

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

Ins.APP.No. 18 of 2011

**ORDER DATED 22-02-2010 IN IC 78/2007 OF EMPLOYEES' INSURANCE COURT,
PALAKKAD**
.....

APPELLANT(S)/APPLICANT:

**A.P.ANTONY, AGED 47 YEARS,
S/O. PYLAPPAN, AYNIKKAL HOUSE, ALAGAPPA NAGAR,
THRISSUR DISTRICT.**

**BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA**

RESPONDENT(S)/OPPOSITE PARTY:

**EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY ITS REGIONAL DIRECTOR,
NORTH SWARAJ ROUND, THRISSUR - 680 020.**

BY ADV. SRI.T.VAJAYAKUMAR

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

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Insurance Appeal No.18 of 2011.
= = = = =

Dated this the 12th day of March, 2015.

J U D G M E N T

The appellant is an employee insured under the Employees' State Insurance Act, hereinafter referred to as 'the Act' for short. He sustained an injury on his neck on 17.10.1993. The appellant though claimed permanent disablement benefit for the said injury, the Employees Insurance Corporation, hereinafter referred to as 'the Corporation' for short, had turned down his claim. The appellant challenged the decision of the Corporation in rejecting his claim for permanent disablement benefit before the Insurance Court and as per Ext.P2 order, the Insurance Court directed the Corporation to extend permanent disablement benefit to the appellant in relation to the injury sustained by him on 17.10.1993. Pursuant to the decision of the Insurance Court, the loss of earning capacity of the appellant was assessed at 10% and he is being extended permanent disablement benefit on that

basis in relation to the said injury. According to the appellant, the injury sustained by him on 17.10.1993 relapsed after a few years in the form of cervical spondylosis and though he was entitled to temporary disablement benefits for the periods of abstention from work on account of cervical spondylosis, he was granted only sickness benefit and extended sickness benefit in respect of the said periods. He has, therefore, instituted I.C.No.78 of 2007 before the Insurance Court, claiming a declaration that the onset of the cervical spondylosis suffered by him is a result of the employment injury sustained by him on 17.10.1993. He also sought a direction to the Corporation to extend temporary disablement benefit at the current rate for the certified periods of abstention from work, after deducting the sickness benefit and extended sickness benefit disbursed to him.

2. The Corporation objected the claim of the appellant contending that the cervical spondylosis suffered by the appellant has nothing to do with the employment injury sustained by the appellant on 17.10.1993; that the appellant, who is receiving permanent disablement benefit in respect of the employment injury, cannot claim temporary disablement benefit for the periods of abstention from work on account of the relapse of the

very same injury and that at any rate, in so far as the appellant had received sickness benefit and extended sickness benefit for the certified periods of abstention from work on account of the subsequent ailment, he is not entitled to temporary disablement benefit for the said periods.

3. The Insurance Court did not consider the question as to whether the onset of the cervical spondylosis suffered by the appellant is as a result of the employment injury sustained by the him on 17.10.1993 or not. Instead, the Insurance Court rejected the claim of the appellant holding that once the claim for permanent disablement benefit is settled and accepted by the claimant, he would be estopped from claiming temporary disablement benefit for the period during which he was in receipt of permanent disablement benefit. The appellant is aggrieved by the said decision of the Insurance Court and hence this appeal.

4. A claim for permanent or temporary disablement benefit arises only when the insured employee suffers an employment injury. In the instant case, the appellant suffered an employment injury on 17.10.1993. It is beyond dispute that the appellant has been granted permanent disablement benefit in respect of the said injury and he is in receipt of the same. The appellant has no

case that he has sustained any other employment injury thereafter to claim temporary disablement benefit. On the other hand, the case of the appellant is that the cervical spondylosis suffered by him is nothing but a relapse of the employment injury sustained by him on 17.10.1993. As such, the primary issue to be considered is as to whether the cervical spondylosis suffered by the appellant is the relapse of the employment injury sustained by him on 17.10.1993. If only it is found that the cervical spondylosis suffered by the appellant is the relapse of the employment injury suffered by the appellant on 17.10.1993, the question as to whether the appellant is entitled to claim temporary disablement benefit for the periods of abstention from work in connection with the said injury arises. The Insurance Court has not considered the question whether the cervical spondylosis suffered by the appellant is the relapse of the employment injury sustained by him on 17.10.1993 or not. The Insurance Court has also not considered the question whether the appellant is entitled to receive temporary disablement benefits for the very same periods for which he had already claimed sickness benefit and extended sickness benefit based on the medical certificates issued by the concerned authorities. In the

circumstances, I am of the view that the matter has to be remitted to the Insurance Court for fresh disposal.

5. In the result, the impugned order is set aside and the Insurance Court is directed to consider the issue whether the cervical spondylosis suffered by the appellant was the relapse of the employment injury sustained by him on 17.10.1993, after affording an opportunity to the appellant to adduce evidence. If this issue is found in favour of the appellant, the Insurance Court shall also consider the question whether the appellant, who is receiving permanent disablement benefit in respect of an employment injury, is entitled to claim temporary disablement benefit for the periods of abstention from work on account of the relapse of the very same injury, especially since the appellant had received sickness benefit and extended sickness benefit in respect of the said periods.

The appeal is disposed of as above.

**Sd/-P.B.SURESH KUMAR,
JUDGE.**

Kvs/-

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PA TO JUDGE.