IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3592 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REGIONAL DIRECTOR
Versus
ARUNKUMAR BRAHMDEV

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Appearance :
MR HEMANT S SHAH for the appellant
MR SHAILESH C SHARMA for the respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/02/2007

ORAL JUDGMENT:

The ESI Court has filed this first appeal under Section 82(2) of the ESI Act, 1948 by which the Corporation has challenged the judgment

and order passed of the ESI Court, Ahmedabad dated 28.10.2005 by which the ESI Court has allowed the appeal preferred by the respondent and set aside the order of the Medical Appellate Tribunal by which the Medical Tribunal assessed the disability of the deceased at 55%. The ESI Court had modified the same and fixed the disability at 60% considering the injury to be falling at item No.10 in Part-II of Second Schedule.

It is not in dispute that the concerned workman while in employment received employment injury with the result that four fingers of his left hand were cut off and he sustained fracture also. The Medical Board assessed the permanent disability at 42% but the Medical Appellate Tribunal assessed the same at 55%. Since it is not in dispute that the employee received the injury during the course of employment, the only question which is required to be considered is only whether the ESI Court is justified in substituting the same with 60% disability. The present appeal is filed on the said limited ground only.

Learned advocate for the appellant, Mr H.S.Shah, submitted that the ESI Court could not have interfered with the order of the Medical Appellate Tribunal by assessing the disability of the injured workman at 60% instead of 55%. In this connection, he has relied upon the decision of the learned Single Single of this Court in the case of Mohamed Abdulla v. Employees' State Insurance Corporation, 1984 LAB I.C. 1773 wherein the learned Single Judge has held that if the finding of the Medical Board and the Medical Appeal Tribunal are not satisfactory and rationally based, he should on his own accord remand the matter for further elucidation.

Mr Shah has also relied upon the observations of the learned Single Judge of this Court in First Appeal No.2660 of 1996 wherein the learned Single Judge has made some incidental observations in

paragraph 6 of the order that the ESI Court, on the facts and evidence on record, could not have raised the extent of disability on mere ipsi dixit when there was an expert medical finding recorded by the Medical Appellate Tribunal. So far as the facts of the present case are concerned, it is required to be noted that it is not in dispute that four fingers of the left hand of the employee were cut off in the accident. The ESI Court has found that even the Medical Board found in paragraph 5 of its order regarding the injury as under:-

"Amputation of left hand except left thumb"

The ESI Court found that the Medical Appellate Tribunal has not given any reasons as to why the request of the employee to assess the disability at 60% is not accepted even though the injury suffered by the employee is a scheduled injury, which is shown at serial no.10 of list of injuries in Part-II of Second Schedule appended to the Act providing for 60% percentage of loss of earning capacity if there is a loss of a hand or of the thumb and four fingers of one hand or amputation from 11.43 cm below tip of olecranon. Considering the injury in question, when it is not in dispute that the employee has received the said injury and since it is a scheduled injury, ESI court is justified in assessing the disability at 60%. Under the circumstances, I do not find any substance in this appeal. No question of law much less any substantial question of law is raised in the present appeal. Hence the same is dismissed with no order as to costs.

(P.B.MAJMUDAR, J.)

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