

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN  
&  
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

Ins.APP.No. 47 of 2012 ()

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AGAINST THE ORDER/JUDGMENT IN IC 7/2006 of E.I.COURT, KOLLAM DATED 22-01-2010

APPELLANT/APPLICANT:

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SUBAIDA BEEVI, AGED 71 YEARS,  
W/O.HYDROSE KUNJU, CHARUVILA PUTHENVEEDU  
UMAYANALLOOR P.O., KOLLAM.

BY ADVS.SRI.P.R.MILTON  
SRI.K.J.CHACKOCHAN

RESPONDENTS/RESPONDENTS:

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1. THE REGIONAL DEPUTY DIRECTOR  
EMPLOYEES STATE INSURANCE CORPORATION, ROUND NORTH  
THRISSUR-680 020.
  2. ASSISTANT DIRECTOR  
EMPLOYEES STATE INSURANCE CORPORATION, ROUND NORTH  
THRISSUR-680 020.
  3. THE MANAGING DIRECTOR  
KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD.  
MUNDAKKAL WEST, KOLLAM-691 001.
  4. THE MANAGER,  
FACTORY NO.1  
KERALA STATE CASHEW DEVELOPMENT CORPORATION LTD.  
KOTTIYAM, KOLLAM-691 571.

R1 & R2 BY ADVS. SRI.T.PM.IBRAHIM KHAN, SC, ESI CORPN.  
SRI.K.M.ABDUL MAJEED  
R3 BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 03-07-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

vpv

**P.N.RAVINDRAN & ANU SIVARAMAN, JJ.**  
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**Insurance Appeal No.47 of 2012**  
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**Dated this the 3<sup>rd</sup> day of July, 2015**

**JUDGMENT**

**P.N.Ravindran, J.**

The appellant is the applicant in Insurance Case No.7 of 2006 on the file of the Employees Insurance Court, Kollam. The respondents are the opposite parties therein. The appellant had in the application filed by her before the Insurance Court prayed for a declaration that the personal injury sustained by her at about 8 a.m. on 31.7.1999 is an employment injury arising out of and in the course of employment and for awarding compensation in respect of the employment injury thus sustained by her. The appellant had in the application filed by her stated that at about 8 a.m. on 31.7.1999 when she reached the front gate of the factory and rushed into the factory premises, she fell down and sustained grievous injuries and fracture of her right hand. She had further averred that after the accident was reported to the factory manager she was rushed to E.S.I. Hospital, Asramam where she was admitted and treated as an inpatient. She had further averred that the injury sustained has resulted in total disability to work and that the claim put forward through the employer before respondents 1

and 2 was mercilessly and arbitrarily rejected on the ground that the injury sustained by her is not an employment injury as defined in section 2(8) of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act" for short).

2. Upon receipt of notice, respondents 1 and 2 entered appearance and filed a written objection contending that the accident took place outside the factory gate while the applicant was coming to the factory and therefore it cannot be treated as an employment injury. They also contended that the accident took place on 31.7.1999, but the instant application was filed only on 22.3.2006, after 5½ years. Respondents 1 and 2 also contended that for treating the personal injury caused to an employee to be an employment injury, the accident should have a casual connection with the employment and the accident must have been occurred in the course of employment. It was contended that as the applicant did not sustain any employment injury, she is not entitled to any compensation. Respondents 3 and 4 filed a written statement wherein they contended that the appellant fainted and fell down in front of the factory gate while she was alighting from an autorickshaw at about 8 a.m. on 31.7.1999 and that the accident was reported to the Medical Officer of the Employees State Insurance Corporation. They also contended that the claimant attained the age of superannuation (60 years) on 31.12.2000 and she

is not entitled to any compensation.

3. The appellant has in the claim petition conceded the fact that she had earlier filed Insurance Case No.23 of 2001 on 9.8.2001 before the Employees State Insurance Court, Kollam in respect of the very same accident, that it was dismissed for default on 18.2.2001 and that the application filed by her for restoration of Insurance Case No.23 of 2001 was dismissed by order passed on 20.12.2002 with a direction to file a fresh application. The appellant has also conceded the fact that thereafter on 18.11.2004 she filed an application before the Legal Services Authority, Kollam for compensation but that was dismissed. The appellant has also filed a petition to condone the delay in filing Insurance Case No.7 of 2006 on the averment that it was on account of her illness and for the aforesaid reasons that she could not file an application in time. Before the Employees Insurance Court the appellant was examined herself as AW1 and the Doctor who had treated her at ESI Hospital, Asramam as AW2. She also produced and marked Exts.A1 to A6. The Employees State Insurance Court considered the rival contentions and held that the application is barred by limitation. The Employees State Insurance Court also held relying on the decision of the Apex Court in **E.S.I. Corporation v. Francis De Costa** [1996 (2) KLT 799 (S.C.)] that as the applicant had not reached the place of employment, the injury sustained by her cannot

be treated as an employment injury. The application was accordingly dismissed. The applicant has, aggrieved thereby, filed this appeal.

4. We heard Sri.P.R.Milton, learned counsel appearing for the appellant, Sri.K.M.Abdul Majeed, learned counsel appearing for respondents 1 and 2 and Sri.C.Unnikrishnan, learned counsel appearing for the third respondent. Sri.P.R.Milton, learned counsel appearing for the appellant contended that section 51E of the Act stipulates that an accident occurring to an employee while commuting from his residence to the place of employment for duty or from the place of employment to his residence after performing duty, shall be deemed to have arisen out of and in the course of employment if nexus between the circumstances, time and place in which the accident occurred and the employment is established. Learned counsel submitted that in such circumstances, as the accident happened outside the factory gate, the impugned order may be set aside and the application remanded to the Employees Insurance Court for fresh disposal so as to enable the appellant to claim the benefit of section 51E of the Act.

5. Per contra, the learned counsel appearing for the respondents submitted that the Employees Insurance Court has no jurisdiction to condone the delay in filing an application, that the power of the Employees Insurance Court is only to condone the delay in making a

claim for benefit and therefore, no exception can be taken to the finding entered by the Employees Insurance Court that the application is barred by limitation. As regards the question whether the injury sustained by her is an employment injury, the learned counsel contended that in the light of the decision of the Apex Court in **E.S.I. Corporation v. Francis De costa** (supra) as the applicant had not reached the place of employment, it cannot be said that the injury sustained by her is an employment injury. The learned counsel also submitted that section 51E of the Act was inserted in the Act only with effect from 01.06.2010 and therefore, it cannot govern the the accident which took place on 31.07.1999.

6. We have considered the submissions made at the Bar by learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The accident in the instant case took place on 31.07.1999. The applicant had admittedly not reached the place of employment. She fell down from an autorickshaw outside the gate of the factory. The Apex Court has in **E.S.I. Corporation v. Francis De costa** (supra) held that the employment of the workman does not commence until he has reached the place of employment and what happens before that is not in the course of employment. Therefore, the injury sustained by the appellant in the instant case cannot be said to be an injury sustained by her in the

course of her employment. As stated earlier, the accident in the instant case took place on 31.07.1999. Section 51E was introduced in the statute only with effect from 01.06.2010. The stipulation in section 51E cannot therefore govern the incident in question which took place on 31.07.1999. We are therefore in agreement with the Employees Insurance Court that the injuries sustained by the appellant in the instant case cannot be said to be an employment injury.

7. That takes us to the question whether the application filed by the appellant is barred by limitation. It is not in dispute that the accident took place on 31.07.1999. The application which was dismissed by the impugned order was filed on 22.03.2006. The appellant had earlier filed Insurance Case No.23 of 2001 on 09.08.2001 and it was dismissed for default on 18.02.2001. Though an application for restoration was filed, it was dismissed by order passed on 20.12.2002 with the observation that she can file a fresh application. Such a fresh application was filed only on 22.03.2006 more than three years and one month thereafter. Apart from stating that she had in the meanwhile moved the District Legal Services Authority by filing an application on 18.11.2004, the appellant has not pleaded or proved that she was prevented by any sufficient cause from moving the Employees Insurance Court afresh. We therefore find no reason to hold that the appellant has satisfactorily explained the delay

in filing the application. We are also of the opinion that the Employees Insurance Court has no power to condone the delay in filing an application under section 77 of the Act. The stipulation in Explanation (a) applies only to the making of a claim for benefit under the Act. The period of limitation prescribed for filing an application before the Employees Insurance Court is stipulated in sub-section (1A) of section 77 of the Act as three years from the date on which the cause of action arose. Explanation (a) to sub-section (1A) of section 77 stipulates that the cause of action in respect of a claim for benefit shall not be deemed to arise unless the insured person or in the case of dependents' benefit, the dependents of the insured person claims or claim that benefit in accordance with the regulations made in that behalf within a period twelve months after the claim became due or within such further period as the Employees Insurance Court may allow on grounds which appear to it to be reasonable.

8. On a plain reading of Explanation (a), it can be seen that the power vested in the Employees' Insurance Court is not to enlarge the time for filing an application after the cause of action has arisen. The power vested in the Employees Insurance Court is to enlarge the time for making a claim in accordance with the regulations. The time prescribed is 12 months. If an insured person or the dependents of an insured person have not claimed the benefit in accordance with the

regulations made in their behalf within a period of 12 months after the claim became due, he or they can seek enlargement of time before the Insurance Court to make such a claim and the Employees Insurance Court is empowered to allow that request, if reasonable grounds are made out. The extension of time to make a claim for a benefit after the claim became due is different from filing an application after the cause of action has arisen for the filing of an application. The cause of action in the instant case arose when the claim made by the appellant was rejected by respondents 1 and 2 on 02.09.2000. Computed from that date, the period of three years prescribed for filing an application expired on 02.09.2003. The appellant had as stated earlier, filed Insurance Case No.23 of 2001 on 9.8.2001 before the Employees State Insurance Court, Kollam. It was dismissed for default on 18.02.2001. The application filed by her for restoration of Insurance Case No.23 of 2001 was dismissed by order passed on 20.12.2002 with the observation that she can file a fresh application. As on that date, an application under section 77 of the Act was not barred by limitation. The appellant did not for reasons best known to her file an application under section 77 within the said period of three years computed from 2.9.2000. The period of three years computed from 2.9.2000 expired on 2.9.2003. The appellant has not given any cogent or acceptable explanation as to why she did not move the

Employees Insurance Court within that period. Though she moved the District Legal Services Authority on 18.11.2004 and that the said application was closed on 19.7.2005, she did not even thereafter move the Employees State Insurance Court till she filed the instant application on 22.3.2006. The appellant has not in the application filed by her under section 75 of the Act given any explanation as to why she did not file an application afresh in the Employees Insurance Court during the period from 20.12.2012 to 02.09.2013.

We accordingly hold that there is no merit in the instant appeal. The appeal fails and is dismissed.

Sd/-

**P.N.Ravindran, Judge**

Sd/-

**Anu Sivaraman, Judge**

/TRUE COPY/

P.A. TO JUDGE

**vpv/sj**