

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

MFA.No. 104 of 2006 (A)

AGAINST THE ORDER/JUDGMENT IN WCC 95/2002 of W.C.C., THRISSUR DATED 23-03-2006
APPELLANT(S)/SECOND OPPOSITE PARTY:

THE ORIENTAL INSURANCE CO. LTD.,
THRISSUR, REP. BY ITS ADMINISTRATIVE OFFICER
REGIONAL OFFICE, ERNAKULAM NORTH, KOCHI-18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENT(S)/APPLICANT AND FIRST OPPOSITE PARTY:

1. C.G.ANILAN,
S/O.GOPI, CHIRAYIL HOUSE, P.O.VARAKKARA
MANNAMPETTA, THRISSUR.

2. ALPHONSA JAMES,
KUNDUPARAMBIL HOUSE, VENDOOOR, P.O.ALAGAPPANAGAR
THRISSUR.

R1 BY ADV. SRI.DILIP J. AKKARA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

M.F.A. (WCC) No.104 of 2006

Dated this the 22nd day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the insurance company, aggrieved by the order passed by the Commissioner for Workmen's Compensation, Thrissur in W.C.C. No.95/2002. The application was filed by the first respondent seeking compensation for the disability suffered in an accident which occurred on 6.1.2002. The second respondent herein is the employer/first opposite party. According to the applicant, he was the driver of a lorry bearing Reg. No.KL-8 A/9142 and on the said date it was loaded with granite and after stopping it in the work site while he attempted to pull the liver for unloading the granite, a huge piece of granite stone fell down from the lorry and his right leg was injured.

2. The Commissioner, after fixing the loss of earning capacity as 28%, granted an amount of Rs.1,37,539.80 with interest at the rate of 12% per annum from 6.1.2002. The serious contest made by the

insurance company in this appeal is with regard to the assessment of disability by the Commissioner.

3. It is submitted by the learned Senior Counsel for the insurance company, Shri George Cherian that the method adopted by the Commissioner violates the dictum laid down by a Full Bench of this Court in **Vanajakshan v. Joseph** (2003 (2) KLT 462 - FB). It was held therein that loss of earning capacity will have to be ascertained with respect to the capacity to do any item of work and not for the failure to perform the duties of the particular post on which he was actually working.

4. The injuries sustained by the first respondent, as recorded in the order of the Commissioner, are the following:

- a. Cut injury on tendoachulleus right.
- b. Deep lacerated wound with skin loss
- c. Heavy shock.

The Doctor, in his certificate Ext.A1, had assessed the permanent disability at 14% and loss of earning capacity as a heavy vehicle driver, at 30%.

5. When the matter reached before this Court, by order dated 11.3.2009 this Court directed the claimant to appear before the District Medical Officer, Thrissur for an examination by the Medical Board and further directed that the report will be forwarded to this Court showing the extent of physical disability suffered as also the extent of reduction in earning capacity reckoning the claimant as a person capable of driving a lorry at the time of the accident.

6. After examination, a certificate has been forwarded by the District Medical Officer, Thrissur as per forwarding letter dated 26.6.2009. We mark the certificate as Ext.X1. Going by Ext.X1, it is seen that his loss of earning capacity is reported as 'nil' (zero) and permanent locomotor disability is found to be 3%. We extract hereinbelow the operative portion of the certificate:

“The board discussed the findings. We took into consideration of the fact that the injured is a heavy vehicle driver. The injury was repaired immediately by the orthopedic team of a major hospital. In modern orthopedic care, an uncomplicated Tendo Achilles injury well repaired and followed up doesn't usually produce any permanent disability. All tests recommended for

assessment of mobility and stability components were conducted and were within normal limits. The board found no reason by which Mr. C.G. Anilan will not be able to drive a vehicle.”

7. Learned Senior Counsel for the appellant, Shri George Cherian submitted that in the light of the above certificate, as there is no loss of earning capacity, the applicant is not entitled for any compensation.

8. Learned counsel for the first respondent, Shri Dileep J. Akkara supported the order passed by the Commissioner.

9. As far as the proceedings under the Workmen's Compensation Act, 1923 (now Employees Compensation Act) is concerned, what is of importance is to assess the loss of earning capacity to perform the duties for fixing the compensation. The Commissioner's order, as we have already noticed, went by the certificate Ext.A1 which reported 14% physical disability and 30% loss of earning capacity. It was not a certificate issued by any Medical Board. Now that the competent Medical Board has gone into the various aspects based on the treatment records and after a physical examination of the applicant, we will have to accept the report of the Medical Board and if that be so, as the Board

has found that there is no loss of earning capacity, the applicant will not be entitled for any compensation.

10. Therefore, the appeal is allowed and the order passed by the Commissioner is set aside. We hold that the applicant will not be entitled for any amount towards compensation.

11. This appeal is filed after depositing the award amount and by interim order dated 13.6.2006 the impugned order was stayed on condition that the first respondent will be permitted to withdraw 50% of the amount deposited by the appellant. It is stated by the learned counsel for the first respondent that 50% of the amount has been withdrawn. Therefore, we direct the Commissioner to return the balance amount under deposit, to the appellant insurance company.

The parties will suffer their costs in the appeal.

(T.R. RAMACHANDRAN NAIR, JUDGE.)

(K.P. JYOTHINDRANATH, JUDGE.)

kav/