

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

Ins.APP.No. 74 of 2010 ()

IC. NO.121/2008 OF EMPLOYEES' INSURANCE COURT, PALAKKAD.

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APPELLANT/OPPOSITE PARTY:

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

BY ADV. SRI.P.SANKARANKUTTY NAIR.

RESPONDENT/APPLICANT:

**SHRI K.VELLINGIRI, INS. NO.54-740472,
GANESAPURAM, P.O. PAMPAMPALLAM,
PIN-678 621, PALAKKAD DISTRICT.**

**BY ADVS. SRI.SHINU J.PILLAI,
SMT.S.SUJA,
SMT.SIBY.P.JOSE.**

**THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD
ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

C.R.

P.B.SURESH KUMAR, J.

Ins.Appeal.No.74 of 2010

Dated this the 3rd day of August, 2015

JUDGMENT

The decision of the Employees' Insurance Court, Palakkad in I.C No.121 of 2008 is under challenge in this appeal. The Employees' State Insurance Corporation ('the Corporation' for short) is the appellant.

2. The insurance case referred to above was instituted by the respondent. He was employed in a factory run by M/s.Madras Spinners. He is an insured employee under the Employees' State Insurance Act, 1948 ('the Act' for short) since 27.8.1966. The employer of the respondent closed down its factory during November 2002. The case of the respondent is that he suffered Chronic Obstructive Lung Disease after the closure of the factory. According to him, since the said disease is an occupational disease, he is entitled to medical benefits as also disablement benefits.

3. The application of the respondent was resisted by the Corporation. As far as the claim for medical benefits is concerned, the contention of the Corporation was that only retired insured employees are entitled to such benefits and since the factory where the respondent was working had been closed down before he attained the age of superannuation, he cannot be treated as a retired insured employee. As far as the claim for disablement benefits is concerned, the contention of the Corporation was that the disease of the respondent is not an occupational disease.

4. The Insurance Court, on a consideration of the materials on record, came to the conclusion that the respondent is entitled to medical benefits with effect from the date on which he made payment for the same as provided for under Rule 61 of the Employees' State Insurance (Central) Rules ('the Central Rules' for short). As regards the disablement benefits, the Insurance Court came to the conclusion that the claim for disablement benefits raised by the respondent is liable to be referred to the Special Medical Board. Consequential orders were also issued by the Insurance Court. The Corporation is aggrieved

by the said decision of the Insurance Court.

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

6. It is an admitted fact that the respondent had attained the age of superannuation when he raised the claims for medical and disablement benefits. Rule 61 of the Central Rules dealing with medical benefits to persons who have attained the age of superannuation reads thus:

"61. Medical benefits to retired insured persons- An insured person who leaves the insurable employment on attaining the age of superannuation, or retires under a Voluntary Retirement Scheme or takes premature retirement after being insured for not less than five years, shall be eligible to receive medical benefits for himself and his spouse at the scale prescribed under the Act and the regulations made thereunder, subject to-

(i) the production of proof of his superannuation or retirement under a Voluntary Retirement Scheme or as the case may be, premature retirement, and having been in the insurable employment for a minimum of five years to the satisfaction of such officer as may be authorized by the Corporation; and

ii) the payment of contribution at the rate of ten rupees per month in lump sum for one year at a time in advance to the concerned office of the Corporation in the manner prescribed by it."

Rule 61 enables an insured employee who leaves the insured employment on attaining the age of superannuation or retires

under a voluntary retirement scheme or takes premature retirement after having rendered not less than 5 years service, to claim medical benefits for himself and his spouse on production of proof of superannuation and payment of contribution at the rate of Rs.10/- per month in lump sum for one year. As noticed above, the stand of the Corporation is that though the respondent is an insured employee from 27.8.1966, he cannot be treated as a retired insured person for the purpose of extending the benefits provided under Rule 61 of the Central Rules, as the factory where he was working had been closed down before the date of his superannuation. The question therefore is, as to whether insured employees who have attained the age of superannuation, after being insured for not less than five years, can be denied the medical benefits as provided for in Rule 61 of the Central Rules, merely for the reason that the factory/establishment where they were working was not functioning as on the date of their superannuation. Rule 61 of the Central Rules needs to be interpreted to answer the said question. The Act being a beneficial piece of legislation intended to provide benefits to employees in case of sickness, employment

injury etc., the provisions therein has to be construed in such a manner as to fructify the legislative intention underlying its enactment. A close reading of Rule 61 indicates that the purpose of the rule is to extend medical benefits to all who ceased to be employees, after being insured for not less than five years. True, the class of persons who ceased to be employees on account of the closure of the establishment/factory after being insured for not less than five years are omitted to be included in Rule 61. But, merely for the reason that the said class of persons are omitted to be included in the rule, it cannot be said that a legislature intended to exclude the said class of persons from the purview of Rule 61, especially when persons who take voluntary retirement and persons who take premature retirement, after being insured for not less than five years, are extended the benefits of the rule. The omission, according to me, is only a *casus omissus*. True, a statute being an edict of the legislature, the court cannot read anything into a statutory provision which is plain and unambiguous. But, it is trite that a *casus omissus* can be supplied by the court in the case of a clear necessity when reason for it is found in the four corners of the statute itself,

especially in situations where 'not doing so' would become the words used in the statute absurd. [**See Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.** [(2008)4 SCC 755]. As far as the present case is concerned, the fact that the respondent had been an insured employee for more than five years is not in dispute. In that view of the matter, the stand taken by the Employees' Insurance Court as regards the claim raised by the respondent for medical benefits is perfectly in order and does not call for interference.

7. Coming to the claim of the respondent for disablement benefits, as indicated above, the direction is only to refer his case to the Special Medical Board. Regulation 74 of the Employees' State Insurance (General) Regulations reads thus:

“Occupational disease- Any question whether an employment injury is caused by an occupational disease specified in the Third Schedule to the Act shall be determined by a Special Medical Board which shall examine the disabled person and send a report in such form as may be prescribed by the Director-General in this behalf to the appropriate Regional Office stating:-

(a) whether the disabled person is suffering from one or more of the diseases specified in the said Schedule;

(b) whether the relevant disease has resulted in permanent disablement;

(c) whether the extent of loss of earning capacity can be assessed provisionally or finally;

(d) the assessment of the proportion of loss of earning capacity and in case of provisional assessment, the period for which such assessment shall hold good.

All assessments which are provisional may be referred to the Special Medical Board for review by the appropriate Office not later than the end of the period taken into account by the provisional assessment. Any decision of the Special Medical Board may be reviewed by it at any time. The disabled person shall be informed in writing of the decision of the Special Medical Board by the appropriate Regional Office and the benefit, if any, to which the insured person shall be entitled."

In the light of the specific provisions contained in Regulation 74, all questions including the question as to whether the disease suffered by an employee is an occupational disease or not are matters to be decided by the Special Medical Board. True, in the impugned order, the Insurance Court has observed that the documents produced by the respondent indicate that he is suffering from an occupational disease. According to me, the said observation of the Insurance Court cannot be treated as a final decision on the issue and the said observation will not place any fetter on the Medical Board to take an independent decision on the question as to whether the disease of the respondent is an

occupational disease or not.

In the result, there is no merit in the appeal and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

smm