

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 176 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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VISHRAM DARSHAN

Versus

REGIONAL DIRECTOR  
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Appearance:

MS ASHA H GUPTA for Petitioner  
MR SR SHAH for Respondent No. 1  
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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/09/2000

ORAL JUDGEMENT

1. The present appeal is directed against the decision dated 19th December 1980 in Application (ESI) No. 139 of 1977 treated as appeal, rendered by the Employees' Insurance Court, Ahmedabad (hereinafter referred to as 'ESI Court'). The said Court was pleased

to dismiss the appeal. The appellant was an employee of Anup Engineering Limited, Ahmedabad. On 22nd December 1976, at about 8.15 a.m., he suffered employment injury to his right hand and right hand thumb for which he was given medical treatment under the Act and he remained temporarily disabled from 22nd December 1976 to 21st February 1977 for which the respondent paid him T.D.B. He was thereafter referred to the Medical Board constituted under the Act for determination of loss of his earning capacity, if any, because of the said employment injury. The prominent doctors of Medical Board examined the appellant on 27th June 1977 and nothing abnormal was detected and, therefore, the Medical Board assessed the loss of earning capacity at 0%. The appellant challenged the said decision of the Medical Board by filing an application before the ESI Court.

2. The respondent, in written statement Ex. 4, resisted the claim made in the application. The respondent raised the contention regarding maintainability of the application by contending that the application is not tenable in view of section 54A(2) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act') and appeal would lie against the decision of the Medical Board. The appellant thereafter filed application Ex. 6 praying that the said application be treated as an appeal. ESI Court, thereafter, passed an order below Ex. 6 treating the said application as an appeal.

3. The appellant in the said proceedings gave application Ex. 9 seeking permission to lead evidence in the case. The respondent, though opposed the application, the ESI Court allowed the said application Ex.9 and permitted the appellant to lead evidence. The appellant examined Dr. Nandkishor Parikh, Ex. 14 who is an Orthopaedic Surgeon who has given a certificate assessing the permanent incapacity of the appellant at 8%. The respondent also examined Dr. N.T.Mehta, Orthopaedic Surgeon, Chairman of the Medical Board. The ESI Court, after appreciating the evidence led by the parties, found no merits in the appeal and, therefore, dismissed the appeal.

4. This appeal, by this time, has been adjourned for 16 times. The learned advocate for the appellant Ms. Asha Gupta has not remained present on any date as far as this Court is concerned. Mr. S.R.Shah, learned advocate appearing for the respondent, however, has remained present on all occasions. This being an appeal of 1981, it is required to be heard and disposed of without

wasting any further time. In the circumstances, in absence of learned advocate for the appellant, I have decided to proceed further with the case.

5. The only questions which are required to be decided in this appeal are what is the disability of the appellant and at what percentage and secondly whether the finding recorded by the ESI Court against the appellant is required to be interfered with or not..

6. Having gone through the evidence on record as well as the grounds of the appeal and the reasonings of the learned judge, I am of the opinion that no case is made out warranting interference. Dr. Nandkishore Parikh who is examined by the appellant at Ex.14 is an Orthopaedic Surgeon and he is having his private clinic. The appellant consulted him on 16th September 1977 for evaluation of his disablement to the right hand. Dr.Parikh found that the disablement was 8% as he found stiffness of right thumb, flexion of N.P.joint upto 20 degree to the right thumb normally being 75 degree. He also found impaired sense of the right thumb tip and right index finger tip as also pinch and grasp to be weak. According to him, because of the limitation of movement of the thumb, he assessed loss of earning capacity at 5% for impaired sense of thumb and ring finger 2 % weakness of pinch and grasp 2% and considering all these together, he summed up the same at 8% though individually it should be 9%.

7. Dr.N.T.Mehta, Chairman of the Medical Board who has been examined by the respondent is also an Orthopaedic Surgeon. He himself has signed the decision of the Medical Board in the capacity of its Chairman. In his evidence, he has stated that he himself, as an Orthopaedic Surgeon, examined the appellant and found no disability to the right hand of the appellant and, therefore, he recorded the finding "Nothing Abnormal Detected (NAD)". He has further stated that note of disability on examination is made only when any such disability is found and in the case of the appellant, as there was none, there was no question of making any note about disability. He has specifically stated that when he was shown the certificate Ex. 15 issued by Dr. Parikh, he had stated that he did not agree with the said certificate given by Dr. Parikh. Dr. Mehta also examined the appellant before the Court and found that there was no abnormality on the thumb or hand of the appellant. Thus, there are two conflicting medical opinions and the question is who is to be believed. Dr. Parikh, an Orthopaedic Surgeon, giving honorary services

in the Civil Hospital, had given certificate to the appellant at Ex. 14 when the appellant approached him in his private clinic. As against that, Dr. N.T. Mehta, known Orthopaedic Surgeon practising since 1957 and holding the post of Chairman of the Medical Board, with his statutory competent authority has no reason either to depose falsely before the Court or to give incorrect opinion after examining the appellant before the Court. Thus, the opinion of Dr. Mehta will certainly carry more weight than the opinion of Dr. Parikh. It is to be noted that Dr. Mehta had personally examined the appellant on 27th June 1977 and did not find any permanent disablement and had given decision which is concurred by other members of the Medical Board and again on 28th July 1980, Dr. Mehta examined the appellant before the Court and thereafter stated that he did not agree with the opinion and findings of Dr. Parikh and there was no permanent disablement found to the right hand or thumb of the appellant. In my opinion, this is sufficient for the Court to arrive at a conclusion that there is no disablement of permanent nature to the right hand or thumb of the appellant. It is difficult for any Court to sit over the judgment of two competent surgeons having given conflicting opinions. The trial court which had an advantage to see the present condition of the appellant's right hand and thumb has also observed that there is no disability to the right thumb or any such stiffness as can be said to be of permanent nature.

8. In view of this, I do not see any merits in this appeal and it is, therefore, dismissed. No order as to costs.

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