

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Ins.APP.No. 93 of 2012 ()

AGAINST THE JUDGMENT IN ICA.NO.7/2008 of EMPLOYEES INSURANCE
COURT, ALAPPUZHA, DATED 05-03-2012.

APPELLANT/RESPONDENT:-

THE REGIONAL DIRECTOR,
ESI CORPORATION,
TRICHUR.

BY ADV.SRI.T.V.AJAYAKUMAR

RESPONDENT/APPLICANT:-

P.V.PONNAN,
S/O.P.J.VINCENT,
PALLIPARAMBIL HOUSE,
KANJIRAMCHIRA,
ALAPPUZHA.

BY ADV. SRI.JOHN BRITTO
BY ADV. SRI.C.A.RAJEEV

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

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Insurance Appeal No.93 of 2012

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Dated this the 9th day of July, 2015.

J U D G M E N T

The decision of the Employees' Insurance Court, Alappuzha in I.C.A.No.7 of 2008 is under challenge in this appeal. The Regional Director of the Employees State Insurance Corporation ('the Corporation' for short), is the appellant.

2. The respondent was a weaver in M/s.Alleppey Mats and Mattings Co-operative Society. The said establishment was covered by the Employees' State Insurance Act ('the Act' for short). The respondent sustained an employment injury on 16.2.1995. Consequently, the respondent was paid temporary disablement benefits by the Corporation for the period from 17.2.1995 to 26.2.1995. Later, he was referred to the Employment State Insurance Medical Board for assessing loss of earning capacity for the purpose of considering his claim for permanent disablement benefits. The Medical Board assessed

the loss of earning capacity of the respondent at 15%. The respondent challenged the assessment of the loss of earning capacity made by the Medical Board before the Employees' Insurance Court in I.C.A.No.3 of 1996. The Employees' Insurance Court held that the loss of earning capacity of the respondent should have been assessed by the Medical Board at 100% and consequently directed the Corporation to disburse to the claimant the permanent disablement benefits on that basis. The decision of the Employees' Insurance Court in I.C.A.No.3 of 1996 was challenged by the Corporation before this Court in M.F.A.No.1315 of 1998. The said appeal was allowed and the matter was remitted to the Insurance Court for fresh disposal. Thereupon, the Insurance Court again referred the matter to the Medical Board to assess the loss of earning capacity of the respondent. On the second occasion, the Medical Board certified the loss of earning capacity of the respondent at 30%. On receipt of the said decision of the Medical Board, the Insurance Court disposed of I.C.A.No.3 of 1996 directing the Corporation to disburse the respondent the permanent disablement benefits

reckoning his loss of earning capacity at 30%. The matter was taken up by the respondent before this Court in Insurance Appeal No.13 of 2005. This Court disposed of Insurance Appeal No.13 of 2005 directing the Insurance Court to decide the case afresh in the light of the decision of this Court reported in **Vanajakshan v. Joseph** [2003(2) KLT 462](FB)]. In the light of the decision of this Court in Insurance Appeal No.13 of 2005, the matter was considered by the Insurance Court and as per the impugned decision, the Insurance Court declared that the of loss earning capacity of the respondent is 100%. Consequent orders were also issued directing the Corporation to grant disablement benefits to the respondent on that basis. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

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

4. The claim of the respondent is for permanent disablement benefits under the Act. Permanent total disablement is defined under Section 2(15B) of the Act which reads thus:

“Permanent total disablement” means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement:

Provided that permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred per cent or more.”

It is clear from the said definition that only the disablement of permanent nature as incapacitates an employee for all work which he was capable of performing at the time of injury, can be regarded as permanent total disablement. In **Vanajakshan's case** (supra), in the context of the Workmen's Compensation Act, this Court held that compensation has to be assessed by the competent authority with reference to the loss of earning capacity and not based on the ability of the claimant to perform the duties of the job he was performing at the time of accident. Since this Court had directed that the case of the respondent for permanent disablement benefits shall be considered in the light of the decision in **Vanajakshan's case** (supra), the issue to be

considered is as to what extent, the earning capacity of the respondent is affected in the context of the works which he was capable of performing at the time of the employment injury.

5. The respondent gave evidence as PW1. He deposed that he does not know any work other than the work of the weaver. Though he was cross-examined by the learned counsel for the Corporation, there was no suggestion to PW1 as to the works which he was capable of doing despite the injury. In his evidence as PW1, the respondent has also stated that he was not offered any work by his employer which he is capable of doing after the injury. On the side of the respondent, he also examined a doctor as PW2. PW2 deposed that the respondent is having lumbar spondylosis and he was advised not to engage in any manual labour involving lifting of weights and bending down. The respondent has examined one of the specialist members of the Medical Board which fixed his loss of earning capacity at 15% as DW1. DW1 deposed that he conducted both physical and clinical examination of the respondent and it was found that he was incapable of doing the work in the same manner after the

employment injury. DW1 also deposed that it would be difficult for the respondent to work as a weaver after he suffered the employment injury. From the available evidence, it cannot be said that the respondent is incapacitated for all the works which he was capable of performing at the time of the employment injury. I hold so not only for the reason that the respondent himself has stated that his employer has not offered any work which he is capable of doing, but also for the reason that the doctor examined on the side of the respondent has only stated that the respondent is incapable of doing only manual labour involving lifting of weights and bending down. As such, the view of the Insurance Court that the respondent is suffering from 100% loss of earning capacity cannot be sustained. From the available materials on record, I am of the view that the percentage of the loss of earning capacity of the respondent can be fixed at 50%.

In the result, the appeal is disposed of holding that the loss of earning capacity of the respondent is 50% and directing the Corporation to disburse permanent disablement benefits to

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the respondent on that basis within three months from today.

Sd/-
P.B.SURESH KUMAR,
(JUDGE)

Kvs/-

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PA TO JUDGE.