

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANNA IOANNOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE SENIOR INSURANCE OFFICER,

2. THE SOCIAL INSURANCE MEDICAL BOARD,

Respondents.

ANNA
IOANNOU
v.
REPUBLIC
(SENIOR
INSURANCE
OFFICER
AND ANOTHER)

(Case No. 22/68).

*Social Insurance Law, 1964—Accident—Disablement benefit—
Recourse against refusal to grant disablement benefit—Respon-
dent Board's conclusion that the accident had caused to the
applicant no disability—Upheld by the Court, dismissing this
recourse under Article 146 of the Constitution.*

The facts sufficiently appear in the judgment of the Court
dismissing this recourse on the evidence adduced.

Recourse.

Recourse against the decision of the respondents by
virtue of which applicant was denied a disablement benefit
under the provisions of the Social Insurance Law, 1964
(Law 2/64).

P. Demetriou for *L. Papaphilippou*, for the applicant.

S. Nicolaidis, Counsel of the Republic, for the Re-
spondents.

Cur. adv. vult.

The following judgment was delivered by :—

STAVRINIDES, J. : On December 28, 1966, the applicant,
then aged 45, a Public Works Department labourer employed
in road construction, met with an accident. She was
admitted in an unconscious condition to the Nicosia General
Hospital, where she stayed for 22 days. On July 26, 1967,
she applied for a disablement benefit under the Social
Insurance Law, 1964 ; and by a letter from the Ministry of

1971
Aug. 14
—
ANNA
IOANNOU
v.
REPUBLIC
(SENIOR
INSURANCE
OFFICER
AND ANOTHER)

Labour and Social Insurance dated November 15 of that year she was informed that her application had been refused on the ground that the Social Insurance Medical Board (hereafter "the Board") "on its examination of her on November 7, 1967, had found that the accident had caused her no disability whatever".

She now asks for

"a declaration ... that the act or decision of the respondent about the non-grant (to her of a benefit) on the ground of disablement is void and/or lacking any legal effect whatever"

and also

"a declaration that the decision of (the Board) dated November 14, 1967, is void and/or lacking any legal effect whatever."

The application is based entirely on alleged "error of fact".

It is common ground that on admission to the hospital she had a comminuted fracture of her left pubic ramus resulting in "partial reduction of the left foramen" and that the fracture has united well.

Evidence was given, on her side, by herself and an orthopaedic surgeon, Dr. N. Kollitsis, F.R.C.S., Scotland, and on the other side by Dr. A. Pelides, also an orthopaedic surgeon. Her evidence as regards her condition at the time of the hearing is to the effect that in consequence of the accident she is unable to do any work, even of a domestic nature; that she cannot squat; that walking causes her pain in the knees; that she has a limp; that she feels pain in both shoulders, especially the left, and also a pain in the lumbar area and, indeed, all over her body. When she was examined by Dr. Pelides she felt all these pains and she told him of them. "All the symptoms she described dated from the accident".

Dr. Kollitsis examined her on May 25, 1968. He said he found "(a) a noticeable limp on the left side; (b) a thickened left hip joint with restriction of movement of that joint; (c) the abduction of one of the shoulder joints was restricted to 130°, compared with the normal range of 175°; and (d) the medial rotation of the same joint was restricted by half the normal range". He referred her to another doctor for an X-ray examination and next day she brought him an X-ray photograph (*exhibit 3*) which, he said, showed displacement of part of the fractured ramus. She told him

she felt pain on standing for a long time, that "as soon as (the accident) happened she felt pain in the hip and pelvis" and that "three weeks later she felt pain in the shoulder-blade". Although the fracture "united well", "one bone fragment (of the fractured ramus) is displaced so as to overlap with the right ramus". He added that "her pelvic bones are asymmetric" and he specifically attributed the limp to such asymmetry. "He would describe her condition", "including injury (c)", "which could also be caused by overstrain in the course of manual labour, such as digging", "as one of moderate permanent incapacity".

1971
Aug. 14
—
ANNA
IOANNOU
v.
REPUBLIC
(SENIOR
INSURANCE
OFFICER
AND ANOTHER)

On the other hand Dr. Pelides, who examined the applicant as a member of the Board on November 7, 1967, and May 14, 1968, said that "in conformity with the usual procedure of the Board", on the earlier of those examinations "she was asked what her trouble was". She thereupon made a statement, which was taken down in writing by one of the members of the Board on the form used for that purpose and, she being illiterate, was read over to her and marked by her at the bottom in acknowledgement of its correctness. The statement was put in (part of *exhibit 1*) and reads :

"On December 28, 1966, while I was working as a labourer on the road I was hit by a motor vehicle and I was injured in both 'podhia'. My left 'podhi' hurts me near the thigh and I am unable to stoop".

Later Dr. Pelides said :

"On November 7, 1967, applicant said nothing about any injury or pain in her left shoulder or any part of her body other than her left 'podhi'. She had no limp at the time. She complained that she tired on walking, specifically that she felt pain in her left leg. I looked for any relevant clinical symptoms but found none. A fracture of the ramus cannot affect movement of the hip nor can it affect the stability of the pelvis, nor cause a limp."

Later still he said :

"When (the applicant) was examined by the Board—on both occasions—she walked normally. On neither occasion was there any limping. All she complained of was pain in the left 'podhi'."

He expressly disagreed with Dr. Kollitsis's findings about displacement of her fractured ramus and overlapping of the

1971
Aug. 14

—
ANNA
IOANNOU

v.

REPUBLIC
(SENIOR
INSURANCE
OFFICER
AND ANOTHER)

rami, about her pelvis having become asymmetric, and about impairment of movement ; and his overall conclusion was that the applicant was not suffering from any disability due to the accident.

As appears from the foregoing, in so far as the applicant relies on pain and a limp her case rests primarily on her own evidence. I do not include restriction of movement in what I have just said because actually she made no such complaint in her evidence. Now in so far as the evidence of medical experts consists of opinions I see no reason for thinking that one opinion is, or is more likely to be, right and the other wrong. But there is more to this case than that. I accept that in her statement to the Board, part of *exhibit 1*, the only complaint the applicant made was one of pain in her left 'podhi' and inability to stoop. With regard to the limp Dr. Kollitsis said :

“ Looking at photograph A (*exhibit 3*) alone, without a clinical examination, I would not have been able to tell that applicant had a limp.”

A limp can be simulated but cannot be concealed, and I accept Dr. Pelides's evidence that on neither of her examinations by the Board did she have one.

For the above reasons the application must fail and is dismissed.

Nicolaides claims no costs.

COURT : In view of this statement I award no costs.

Application dismissed.
No order as to costs.