

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

MFA.No. 59 of 2006 ()

**AGAINST THE ORDER IN WCC 24/1997 OF COMMISSIONER FOR WORKMEN'S
COMPENSATION (DEPUTY LABOUR COMMISSIONER),THRISSUR DATED 18-11-2005**

APPELLANT/2ND OPPOSITE PARTY IN THE WC CASE:

**UNITED INDIA INSURANCE CO.LTD.,
ALAPPUZHA, REPRESENTED BY THE ADMINISTRATIVE, OFFICER
UNITED INDIA INSURANCE CO.LTD., REGIONAL OFFICE
SARANYA, HOSPITAL ROAD, KOCHI 11.**

BY ADV. SRI.A.R.GEORGE

RESPONDENTS/APPLICANTS & 1ST OPPOSITE PARTY IN THE WC CASE.:

- 1. SELVI, W/O.LATE THANKARAJ, KARADI
DIVISION, MANALARO ESTATE, PADAGIRI P.O
NELLIAMPATHY, CHITTUR TALUK, PALAKKAD.**
- 2. PARVATHY (MINOR) D/O. LATE THANKARAJ,
DO. DO.**
- 3. JAYAKUMAR (MINOR), S/O.LATE THANKARAJ,
DO. DO.**
- 4. JAYASUDHA, D/O.LATE THANKARAJ, DO. DO.
(MINOR APPLICANTS 2 TO 4 ARE REPRESENTED BY
THEIR MOTHER IST APPLICANT-SELVI).**
- 5. MANAGER,
MANALARO ESTATE, PADAGIRI P.O., NELLIYAMPATHY
CHITTUR TALUK.**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

SHG/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.F.A.(WC Act) No.59 of 2006

Dated this the 7th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

The appellant Insurance Company is aggrieved by the order passed by the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Thrissur.

2. We heard learned counsel for the appellant Sri. A.R. George. In spite of service of notice to the respondents there is no appearance either for the legal heirs of the workman or for the employer 5th respondent.

3. The respondents 1 to 4 are the applicants before the Commissioner. It was filed under Section 22 of the Workmen's Compensation Act for claiming compensation for the fatal accident caused to Thankaraj. The wife is the first applicant and the others are the minor children. It was contended that on 21.10.1996 he was taken to the Manalaro Estate Hospital due to severe chest pain and while undergoing treatment the pain increased and he was

admitted in the hospital on 25.10.1996 but he died at 10.30. It was alleged that it was due to the stress caused in the work done by him the death occurred. It was also claimed that the deceased was having monthly wages of Rs.2,000/- and was aged 38 at the time of accident. It was admitted by the first opposite party employer that he was a permanent employee and had worked till 21.10.1996. It was also their contention that he had not met with any accident arising out of the course of employment and on 25.10.1996 at 12 noon his body was brought to the Estate Hospital by some of his colleagues. The second opposite party viz. the appellant totally denied the claims.

4. Before the Commissioner the second applicant was examined as AW1 and Exts.A1 to A3 were marked. Another witness was examined as AW2. MW1 was examined for the employer and Exts.X1 and X2 have been marked.

5. Sri. A.R. George learned counsel for the appellant submitted that the view taken by the Commissioner that the death has arisen out of and in the course of employment

cannot be sustained. It is submitted that the evidence by way of hospital records will show that he was brought dead to the hospital on 25.10.1996 (Ext.X2). He also referred to the relevant page of Attendance Register Ext.X1 to show that he had worked only till 21.10.1996 in October and after 21st his absence is marked. It is therefore submitted that the oral evidence ought not have been accepted by the Commissioner, as the cause of death and the accident if any should have been supported by medical evidence.

6. On issue Nos.1 & 2 after considering the oral evidence of the second applicant and a co-worker AW2 a finding was rendered to the effect that the deceased had sustained an accident on 21.10.1996 . According to us, in the light of the fact that he was brought dead to the hospital on 25.10.1996 various aspects concerning the events from 21.10.1996 to 25.10.1996 have to be analysed. The point is whether he was suffering from any ailment due to the stress in the job which he was doing on 21.10.1996. The said aspect has not been properly analysed by the authority.

The medical records had to be properly verified. Such a finding being absent, this court can interfere.

7. Since nobody appears for the respondents, the only option is to send back the matter for fresh consideration. Therefore, we allow the appeal and set aside the order and the case is send back for consideration afresh to the Industrial Tribunal concerned, which is having jurisdiction. It is seen that the appellant has deposited the amount before the Commissioner and depending upon the outcome of the order to be passed it will be disbursed to the party concerned. No Costs.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/