

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. 70 of 2010 ()

AGAINST THE ORDER IN EIC 3/2007 of E.I.COURT,
KOZHIKODE, DATED 27-08-2009.

APPELLANT/RESPONDENT:-

THE REGIONAL DIRECTOR,
ESI CORPORATION,
REGIONAL OFFICE,
ROUND NORTH
THRISSUR.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENT/APPLICANT:-

C.P.LEELA,
VELUTHEDATHU PARAMBA, NALLUR ANGADI, POST FEROKE
KOZHIKODE, PIN-673 631.

BY ADV. SRI.P.V.KUNHIKRISHNAN

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

Kvs/-

P.B.SURESH KUMAR, J.

= = = = =
Insurance Appeal No.70 of 2010.
= = = = =

Dated this the 18th day of February, 2015.

J U D G M E N T

The decision of the Employees' Insurance Court, Kozhikode in E.I.C.No.3 of 2007 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 was a worker employed in Commonwealth Tile Factory at Feroke, Calicut. She was working in the canteen of the Tile Factory and was an insured employee under the Employees State Insurance Scheme. On 31.12.2001, she suffered severe low backache and was taken to ESI Hospital. According to her, the severe low backache suffered by her was due to the heavy work load and over strain in the work place. Though, she was under prolonged treatment, she was paid sickness benefits only for 91 days. She, therefore, claimed sickness benefits

for a period of 309 days before the Insurance Court.

3. The Corporation objected to the claim made by the respondent, contending that as per the provisions of the Act, the Rules and the Regulations made thereunder, she is entitled to the sickness benefit only for 91 days. According to the Corporation, the disease of the respondent is not one included in the list of diseases in respect of which the Corporation is empowered to provide extended sickness benefits, as per its resolution dated 5.12.1999.

4. The Insurance Court, on an evaluation of the materials on record, found that the respondent was under prolonged treatment for the injuries sustained by her and therefore, denying her sickness benefits is unreasonable and arbitrary. Accordingly, the appellant was directed to extend to the respondent the extended sickness benefits for a period of 309 days. The Corporation is aggrieved by the decision of the Insurance Court.

5. It is beyond dispute that the respondent was under certified incapacity from 31.12.2001 onwards on

account of the diagnosis of low backache. It is also beyond dispute that the respondent was admitted in ESI Hospital on various occasions for the treatment of the above disease. It is further beyond dispute that the respondent was disbursed the sickness benefits for a period of 91 days during the period from 1.1.2002 to 23.4.2002. The Corporation has not considered the case of the respondent for payment of extended sickness benefit, for, the ailment of the respondent is not an ailment over which the Corporation is empowered to relax the norms and extend the extended sickness benefits. The respondent was admitted for treatment in the ESI Hospital, Kozhikode from 16.4.2002 to 19.4.2002 and from 8.5.2002 to 16.5.2002. According to the Corporation, the extended sickness benefits can be granted only to those employees who are suffering from certain long term and malignant diseases, the list of which are specified by the Corporation. The decision of the Corporation relied on in the objection filed in the application reads thus:

"In addition to the above list, Director General/Medical Commissioner are authorised to sanction Extended Sickness Benefit for a maximum period up to 730 days in cases of rare disease or under special circumstances which have not been included in the above list, depending on the merit of each case on recommendations of RDMC/AMO or other authorised officers running the medical scheme."

The said decision of the Corporation indicates beyond doubt that the Medical Commissioner of the Corporation is empowered to sanction Extended Sickness Benefits for a maximum period upto 730 days in cases of rare diseases or under special circumstances which have not been included in the above list, depending on the merit of each case. In so far as the respondent was not eligible for extended medical benefits in accordance with the provisions of the Act, the Rules and the Regulations made thereunder, the Insurance Court was not justified in directing the respondent to grant extended medical benefits to the respondent. The Insurance Court, in such cases, can only direct the Medical Commissioner of the Corporation to consider the case of the employee concerned for sanction of extended sickness

benefits.

6. In the result, the impugned order is set aside and the E.I.C.No.3 of 2007 is disposed of directing the Medical Commissioner to consider the case of the respondent for extended sickness benefits. This shall be done by the Medical Commissioner within a period of 90 days from today.

The appeal is disposed of as above.

Sd/-
P.B.SURESH KUMAR,
(Judge)

Kvs/-

// true copy //

PA TO JUDGE.