

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

Ins.APP.No. 57 of 2011 ()

IC 3/2009 of EMPLOYEES' INSURANCE COURT, PALAKKAD

APPELLANT/RESPONDENT :

E.S.I.CORPORATION,
PANCHADEEP BHAVAN, NORTH SWARAJ ROUND, THRISSUR-20

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENT/APPELLANT :

LEELA UNNIKRISHNAN
AGED 40, W/O.UNNIKRISHNAN, VADAKKEVALLATH HOUSE P.O
ANALLOOR, CHALAKKUDY, THRISSUR

BY ADV. SANTHOSH .P. PODUVAL
BY ADV. SMT.R.RAJITHA
BY ADV. SRI.C.B.MUKUNDAN (THRISSUR)

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 18-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

Insurance Appeal No.57 of 2011

Dated 18th February, 2015.

J U D G M E N T

The decision in I.C.No.3 of 2009 on the file of the Employees Insurance Court, Palakkad is under challenge in this appeal. The Employees State Insurance Corporation (hereinafter referred to as 'the Corporation' for short) is the appellant.

2. The respondent was an employee in an establishment covered under the Employees' State Insurance Act (hereinafter referred to as 'the Act' for short). On 13.2.2008, she sustained injury in an accident arising out of and in the course of her employment and as a result, she lost four fingers of her right hand. The Corporation accepted the injury sustained by the respondent as an 'employment injury' and referred her to the Medical Board for assessment of the loss of earning capacity. The Medical Board assessed the loss of earning capacity of the respondent at 50 per cent. Aggrieved

by the said assessment, the respondent approached the Insurance Court in the proceedings referred to above. The Insurance Court, on an appraisal of the materials on record and the law on the point, found that the loss of earning capacity suffered by the respondent was 100 per cent and directed the Corporation to disburse her the consequential benefits. The corporation is aggrieved by the said decision of the Insurance Court.

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

4. The learned counsel for the appellant contended that since the injury sustained by the respondent is an injury included in the list of injuries mentioned in Part II of the Second Schedule of the Act for which the percentage of loss of earning capacity is prescribed statutorily at 50 per cent, the Insurance Court was not justified in enhancing the said percentage of loss of earning capacity. According to the learned counsel, as far as employees who sustained injuries specified in the Second Schedule are concerned, permanent total disablement could be found only when the injury is an

injury specified in Part I of the Second Schedule or when the employee suffers a combination of injuries specified in Part II of the Second Schedule where the aggregate percentage of the loss of earning capacity as specified therein against those injuries amounts to 100 per cent or more. The said argument is raised based on the proviso to Section 2 (15B) of the Act.

5. Section 2(15B) of the Act which defines permanent total disablement reads thus:

“2(15B) “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 resulting 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;”

As is evident from the definition, permanent total disablement is disablement of a permanent nature which incapacitates the employee for all work which he was capable of performing at the time of the accident resulting in such disablement. In other words, the question as to whether the injury sustained by an

employee would amount to permanent total disablement is a question to be decided on a consideration of the issue as to whether the disablement incapacitates the employee for all work he was capable of performing at the time of accident. The provision in the proviso to Section 2(15B) of the Act that permanent total disablement shall be deemed to result from every injury specified in Part I of Second Schedule or from any combination of injuries as specified in Part II thereof where the aggregate percentage of the loss of earning capacity as specified in Part II against those injuries amounts to 100 per cent or more, is only an exception to the provision contained in Section 2(15B) of the Act. In other words, in the case of an employee who sustained an injury specified in Part I of the Second Schedule or any combination of injuries specified in Part II of the Second Schedule where the aggregate percentage of the loss of earning capacity as specified in Part II against those injuries amounts to 100 per cent or more, it can be deemed that the person concerned has sustained permanent total disablement. But, that does not mean that merely for the reason that 100 per cent loss of earning capacity is not

prescribed in the Second Schedule for the injury or for the combination of injuries sustained by the employee, it cannot be contended that the employee has not sustained permanent total disablement or has not suffered 100 per cent loss of earning capacity. If it is established on facts that the employee concerned has sustained disablement of a permanent nature as incapacitates him for all work which he was capable of performing at the time of the accident resulting in the disablement, the Insurance Court can certainly hold that the employee is suffering from 100 per cent loss of earning capacity. In **E.S.I. Corporation v. Gopi** (1995 (1) KLT 482) this Court has held that it is not necessary that the employment injury should render the employee totally unfit to do any work whatsoever for holding that the employee is suffering from permanent total disablement and it is enough if it is established that the employee is incapacitated from doing all the work which he was capable of performing at the time of accident. The relevant extract of the said judgment reads thus:

“11. The legal position, according to us, is that it is not necessary that the employment injury should render the employee totally unfit to do any work whatsoever for holding that he is suffering

permanent total disablement as understood in the E.I. Act. It is enough that he was incapacitated from doing the work which he was capable of doing at the time of accident. In other words it is not the look out of the Insurance Court to find out whether he can be trained to do some other work. If he can do the work which he was performing just before the accident in a reduced form the result is only permanent partial disablement. If he cannot do that work at all then the consequence is total permanent disablement.”

6. In the instant case, on facts, the Insurance Court found that on account of the disablement, the respondent is incapacitated from performing all work which she was capable of performing at the time of accident. The view of the Insurance Court that the respondent has suffered 100 per cent loss of earning capacity is, therefore, in order.

There is, therefore, no merit in the appeal and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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