IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

Ins.APP.No. 59 of 2012 ()

ICA.NO. 3/2008 OF EMPLOYEES INSURANCE COURT, KOLLAM DATED 13-12-2011

APPELLANT/RESPONDENT :

THE DEPUTY DIRECTOR
EMPLOYEES STATE INSURANCE CORPORATION,
POLAYATHODU, KOLLAM.

BY ADV. SRI. T.V.AJAYAKUMAR

RESPONDENTS/APPLICANT :

LINVINGSTON
SAMASTHATHIKUNNU VEEDU,
NANNAMKUZHI, PAYATTUVILA
BALARAMAPURAM, THIRUVANANTHAPURAM.

BY ADVS. SRI.GOPAKUMAR R.THALIYAL
SRI.A.CHANDRA BABU

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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P.B.SURESH KUMAR, J.

Ins.Appeal.No.59 of 2012

Dated this the 14th day of July, 2015

JUDGMENT

The decision of the Employees' Insurance Court, Kollam in I.C.A. No.3 of 2008 is under challenge in this appeal. The Deputy Director of the Employees' Insurance Corporation ('the Corporation' for short) is the appellant.

2. The respondent is an insured employee under the Employees State Insurance Act ('the Act' for short). He was a fitter apprentice in M/s.Vijaya Mohini Mills, Thiruvananthapuram. The respondent sustained interstitial lung disease in the course of his employment. According to him, the interstitial lung disease is an occupational disease caused to him on account of exposure to cotton dust and therefore, he is entitled to permanent disablement benefit

as provided for under the Act. It is also his case that on account of the said disease, the management terminated him from the service ten years before the date of superannuation. When the respondent raised the claim for permanent disablement benefit, the Corporation referred him to the Medical Board. The Medical Board, on examining the respondent, reported that the interstitial lung disease of the appellant is not an occupational disease. The respondent challenged the decision of the Medical Board before the Employees' Insurance Court in an appeal under Section 54A of the Act. The said court, on appraisal of the materials on record, came to the conclusion that the respondent is suffering from byssinosis which is an occupational disease, as defined under Entry 3 of Part C of the Third Schedule to the Act and that the respondent is entitled to permanent disablement benefit, reckoning his loss of earning capacity at 100%. The said decision of the Insurance Court is under challenge in this appeal.

3. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

4. The learned counsel for the appellant contended that there is nothing on record to indicate that the appellant is suffering from byssinosis which is an occupational disease caused on account of exposure to cotton dust. It is also contended by him that since it was found by the Insurance Court that the report of the Medical Board is not correct, the matter should have been referred to the Medical Board again and the Insurance Court ought not have decided the case finally. The learned counsel for the appellant has further contended that at any rate, the Insurance Court acted illegally in holding that the appellant is suffering from 100% loss of earning capacity.

5. Per contra, the learned counsel for the respondent, relying on the decision of this Court in **E.S.I Corporation vs. Pushpa** [2009 (3) KLT 562], contended that the Insurance Court has all the power to pass an order in the

nature of one impugned in the appeal, in exercise of his power under Section 78 of the Act.

6. The fact that the respondent has been suffering from interstitial lung disease and the fact that on account of the said ailment, he was terminated from service by his employer at the age of 48 are not disputed. The question is as to whether the said ailment of the respondent is an occupational disease which enables the respondent to claim permanent disablement benefit. Ext.B2 is the report of the Medical Board. Ext.B2 states that the respondent was diagnosed with interstitial lung disease. It also says that interstitial lung disease suffered by the respondent is non-occupational. Ext.A1 is the certificate issued to the respondent by the Department of Respiratory Medicine attached to the Medical College, Thiruvananthapuram. True, Ext.A1 does not say that the interstitial lung disease suffered by the respondent was caused on account of the occupational exposure, but it certifies that the said ailment

is possible on account of the occupational exposure. It also states that since it is possible for the ailment to reoccur, the exposure to occupational dust shall be avoided. Ext.A2 is the document relied on by the respondent to substantiate his case. Ext.A2 is the referral letter issued to the respondent by the Medical Officer attached to ESI Hospital, Peroorkada. It is as per Ext.A2, the respondent was referred for examination by the Medical Board. In Ext.A2, as against the column "Investigation done with results" it is stated that the respondent was suffering from interstitial lung disease and byssinosis. It is beyond dispute that byssinosis is defined as an occupational disease caused on account of exposure to cotton dust in Entry 3 to Part C of the Third Schedule to the Act. Ext.B2 report issued by the Medical Board does not indicate as to how the Medical Board came to the conclusion that the disease suffered by the respondent is not an occupational disease. Even before the Insurance Court, the Corporation has not chosen to adduce any evidence in support of their case that the disease suffered by the respondent is not an occupational disease. In the aforesaid circumstances, the Insurance Court cannot be faulted for having held that the respondent is suffering from byssinosis caused on account of exposure to cotton dust.

7. The contention raised by the Corporation that since it was found by the Insurance Court that the decision of the Insurance Medical Board is not correct, the matter should have been remitted to the Insurance Medical Board is also without substance. In **E.S.I Corporation v. Pushpa** (supra), this Court held that in an appeal preferred under Section 54A of the Act challenging the decision of the Medical Board, the Employees Insurance Court has a power to decide the matter finally on the basis of the evidence adduced before it. The relevant portion of the judgment reads as follows :-

"5. The powers of the E.I Courts are as mentioned in S.78

of the Act. The order of the E.I Court is to be treated as a decree of a civil court. The E.I Courts have been given certain powers which are available to a civil court. For all practical purposes, issues which are germane are to be dealt with by the E.I Court as is clear from sub -s (3) of S.75. Therefore, when the matter came up before the E.I Court in an Appeal under S.54A, certainly the E.I Court has the power to decide the matter on the basis of the evidence adduced before it. The evidence may include the evidence of Experts adduced before it in such a manner so as to establish before it that the relief which is sought may be granted. In an appeal from the decision of the Medical Board, the E.I Court would certainly have the power to call for re-appraisal or re-assessment or consider such evidence which would show that a re-assessment is warranted. It may also have the incidental power to remit the matter back to the very same Medical Board for a review. This is a power which flows from S.54A as when the Court refers it back to the Medical Board, it is doing it in the course of the exercise of the appellate powers with which it is vested. It may be that circumstances co-exists as are to be found either in sub-s (1) or sub-s(2) of S.55. We notice also that in an Appeal to the Medical Appeal Tribunal, the Medical Appeal Tribunal has the power to get expert evidence. No doubt, such power is not specifically mentioned in respect of E.I court, but that does not mean that the Court would have the power which is given to the Tribunal. The reason being that the said power must be incidental to the main power for deciding the correctness of the assessment made by the Medical Board, the decision being

> challenged in an appeal. But, in this case, we notice that without assigning any reason and after finding that the matter has to go for review by the Medical Board, the E.I Court has directed a review by a Medical Board constituted with medical experts preferably from Medical College Hospital or from the State Health Service. No doubt, the word used 'preferably' may not enjoin any peremptoriness on the same direction. But, when it decides the matter to be sent for review, it may not be open to the E.I Court to further direct "preferably by Experts" mentioned already. We cannot say that there is no question of law as such, as the question of law relates to the power of the E.I Court. In the light of this discussion, we allow the Appeal to the extent of deleting the direction that the appellant may constitute a Medical Board with medical experts preferably from Medical College Hospital or from the State Health Service. The Medical Board shall be constituted as per the direction of the Court at the earliest and the assessment done as aforesaid." (underline supplied)

In the light of the said decision, the Insurance Court cannot be faulted for having decided the case finally in favour of the respondent.

8. There is nothing on record to indicate that the respondent is capable of undertaking any work at present which he was capable of performing earlier. The Insurance

Court found that on account of the inability of the respondent to work, the service of the respondent was terminated by his employer. In the said circumstances, the Insurance Court cannot also be faulted for having held that the respondent is entitled to permanent disablement benefit reckoning his disability at 100%.

The appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

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