuine grievance, deserving judicial intervention. The unscrupulous litigation, who consume the precious time of the Court, must be saddled with the cost with an object to discourage frivolous litigation and a deterrent message must be passed.

24. In the present case, I find that the action on behalf of the ESI Corporation, who was expected to act fair and for the benefit of the employee, acted in converse and entangled the employee in the litigation. The employee, who suffered injury in the year 2000, is still entangled even after 26 years in the litigation. Therefore, this Court finds that while dismissing the appeal, it is a fit case to impose a cost upon the appellant.

25. For the following reasons, the appeal stands dismissed with the cost of Rs.10,000/- to be paid by the appellant in the State Legal Services Authority within a period of 02 weeks from the date of receipt of this order, failing which a recovery warrant shall be issued against the appellant and the amount of cost shall be recovered as arrears of land revenue.

26. Connected CA/s, if any do not survive.

27. Record and Proceedings to be sent back.

Raj

Sd/-
(J.C. DOSHI, J.)