IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 280 of 2005

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REGIONAL DIRECTOR,EMPLOYEE STATE INSURANCE CORP.

Versus

BHAGWAN RATANBHAI MALI

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Appearance:
MS DIMPLE A THAKER(6838) for the Appellant(s) No. 1
MS ASHA H GUPTA(1025) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Date : 19/04/2024
ORAL ORDER

1. Heard learned advocate Ms. Dimple A. Thaker for appellant and learned advocate Ms. Asha H. Gupta for respondent.

2. This Appeal is filed by the appellant under Section 82 (2) of the Employees' State Insurance Act, 1948. The appellant has challenged the judgment and order dated 26.09.2003 passed by the learned Employees Insurance Court, Ahmedabad in E.S.I. Second Appeal No.25/1997 by which the Second Appeal of the original applicant - present respondent came to be allowed.

3. Brief facts of the case are as under:-

3.1 The respondent herein – workman was working as a fitter in M/s Raipur Manufacturing Company Limited, Ahmedabad and was possessing Insurance No.37-1439668. While performing his duties, the respondent met with an accident and sustained injuries on right knee (leg) on 14.02.1996. The respondent took medical treatment and the Medical Board assessed the disability at 2%. The decision of the Medical Board was challenged by the workman by filing an Appeal No.269 of 1996 before the learned Medical Appellate Tribunal, wherein the learned Medical Appellate Tribunal vide order dated 16.01.1997 assessed the permanent disability of the respondent at 4%. The present appellant being aggrieved and dissatisfied with the decision of the learned Medical Appellate Tribunal, preferred Second Appeal before the learned E.S.I. Court, Ahmedabad being E.S.I. Second Appeal No.25 of 1997 and the said Appeal was partly allowed and the disability, which was assessed by the learned Medical Appellate Tribunal at 4% was increased to 5%.

3.2 Being aggrieved and dissatisfied with the decision of the learned E.S.I. Court, the present appellant is before this Court.

4. The learned advocate for appellant has submitted that the judgment and order passed by the learned Employees State Insurance Court, Ahmedabad is bad in law and without any medical evidence on record. It is further pointed out that the learned Employee State Insurance Court has not considered the opinion of the Medical Board, which has assessed the permanent disability at 2%. The said decision of the Medical Board was on the basis of medical records which was examination by team of expert doctors. It is further submitted that in absence of any medical evidence, there was no reason to increase the permanent disability to 5%. It is also submitted that the learned E.S.I. Court has committed an error in interfering with the conclusion arrived at by the learned Medical Appellate Tribunal while exercising the appellate powers under Section 54-A(2)(i) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act').

5. I have considered the submissions canvassed by the learned advocate for appellant and the impugned judgment and order dated 26.09.2003. The respondent was an employee of M/s Raipur Manufacturing Company Limited, Ahmedabad and also possessed

Insurance No.37-1439668. It can also be culled out from the material placed on record that the respondent met with an accident while discharging his duties on 14.02.1996 and sustained injury on right knee (leg). The workman took medical treatment and he was also facing functional loss due to the injury and therefore, he was referred to team of expert doctors of the Medical Board. The said Board assessed the permanent disability of the workman at 2%. The decision of the Medical Board was assailed before the learned Medical Appellate Tribunal by the respondent. On 16.01.1997, the learned Medical Appellate Tribunal after assessing the respondent and considering the medical evidences, assessed the permanent disability at 4%. The learned E.S.I. Court while considering the material available on record came to the conclusion that the permanent disability could not be assessed at 4%, but assessed the permanent disability of the respondent at 5%. While increasing the permanent disability, the learned E.S.I. Court has considered all the factual aspects, difficulties and disabilities sustained by the respondent which surfaced on record of the case. The learned E.S.I. Court has very marginally increased the permanent disability of the

respondent from 4% to 5%. The challenge against the said order is purely a question of fact and by no stretch of imagination, it could be a substantial question of law.

6. It would be apt to refer the decision of ***Bhanubhai Govindbhai Vs. Employees State Insurance Corp***. reported in ***2018 (0) AIJEL – HC 240646***, the Coordinate Bench has referred to the decision of ***Santosh Hazari V. Purushottam Tiwari,*** wherein the Hon'ble Apex Court has discussed the phrase substantial question of law, which are as under:-

> *"25] A three judge Bench of this Court in the case of Santosh Hazari v. Purushottam Tiwari (Deceased) by LRs., (2001) 3 SCC 179 speaking through R.C. Lahoti J (as His Lordship then was) examined the scope of section 100 of CPC in detail and laid down the following propositions in paragraphs 9, 10, 12 and 14 as under:*
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> *"9. xxx….*
> *11 ….xxx*
> *12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question ring in the amended substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or acabenderson is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution.*

The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Rear Dina 928 AIR (PC) 172, the phrase "substantial question of law" as it was employed in the last clause of the then existing section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd., 1962 AIR (SC) 1314 the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju, 1951 AIR(Mad) 969

"When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law."

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

13. ...xxx
14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question case" there must be first a foundation for it of law "involving in the laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a must be necessary to decide that question of question involved in the case unless it goes to the root of the matter. It will, therefore, fore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis".

[28] In our considered opinion, the aforementioned questions cannot be regarded as satisfying the test of being a "substantial questions of law" within the meaning of section 100 of CPC. These questions, in our view, are essentially questions of fact. In any event, the second appeal did not involve any substantial questions of law as contemplated under section 100 of CPC and lastly no case was made out by the respondents before the High Court for remanding of the case to the trial court for de novo trial in all the civil suits. This we say for following reasons."

7. In view of aforesaid observation of the Hon’ble Apex Court as well as considering the judgment and order of the learned E.S.I Court, there are hardly any questions of law, much less, substantial question of law involved in the present First Appeal. The appellant

has not been able to point out any substantial question of law being involved in the present First Appeal. What is challenged is only the factual aspect regarding assessment of permanent disability sustained by the respondent. The question of assessment of permanent disability is a pure question of fact.

8. In the totality of the facts, this Court is of the view that there is no infirmity or illegality in the order impugned. Hence, this Appeal cannot be entertained and the same is rejected with no order as to costs. Notice discharged.

9. The Record and proceedings, if any, may be sent back to the Court below, forthwith.

(D. M. DESAI,J)

Vikramsinh Amarsinh