



2025:DHC:10146-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 28.08.2025

Judgment pronounced on: 18.11.2025

+ W.P.(C) 9748/2017

SHRI MUNNA PRASAD

.....Petitioner

Through: Mr. H K Chaturvedi, Mrs. Anjali Chaturvedi, Mr. Sagar Chaturvedi, Ms. Megha Chaturvedi and Ms. Shreeaa Singh, Advs.

versus

EMPLOYEES STATE INSURANCE
CORPORATION AND ANR.

.....Respondents

Through: Mr. Vaibhav Manu Srivastava, Panel Counsel, Mr. Mahesh Srivastava, Ms. Kaveri Rawal, Mr. Sanjay Kumar, Advs. for R-1.

Mr. Chandan Prabhakar, Dy Director. ESIC
Mr. Jagdish Chandra, CGSC and Mr. Sujeet Kumar, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

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18.11.2025

OM PRAKASH SHUKLA, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India, wherein the petitioner has prayed for the following relief(s):



“A. Allow present Writ Petition under Article 226 & 227 read with Article 14 & 21 of the Constitution of India for issue of appropriate writ(s)/orders/directions for setting aside and quashing of the impugned order no. P/11/14/11/2016/BFT.-II dated 09.09.2016 passed by Shri Arun Kumar, Insurance Commissioner ESI Corporation, Headquarters, New Delhi;

B. Declare Rules 54, 57 & 60 of the Employees' State Insurance (Central) Rules, 1950 including all other provisions of ESI Act and Rules as Ultra Vires and Unconstitutional upto the extent that they do not provide permanent disability benefits equal to the corresponding minimum wages increasing from time to time under the provisions of The Minimum Wages Act, 1948 or up to the extent they prevent providing permanent disablement benefits equal to minimum wages;

C. Direct the respondent no.1 to pay permanent disability benefits to the Petitioner equal to the minimum wages increasing from time to time to maintain the bare life as guaranteed under Article 21 of The Constitution of India; and

D. Pass such other and further orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. The facts of the case reveal that the petitioner herein was employed in M/s Sawhney Rubber Industries from 27.08.1988 and during such employment, he suffered an accident on 25.06.1989, resulting in the amputation of both hands. Thereafter, the petitioner was awarded Permanent Disablement Benefit¹ on 12.10.1990 by the Employees' State Insurance Corporation² at the rate of Rs. 14 per day (periodically revised till date). The grant of the said quantum of PDB was not unchallenged. Subsequently, although the petitioner worked for ten more years in the same workplace after the accident, it is

¹ “PDB”, hereinafter

² “ESIC”, hereinafter



alleged that vide letter dated 25.01.1999, the management terminated the petitioner's employment.

3. Post termination, the petitioner filed a claim before the Ld. Labour Court alleging his termination to be illegal. Upon perusal of the evidence, the Labour Court passed an Award dated 05.12.2003 holding that the termination was valid and thereby the management was justified since the petitioner was incapable of discharging the duties assigned to his post. Aggrieved by the said Award, the petitioner filed a writ petition before this Court seeking reinstatement in employment with full back wages.

4. The Ld. Single Bench of this Court *vide* judgment dated 10.10.2012, reversed the Award of the Labour Court holding that the petitioner's termination was illegal. However, it was also reasoned that petitioner could not be reinstated since the factory had virtually closed. Hence, the Ld. Single Judge *vide* order dated 10.10.2012 directed payment of Rs. 2 lakhs in lump sum to the petitioner as compensation in lieu of the same. Subsequently, the petitioner and his former employer both assailed the said order of the Ld. Single judge in a Letters Patent Appeal³ No. 47 of 2013, wherein the petitioner prayed for adequate/increase of compensation and the former employer assailed the grant of compensation altogether. A coordinate Bench of this Court in aforesaid LPA, *vide* order dated 25.04.2016, reversed the finding of the Ld. Single judge and upheld the Award of the Labour Court but did not interfere with amount of compensation. Further, it

³"LPA", hereinafter



was held that ESIC is a statutory public body whose mandate is to provide disability and medical benefits on an ongoing basis, and the fixation of an amount which is a fraction of the minimum wage is a *prima facie* violation of Article 14 of the Constitution of India. Resultantly, the Division Bench of this Court held that the ESIC must provide fair compensation, corresponding at least to the minimum wage, and pass appropriate order in that regard within four weeks.

5. In view of the abovementioned order, the ESIC, *vide* order dated 09.09.2016, held that the PDB payable to the petitioner for life is closely proximate to the wages earned by him at the time of employment injury and further recorded that the petitioner has been granted PDB in accordance with his entitlement. This order was passed by placing reliance on Rule 54, 57(3)(a), & 60 of the Employees' State Insurance (Central) Rules, 1950⁴. The ESIC, keeping in view the mandate of the said provisions, declined to grant any benefits to the petitioner.

6. Consequently, the petitioner filed a contempt petition alleging wilful disobedience of the judgment dated 25.04.2016 passed in the aforesaid LPA No. 47/2013 by a coordinate Division Bench of this Court, whereby the respondent was directed to appropriately work out the disability benefit equivalent to the minimum wage or approximate amount as permissible. Although, the Ld. Single Bench of this Court dismissed the contempt petition on the ground that the ESIC calculated the disability benefit in accordance with the ESIC Rules,

⁴ "ESIC Rules"



however, the petitioner was given liberty to challenge the legality and validity of the Regulations and ESIC Rules in accordance with law.

7. It is in this background that the present writ petition has been filed by the petitioner assailing the ESIC order dated 09.09.2016 as well as the *vires* of the ESI Rules to the extent that they do not provide PDB equal to the corresponding minimum wages increasing from time to time under the provisions of the Minimum Wages Act, 1948.

8. Mr. H K Chaturvedi, the learned Counsel for the petitioner submits that Rule 57(3) of the ESI Rules is contrary to the provisions of the Constitution of India as well as Sections 19 and 95 of the Employees' State Insurance Act, 1948⁵. He further contends that this Rule restricts the disablement benefit to 90% of the standard benefit of the corresponding year of disablement and does not allow an increase in the same as per the increasing index of wages/ living requirement/ corresponding to the Minimum Wages Act.

9. Learned Counsel for the petitioner submits that the ESI Rules are unconstitutional in light of Articles 14 and 21 of the Constitution of India because two similarly situated workmen cannot be discriminated against by giving different rates of PDB because of the injury occurring in different years. Further, the Counsel for the petitioner submits that, by fixing benefits below the minimum wage, the ESI Rules contravene Section 22 of the Minimum Wages Act, 1948 which prohibits payment of wages below the prescribed

⁵ "ESI Act", hereinafter



minimum. It is therefore submitted that Rules 54, 57 & 60 are *ultra vires* the ESI Act as well as the provisions of the Constitution of India.

10. As regards the quantum of benefit being extended under the ESI Act, the learned Counsel has contended in the rejoinder that the PDB granted at the rate of Rs.49.14 per day for loss of both hands in an accident that took place nearly 27 years ago is not sufficient for the subsistence living of a permanently disabled person.

11. It is further contended that in this case, the petitioner is receiving only 10% of the minimum wages as disability benefit, which is grossly inadequate and violative of Article 21 of the Constitution of India. Reliance is placed on judgments of the apex Court, *D.S. Nakara v. Union of India*⁶, *Regional Director, ESI Corporation v. Francis De Costa*⁷, *Olga Tellis v. Bombay Municipal Corporation*⁸ and *C.E.S.C. Ltd. v. Subhash Chandra Bose*⁹, to argue that social security and fair compensation are constitutional guarantees.

12. Per contra, Mr. Vaibhav Manu Srivastava, learned Counsel for Respondent No.1 submits that the ESIC makes payment or extends benefits out of the Employee's State Insurance Fund, and the rate at which the benefit is to be granted is prescribed in the ESI Rules. He submits that under Section 95 of the ESI Act, the Central Government has the power to make rules with respect to disablement benefits and

⁶1983 (2) SCR 165

⁷1993 supp (4) SCC 100

⁸1985 Supp (2) SCR 51

⁹1992 1 SCC 441



as such contends that the impugned order has been rightly passed by the Insurance Commissioner, ESIC, New Delhi.

13. The learned Counsel for Respondent No.1 submits that PDB is revised periodically to neutralize the increase in the All India Consumer Price Index (Industrial Workers) by the Corporation on the basis of actuarial reports and as per established procedures. He further contends that the authority to determine benefit rates and eligibility conditions lies exclusively with the Central Government under Section 95 of the ESI Act, and that the function of ESIC is solely administrative. He submits that Courts cannot issue directions requiring ESIC to act in contravention of the statutory scheme, as doing so would amount to judicial overreach. He further submits that PDBs are determined entirely by statute and relies on Section 51 to substantiate his contention. Therefore, it is the plea of Respondent No.1 that the Central Government, through the ESI Act, prescribed a fixed formula, based on standardized rates and average daily wages for the calculation of such benefits, without permitting any administrative deviation or enhancement by ESIC.

14. The learned Counsel for Respondent No.1 submits that the ESI scheme is not confined to cash benefits and under Sections 58 to 62, it delivers comprehensive social security, including medical care, rehabilitation, maternity benefits, funeral expenses, and vocational support which shows that it is a contributory insurance mechanism and not an extension of wage obligations. In any case, a person is entitled to a minimum wage under any employment till the age of



superannuation, whereas the disablement benefit is payable monthly for a period that can be the lifetime of the person in case of permanent disability.

15. Respondent No.1 has relied on the *Employees' State Insurance Corporation, Bangalore v. New Forge Company, Bangalore*¹⁰, wherein the High Court of Karnataka held that wages for ESI contributions or benefits must be determined strictly under the ESI Act, and the concept of minimum wage cannot be adopted as doing so would be contrary to ESI Act. Further, Respondent No.1 relies on *ESI Corpn. v Texmo Industries*¹¹ and *Smitha Rajendran v Employees' State Insurance Corpn.*¹² to establish differentiation between the ESI and the Minimum Wages Act, 1948.

16. Mr. Jagdish Chandra, learned CGSC for Respondent No. 2 in order to oppose the present petition has submitted that Rule 54 defines the “daily rate of benefit” or “Standard Benefit Rate” in respect of a group of employees whose average daily wages are in specific wage brackets prevailing from time to time. He submits that Rule 54 was omitted w.e.f. 01.07.2011, and the definition of “Standard Benefit Rate” was linked to average daily wages which was introduced w.e.f.01.07.2011. It has been contended that Rule 57 contains provisions for disablement benefits (temporary and permanent) and Section 57(3) provides for calculation of the “daily rate of disablement benefit” @ 90% of the Standard Benefit Rate (w.e.f. 01.07.2011). It is

¹⁰2010 SCC OnLineKar 507

¹¹(2021) 18 SCC 771

¹²2021 SCC OnLine Ker 16559



also contended that Rule 60 provides for medical benefits to an insured person who ceases to be in insurable employment on account of permanent disablement.

17. The respondents submits that wages are based on the contract of employment under Section 2(h) of the Minimum Wages Act, 1948 and since there is no contract of employment, therefore no comparison can be made between minimum wage and disability benefits. Additionally, it is contended that the order of the Insurance Commissioner was issued entirely in compliance with the ESI Act and ESI Rules, and that setting the petitioner's benefit at the mandated rate was lawful.

18. The learned Counsel for respondents have further attempted to explain that the ESI Act's disability benefit cannot be compared to minimum wages, since disability benefits are social security payments intended to make up for a loss of earning capability following an injury sustained on the job and wages are compensation for work completed during employment. Thus, there was neither a need nor was it required for the ESIC to update or align these benefits with current minimum wages, as PDB are determined according to the statutory formula, i.e., 90% of the pay of the insured person at the time of the accident and is absolutely unrelated to the Minimum Wages Act, 1948.

19. We have heard both parties and carefully perused the material on record and the relevant amendments.



20. First and foremost, it has to be understood that the ESI Act, 1948 is a social welfare legislation. Its primary object, as revealed from the Act itself, is *'to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto'*. On a plain reading of the said objective, it is apparent that certain benefits are to be provided to certain class of citizens. In this context, two key aspects emerge herein, the first being 'sickness' and the second being 'employment injury'. The aspect of 'maternity' is not under consideration in present case before this Court. The Act permits devising provisions to extend certain benefits that are connected with or somehow related to 'sickness' or 'employment injury'. No doubt, within the scope of the Act, monetary benefits that are included as one of the species of such benefits awarded. However, it is to be understood that these benefits can take any shape and form as per the scheme of the Act, the caveat being that they can be extended only in situations of 'sickness' or 'employment injury'.

21. Having said so, this Court finds that the primary question which creeps into one's mind is the quantum of monetary benefit to be extended during the period of 'sickness' or 'employment injury'. Since this Court is dealing with the issue relating to grant of PDB by the ESIC as under the ESI Act, this Court confines its observations to that category of benefit. Section 51 of the ESI Act mandates that these benefits are to be paid *'at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government'*. This is echoed in Section 95 of the ESI Act wherein the



Central Government has been entrusted with the power to make rules. Although, in the first brush it appears that only the Central Government is empowered to prescribe the quantum of benefits under the Act, however, Section 97 of the Act confers the power to the Corporation itself to make regulations. Thus, this Court cannot agree with the submission of the learned Counsel for the Respondent No. 1 that only the Central Government is empowered to make the rules and that ESIC is merely an administrative authority for implementation.

22. The next question which arises is whether under the existing rules or regulations, the PDB can be enhanced by the ESIC and if yes, to what extent. Immediately, thereof, this Court is led into the provisions under Rule 54, 57(3) and 60 of the ESI Rules, as has been agitated by both the parties in the present case. This Court finds that prior to 2011 amendment, Rule 54 read with rule 57(3) was as follows:

"54. Daily rate of benefit. Daily rate of benefit (hereinafter referred to as the "Standard benefit rate", in respect of group of employees specified in the first column of the table below shall be the amount respectively specified in the corresponding entry in the second column thereof....."

That is to say that Rule 54 contained tabulated wage brackets and thereby setting a "Standard Benefit Rate" by taking into account the average daily wage of an employee along with benefits linked to wage brackets and not the actual wages.



23. However, post 2011 amendment, Rule 54 was omitted, and “Standard Benefit Rate” is now defined as per Rule 2(7A), which states as follows:

“Standard Benefit Rate” means average daily wages obtained by dividing the total wages paid during the contribution period by the number of days for which these wages were paid.”

Therefore, as on today, the prevailing law provides for the Standard Benefit Rate to be directly linked to the average daily wages of the insured person/employee. This change is also reflected in Rule 57(3), which provides for the following:

“The daily rate of disablement benefit shall be 90% of the Standard Benefit Rate in the contribution period corresponding to the benefit period in which the employment injury occurs.”

24. Learned Counsel for the petitioner has well argued that the daily rate of disablement benefit ought to be increased, so as be commensurate with the provisions of Minimum Wages Act of 1948, however, this Court finds that neither party has addressed the question of whether there is any provision in the ESI Act for increase of this benefit. It is only if such an enabling provision exists in the Act, that the ESIC can be called upon to discharge their duty as an authority within constitutional framework. This Court finds that although the relevant provision for enhancement of benefits existed in the statute, however, after 1989, the law has changed completely. It may be noted that Section 99, prior to the amendment of 1989, stipulated the power to enhance benefit, which meant that ESIC itself could increase the



quantum or period of benefits. The said provision prior to the amendment is reproduced below:

*“99. **Enhancement of benefits.** At any time when its funds so permit, the Corporation may enhance the scale of any benefit admissible under this Act and the period for which such benefit may be given, and provide or contribute towards the cost of medical care for the families of insured persons.”*

25. However, pursuant to the amendment of 1989, Section 99 has been altogether deleted and substituted by the following:

*“99. **Medical care for the families of insured persons** – At any time when its funds so permit, the corporation may provide or contribute towards the cost of medical care for the families of insured persons.”*

26. So, the earlier provision for ‘enhancement of benefit’ stands substituted by ‘Medical care for the families of insured persons’. Therefore, it is evident that the powers of ESIC under Section 99, after amendment have been absolutely changed from the power to enhance all benefits to only family medical care. Therefore, to say that ESIC could be directed to enhance the PDB or that ESIC should be directed to make the grant of PDB commensurate to the Minimum Wages Act, 1948 would be a misnomer and the power of judicial review cannot be expanded beyond what the legislation has now expressly provided.

27. Further, it is evident from the amendments and the scheme of the Act that the disablement benefit is a statutory compensation completely distinct from the concept of wages, intended to only make good the loss of earning potential brought on by an injury suffered



during employment. There is a conceptual difference between the money disbursed under the provisions of ESI Act and the money received under the provisions of Minimum Wages Act, 1948. Primarily, wages are the price of labour paid by the employer and is an economic safeguard ensuring fair remuneration for services rendered during employment, whereas disablement benefits are social insurance payments funded by the contribution of both employer and employee. These benefits are not only independent of the service being provided but also are in the nature of compensation due to loss of earning capacity, in contrast to work being performed. As has been rightly pointed out by the learned Counsel for the respondents, that the ESI Act is actually designed to ensure solvency and fairness across all insured members and any attempt to align the benefits to minimum wages would distort this scheme and create inequities.

28. This Court finds that Rule 57(3) of the ESI Rules, explicitly prescribes that the daily rate of disablement benefit shall be ninety per cent of the “Standard Benefit Rate”, thereby leaving no requirement to interpret or apply it otherwise.

29. This Court concludes that the arguments of the petitioner regarding unconstitutionality do not apply here as there is no room in the statutory framework to equate the benefits granted under the ESIC to minimum wages, which are governed by completely different statutes serving entirely different purposes. Anyhow, every insured person under the impugned scheme is treated equally, and there is no hostile discrimination or arbitrariness. Thus, the arguments of the



petitioner that the Rule is unconstitutional and violative of Articles 14 and 21 is without merit.

30. Our attention is also invited to a judgment of the Karnataka High Court in the case of ***Employees State Insurance Corporation, Bangalore v New Forge Company, Bangalore*** (supra), wherein the Ld. Single Bench dealt with an identical issue of whether under the ESI Act, minimum wage has to be adopted or not. Although not binding, we agree with the finding of the Karnataka High Court that adopting the rigours of the Minimum Wage Act, 1948 would be contrary to the provisions of the ESI Act. The relevant portion for the same is reproduced below:

“14. ...ESI Act is a beneficial legislation enacted for the benefit of the employees and provisions thereunder have to be read in favour of whom such enactment has been brought about and it would not sub-serve the purpose when interpretation and construction of said statute is sought to defeat the purpose and such plea when sought to be put forward cannot be accepted, inasmuch as under the guise of the applicability of Minimum Wages Act, an employer would take shelter under it and in effect defeat the very purpose of the ESI Act itself and as such the contention of the learned Counsel for the appellant in MFA No. 6677 of 2003 cannot be accepted and accordingly it is rejected.”

31. It has to be understood that ESIC benefits are merely linked to minimum wages in the sense that a worker's eligibility for ESIC benefits is determined by their monthly wage, which must fall below the specified wage ceiling. This wage limit indirectly connects to minimum wages as ESIC coverage ensures that workers earning less than this threshold receive essential benefits, thereby aligning with the principle of providing social security to low-wage earners as



envisioned by both the ESI Act, 1948 and the Minimum Wages Act, 1948. However, the connection between the abovementioned statute, ends at this juncture and there cannot be any other deliberation.

32. Thus, we agree with the contention of Respondent No.1 that disablement benefit is payable monthly for a period which can be the lifetime of the person in case of permanent disability whereas minimum wage is paid till the course of employment. According to the Minimum Wages Act of 1948, an individual is entitled to minimum wages as long as he is employed. As a result, wages, including minimum wages, are linked to the employment of the person and come to a halt when the service contract expires/employment ceases. The ESI Act, on the other hand, defines disablement benefit as a social insurance payment that is triggered by an accident leading to an employment injury which, in the present case, is permanent disability. It is not remuneration for work performed but compensation for loss of earning capacity. Hence, it is not legally sound to compare both schemes since both operate in their own respective hemisphere.

33. With respect to the relief prayed as to the quashing of the impugned order dated 09.09.2016, the petitioner in their rejoinder, admitted that the PDB rate calculated by the Insurance Commissioner of ESIC is correct and justified, and therefore, we do not deem it necessary to delve into the merits of the order.



34. At this juncture, although we hold that the prayer of the petitioner declaring Rules 54 (non-existent), 57 & 60 of the ESI Rules, and all other provisions of the ESI Act and Rules as *ultra vires* and unconstitutional to the extent that they do not provide PDBs corresponding to the minimum wages cannot be granted in view of our reasoning in the foregoing paragraphs. However, we express and note our deep anguish and concern about the quantum of permanent disability benefits extended by the ESIC, which by any standards, are not commensurate to even buying a two-square meal for a single person, leave along the minimum wages as guaranteed in the Minimum Wages Act, 1948. We acknowledge the hardships faced by the petitioner, who is a 100% permanently disabled person and hence call upon both the ESIC and the Central Government to form a committee, which can be empowered on a biennium basis to recommend the ESIC to enhance/vary the PDB taking into account the prevailing market standards, inflation and actual cost of living, including the provisions of Minimum Wages Act, 1948 and other allied Act(s). However, the said committee in this regard, may not be bound or guided merely by the provisions of the Minimum Wages Act, 1948 and rather shall act independently in all fairness, reasonability and equity, keeping in mind the ambitious endeavour of the Government to provide social security to the sick and disabled as envisaged under the ESI Act.

35. For all the aforesaid reasons, we dispose of the present petition in the aforesaid terms, by holding that the relief being sought is essentially within the scope of legislature and the Rules 54 (non-



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existent), 57 & 60 of the Employees' State Insurance (Central) Rules, 1950, are neither *ultra vires* nor unconstitutional within the existing framework of the ESI Act.

36. A copy of this order may be sent forth, both to the ESIC and the Ministry of Labour & Employment for necessary compliance. There shall be no order as to costs.

OM PRAKASH SHUKLA, J

C.HARI SHANKAR, J

NOVEMBER 18, 2025/rjd