IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

Ins.APP.No. 77 of 2009 ( )

IC 91/2005 of EMPLOYEES' INSURANCE COURT, KOZHIKODE

APPELLANT(S)/RESPONDENT :

THE REGIONAL DIRECTOR,
E.S.I. CORPORATION, THRISSUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S)/APPLICANT :

M.K. KUTTAN, S/O. ARAMUGAN,
ELAYEDATH THAZHATH HOUSE, P.O. FAROKE COLLEGE
KOZHIKODE.

BY ADV. SRI.A.RANJITH NARAYANAN
BY ADV. SRI.S.K.SAJU

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

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Ins. Appeal No.77 of 2009

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Dated 10th March, 2015.

J U D G M E N T

The decision of the Employees' Insurance Court, Kozhikode in E.I.C.No.91 of 2005 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 an insured employee under the Employees' State Insurance Act, 1948 ('the Act' for short). He retired from service on 31.12.2004. After his retirement, the respondent claimed sickness benefit, as provided for under Section 46(1)(a) of the Act, for the period from 1.1.2005 to 6.3.2005. The sickness benefit claimed by the respondent for the said period has been granted. Later, the respondent claimed sickness benefit for the period from 7.3.2005 to 12.11.2005. The said claim was rejected by the Corporation on the ground that the respondent ceased to be an employee with effect from 31.12.2004 and therefore, he is not entitled to

sickness benefit. The decision of the Corporation was challenged by the respondent before the Insurance Court in the proceedings referred to above and as per the order impugned in this appeal, the Insurance Court directed the Corporation to extend sickness benefit to the respondent for the period from 7.3.2005 to 12.11.2005 also. The Corporation is aggrieved by the said decision of the Insurance Court and hence this appeal.

3. Section 2(20) of the Act defines "sickness" thus :

> 2(20) "sickness" means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds;

Section 46(1)(a) of the Act provides that insured persons are entitled to periodical payments in case of sickness certified by a duly appointed medical practitioner. Regulations 52A(1) of the Employees' State Insurance (General) Regulations, 1950 ('the Regulations' for short) reads thus :

> 52A. Abstention verification
> [(l)] Every employer shall furnish to the appropriate Office such information and particulars in respect of the abstention of an insured person for work for which sickness benefit or

> disablement benefit for temporary disablement, as provided under the Act have been claimed or paid, in Form No.10 and within such time as the said office may in writing require in the said Form.”

It is evident from the said provisions that sickness for which sickness benefit under the Act is claimed is a condition which requires medical treatment and necessitates abstention from work on medical grounds. Regulation 52A(1) of the Regulations reiterates the said position by requiring the employer of the insured person to furnish to the appropriate office such information and particulars in respect of the abstention of the insured person from work for which sickness benefit has been claimed. In other words, sickness benefit is contemplated under the Act only when the insured employee is unable to attend his regular work. When a person retires from service on superannuation, the question of abstention from work does not arise. In this context, it is worth referring to Rule 61 of the Employees' State Insurance (Central) Rules, 1950. The said rule provides for medical benefits to retired persons. As per Rule 61, a retired employee is entitled to medical benefits on an additional payment. Thus, on a consideration of the scheme of the Act and the Rules and Regulations made thereunder, it is clear that a retired employee is not entitled to sickness befit for the period after the date of superannuation.

4. The learned counsel for the respondent, relying on Regulation 4 of the Regulations, contended that he has paid contributions payable under the Act for the period upto December, 2004 and he is, therefore, entitled to sickness benefit, at any rate, upto 30th June, 2005. True, Regulation 4 of the Regulations provides that the benefit period for the contribution made upto 30th September of a particular year will be the period between 1st of January of the following year to 30th June and the benefit period for the contributions made upto 31st March will be the period between 1st of July to 31st December. The argument is that since contribution has been paid by the respondent upto 30th September, 2004, he is entitled to all the benefits for the period upto 30th June, 2005. Regulation 4 indicates that advance contribution is being collected by the Corporation and the benefits under the Act are

extended only from a later point of time. The learned counsel for the Corporation pointed out that Regulation 4 of the Regulations is intended only to ensure that benefits under the Act are claimed by genuine employees and to rule out payment of contribution in the pretext of employment solely for the purpose of claiming benefits under the Act. Be that as it may, the fact that the benefits provided for under the Act can be claimed only in accordance with the provisions of the Act, the Rules and the Regulations, cannot be disputed. When the Act, and the Rules and Regulations made thereunder, do not confer on an insured employee the sickness benefit after retirement, the same cannot be claimed on the strength of Regulation 4, for, the said Regulation only provides for the time from which the benefits under the Act can be claimed. The payment of contribution upto the date of superannuation is a statutory requirement and merely for the reason that contribution has been paid upto the date of superannuation, it cannot be contended that the benefits can be claimed otherwise than in accordance with the provisions of the Act, Rules and the

Regulations. The decision of the Insurance Court that the respondent is entitled to sickness benefit for the period from 7.3.2005 to 12.11.2005 is, therefore, unsustainable.

In the result, the appeal is allowed and the impugned order is set aside. I.C.No.91 of 2005 before the Employees' Insurance Court, Kozhikode stands dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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