

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Ins.APP.No. 2 of 2011 ()

**AGAINST THE ORDER IN EIC 10/2006 of EMPLOYEES INSURANCE COURT,
KOZHIKODE DATED 11-03-2010**

APPELLANT/RESPONDENT:

**THE REGIONAL DIRECTOR,
EMPLOYEES SATE INSURANCE CORPORATION, THRISSUR.**

BY ADV. SRI.T.V.AJAYAKUMAR

RESPONDENT(S)/APPLICANT:

**K.V.RASHEED, S/O.KUNHOKKU,
MELEDATH HOUSE, PANTHEERANKAVU, CALICUT-673310.**

**BY ADV. SRI.K.M.FIROZ
BY ADV. SMT.M.SHAJNA**

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 11-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

P.B.SURESH KUMAR, J.

INS.APPEAL No.2 of 2011

Dated this the 11th day of February, 2015

JUDGMENT

The decision in E.I.C.No.10/2006 on the file of the Employees' Insurance Court, Kozhikode is under challenge in this appeal. The Regional Director of the Employees' State Insurance Corporation (hereinafter referred to as 'the Corporation' for short) is the appellant.

2. The respondent is the applicant in the proceedings before the Employees Insurance Court. He is an employee of an establishment covered under the Employees' State Insurance Act (hereinafter referred to as 'the Act' for short). On 07.04.2005, at about 9.15 a.m., the respondent sustained injuries in a motor accident. According to him, he is a head-load worker engaged by his employer for delivery of goods and articles and on 07.04.2005, while he was going to Kallai after delivering a few pump sets at a site of his employer at Valiyaparambu Kunnu in a bike, he sustained injuries in the accident. It is his case that since the accident occurred in the course of the employment, he

is entitled to disablement benefits for the injuries sustained by him. He has, therefore, sought directions to the Corporation to refer him to a Medical Board to assess the disability and loss of earning capacity and to disburse him the consequent benefits.

3. The Corporation contested the application contending mainly that the respondent sustained injuries while going to his place of employment from his residential house and he is therefore not entitled to disablement benefits under the Act.

4. The respondent gave evidence in the proceedings as PW1. He has also produced Exts.P1 to P6 documents. Exts.D1 to D3 are the documents produced by the Corporation.

5. The Insurance Court, on an evaluation of the materials, found that the accident is one arising out of and in the course of employment of the respondent and he is therefore, entitled to temporary disablement benefits for the period of absence from duty on account of the injuries. Consequently, the Insurance Court directed the Corporation to refer the respondent to the Medical Board for determining the percentage of disability and disburse all eligible benefits to him. The Corporation is aggrieved by the said decision of the Insurance

Court and hence this appeal.

6. Heard the learned counsel for the appellant and the learned counsel for the respondent.

7. The learned counsel for the appellant, relying on Ext.D2, the first information report in the case registered in connection with the accident and the evidence rendered by the respondent as PW1, contended that the accident occurred while the respondent was going from his home to the place of work and he is therefore not entitled to disablement benefit for the injuries. He relied on the decision of the Apex Court in **Regional Director, E.S.I. Corporation and Another Vs. Francis De Costa and another [1996 (6) SCC 1]**, in support of his contention.

8. Section 2 (8) of the Act, which defines “employment injury” reads thus:

“employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India”.

Going by Section 2(8) of the Act, only injuries sustained to an employee caused by accident arising out of and in the course of his employment can be treated as employment injury. In **Francis De' Costa's case**(supra), the Apex Court considered the case of an employee who sustained injuries in a motor accident on his way to the place of employment and held that unless it can be said that his employment began as soon as he set out for factory from his house, it cannot be said that the injury was caused by accident arising out of and in the course of employment.

Paragraph 5 of the judgment reads thus:

“That the first respondent has suffered a personal injury is not in dispute. The only dispute is whether the injury will amount to “employment injury” within the meaning of Section 2(8), so as to enable the respondent to claim benefit under the Act. The definition given to “employment injury” in sub-section (8) of Section 2 envisages a personal injury to an employee caused by an accident or an occupational disease “arising out of and in the course of his employment”. Therefore, the employee, in order to succeed in this case, will have to prove that the injury he had suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act. It does not appear that the injury suffered by the employee in the instant case arose in any way out of his employment. The injury was sustained while the employee was on his way to the factory

where he was employed. The accident took place one kilometre away from the place of employment. Unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident "arising out of ... his employment". A road accident may happen anywhere at any time. But such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something incidental to his employment.

True, in the case dealt with by the Apex Court, the fact that the employee concerned was going to his place of employment from his house was admitted. In the instant case, the parties are in dispute as to whether the respondent was going to the place of employment from his house or not when he sustained injuries. The stand taken by the respondent in the application before the Insurance Court was that on the relevant day the respondent started work at 8.00 a.m. and the accident took place while he was proceeding to Kallai after delivering a few articles at a work site as directed by his employer. On the other hand, the case pleaded by the Corporation is that the respondent was on his way from his house to his place of employment at the time of accident. The respondent has placed reliance on Ext.D1 to

substantiate his contention. Ext.D1 is the accident report submitted by the employer of the respondent. In Ext.D1, it is stated by the Branch Manager of the establishment of the respondent that the respondent sustained injuries in the accident occurred while he was engaged in the material supply of the establishment. Ext.D2 is the first information statement given by the respondent to the police in the case registered in connection with the accident. In Ext.D2 first information statement, it is stated by the applicant as follows:

“`L¢ kÍ}qĒLvV f]qO¾]Ú¤ fLuU ID òs¾LeV fLoy]`OĐfV. `L¢ SWLu]S`LaV Rrp]cVSWLp]¤ Rzcv SsL;cV v;`rLeV. 07/04/2005 f}pf] qLv]Rs kÍ}qĒLv]¤ j]ĐOU SWLu]S`LSŸ`V S^Ls]`V vqOĐf]jLp] AU^]fVXL¢ KLa]\Ÿ]qOĐfLp KL-11-U-6519 jÒ; SoLSŸL; R Ry`]t]R£ k]Đ]¤ CqOĐV pLNf R\pÅO vqRv WLS¾V yOoL; 9¼ oe] yop¾V RRWòLs¾Oç zLq}yV C;]\Ÿ o]sæ]R£ oO¢vwU l¾]pSŌL¥ If]`q WOĐ¾V kLsU nLY¾O j]ĐOU kÍ}qĒLvV nLYS¾`V Af]SvYfp]sOU AèÈoLpOU KLa]\ŸO vĐfLp KC-11-L-2097 jÒ; YOcVyV KLSŸLr]f KqO o]j] SsLr]Rp or]WaĐV `L¢ yµq]\Ÿ SoLSŸL; R Ry`]t]R£ vsfOnLYU Ca]\Ÿf]¤ `L¢ SoLSŸL; R Ry`]¥ yz]fU SrLc]¤ Rfr]\ŸO v}eO.”

The respondent though stated in the proof affidavit filed in the

proceedings that the accident occurred while he was going to Kallai to take delivery of certain articles as instructed by his employer, in cross-examination, it was admitted by him that the accident occurred on the road between his residence and the place of employment. The relevant portion of the deposition in the cross-examination reads thus:.

“[j]“V AkWaU yUnv]\ŷfV v}a]jOU RfLu]α òLkj³/₄]jOU Cap] sOç SrLc]α v\ŷLeV.”

He has also admitted in cross-examination that he has given a statement to the police that the accident occurred while he was going to his office from his house. The relevant portion of the deposition reads thus:

“Ext. P2 α v}Ŷ]α j]ÐOU KLI}y]Ss“V vqOÐ vu] motor vLzj AkWaoO°Lp] IÐO kr´fV wq]pLeV.”

Ext.D2 and the evidence tendered by the respondent would certainly cast doubt on the genuineness of the case set up by the respondent before the Insurance Court that the accident is one arising out of and in the course of employment. However, the Insurance Court took the view that there is no reason for the employer to give an incorrect accident report to the Corporation

and that the case of the respondent is genuine. Be that as it may, Section 82 of the Act deals with the power of this Court to interfere with the decisions taken by the Insurance Court. Section 82 reads thus:

82. Appeal--

- (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.
- (2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.
- (3) The period of limitation for an appeal under this section shall be sixty days.
- (4) The provisions of sections 5 and 12 of the [Limitation Act, 1963 (36 of 1963), shall apply to appeals under this section.

Even though I am not in agreement with the factual conclusion arrived at by the Insurance Court that the respondent sustained injuries in an accident arising out of and in the course of his employment, in the light of the limited jurisdiction conferred on this Court as indicated in Section 82 of the Act, I am unable to interfere with the impugned decision of the Insurance Court, for, there is no substantial question of law involved in the matter.

In the result, the appeal is dismissed.

JV

**P.B. SURESH KUMAR,
JUDGE**