IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

Ins.APP.No. 12 of 2013 ()

EIC (APPEAL) 1/2010 of E.MPLOYEES' INSURANCE COURT, KOZHIKODE

APPELLANT(S)/APPELLANT:

P.V. VALSALAN, AGED 59 YEARS,
S/O. STANLY, NEAR CHUNGAM, P.O.PAPPINISSERI
KANNUR DISTRICT.

BY ADVS.SRI.K.C.SANTHOSHKUMAR
SMT.K.K.CHANDRALEKHA

RESPONDENT/RESPONDENT :

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION
THRISSUR-680 020.

BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Ins.Appeal No.12 of 2013

Dated 13th February, 2015.

J U D G M E N T

The decision in E.I.C.(Appeal) No.1 of 2010 on the file of the Employees Insurance Court, Kozhikode is under challenge in this appeal. The appellant in the proceedings has come up in this appeal.

2. The appellant was a weaver by profession. He was an employee in an establishment covered under the Employees' State Insurance Act (hereinafter referred to as 'the Act' for short). On 10.3.2003, he sustained injury in an accident arising out of and in the course of his employment. The Corporation accepted the injury sustained by the appellant as an 'employment injury' and referred him to the Medical Board for assessment of the loss of earning capacity. The Medical Board assessed the loss of earning capacity of the appellant at 5%. Aggrieved by the said assessment, the appellant approached the Insurance Court in E.I.C.(A)No.1 of 2004 and the Insurance Court directed the Employees State Insurance

Corporation (hereinafter referred to as 'the Corporation', for short) to arrange for a fresh assessment of the loss of earning capacity of the appellant by the Medical Board. Consequent on the direction issued by the Insurance Court, the appellant was subjected to yet another medical examination by the Medical Board for assessment of his loss of earning capacity. Even in the second medical examination, the Medical Board had come to the conclusion that the loss of earning capacity of the appellant is only 5%. E.I.C.(Appeal) No.1 of 2010 was filed by the appellant challenging the said assessment of the Medical Board. The Insurance Court, on an appraisal of the materials on record, found that the assessment made by the Medical Board is in order and consequently, dismissed the appeal as per the order impugned in this appeal.

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

4. Ext.P1 is the disability certificate issued to the appellant by PW1, a former Professor of Medical College, Calicut. In Ext.P1, PW1 has certified that the appellant is suffering from 23% permanent disability. Relying on Ext.P1, the

learned counsel for the appellant contended that the decision of the Medical Board in assessing the percentage of loss of earning capacity of the appellant at 5% is illegal and unsustainable.

5. Ext.D1 is the certificate of the Medical Board, assessing the loss of earning capacity of the appellant at 5%. DW1, who is an Orthopedic Surgeon, was one of the doctors in the Medical Board, which issued Ext.D1 certificate in respect of the loss of earning capacity of the appellant. DW1 has deposed before the Insurance Court that there was no deformity for the appellant at the time of examination by the Medical Board. He stated that the appellant was able to move towards both sides equally. He also stated that the manner of walking of the appellant was normal. He further stated that the forward flexion fingertip of the appellant reaches below the middle of the leg. He further deposed that though the appellant complained of pain on the shoulder, there was no disability noticed at his shoulder. DW1 was not cross examined by the appellant and his testimony, therefore, stands unchallenged.

6. The Insurance Court found that the Medical Board

has considered all the relevant aspects in the matter of assessing the loss of earning capacity of the appellant. The Insurance Court noticed that Ext.D1 certificate was issued after perusing Ext.P1 certificate issued by PW1 as well. The argument advanced by the appellant on the strength of Ext.P1 certificate was repelled by the Insurance Court holding that what was assessed by PW1 in Ext.P1 was the disability of the appellant whereas what was assessed by the Medical Board in Ext.D1 is the percentage of loss of earning capacity of the appellant. The Insurance Court had also taken note of the fact that the Medical Board is a body consisting of expert doctors and therefore, their conclusions cannot be easily brushed aside. In the light of the unchallenged evidence of DW1, I do not find any reason to interfere with the decision of the Insurance Court. There is therefore, no merit in the appeal and the appeal is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)