

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA**

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

MFA.No.81 of 2007 ()

**-----
AGAINST THE ORDER IN WC 18/2004 of W.C.C.,KOZHIKODE
DATED 30-12-2006
-----**

APPELLANT(S)/APPLICANT ::

**BABU K.P., S/O.KORUKUTTY,
KATTIPARAMBATH VEEDU, ELAYADATH PARAMBU, P.O. OLAVANA
ODUMBRA, KOZHIKODE.**

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENT(S)/OPPOSITE PARTIES ::

- 1. C.P. MURALEEDHARAN, S/O. VASU,
CHATTIPPURAKANDY HOUSE, KALLIKOODAM, FEROKE P.O.
KOZHIKODE.**
- 2. NEW INDIA ASSURANCE COMPANY LTD.,
POOTHERY BUILDING, FEROKE, KOZHIKODE.**

R2 BY ADV. SRI.P.G.GANAPPAN

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

VS

**T.R.RAMACHANDRAN NAIR,
& P.V.ASHA, JJ.**

M.F.A.No.81 of 2007

Dated this the 9th day of March, 2015

JUDGMENT

T.R.RAMACHANDRAN NAIR, J

The appellant herein is the applicant in W.C.No.18/2004 before the Commissioner for Workmen Compensation. While he was loading timber in a mini lorry, which was insured with second respondent, he sustained injuries. The following are the injuries sustained by him. (i) Fracture P2 of 4th toe. (ii) Lacerated wound right foot. (iii) Amputation 2nd and 3rd toe right.

2. As against the total claim of Rs.2,00,000/- the Commissioner awarded only Rs.15,250/-.

3. We heard the learned Counsel on both sides.

4. The learned Counsel for the appellant submitted - by relying upon the disability certificate showing that 16% is the disability - that the Commissioner was not right in restricting the percentage of disability to 5%. It is submitted that the relevant provisions under Workmen's Compensation Act will show that, in spite of

the non scheduled injuries, the occupational disability reported by the doctor could be accepted.

4. The learned Counsel for the 2nd respondent-Insurance Company submitted that the amputation of two toes of one foot through metatarso phalangeal joint is a scheduled injury, for which 5% is the disability as per the schedule. Therefore, in this case, there is no scope for increasing the percentage.

5. We have gone through Ext.A3 disability certificate. There is the doctor has given a consolidated assessment under which, the percentage of occupational disability is 16%. The major item of injury being amputation as already noted, the percentage of disability is only 5%. It cannot be said that, as far as the remaining injuries are concerned, there will be 11% occupational disability. Therefore, we find no reason to interfere with the order of the Commissioner, on these aspects.

6. The next aspect is regarding his monthly income, which was claimed at Rs.6,000/-. But the Commissioner adopted the income at Rs.3,000/-. He is a

loading worker at the relevant time and the accident occurred in the year 2003. Therefore, according to his age, Rs.4,000/- can be adopted as the monthly income. Therefore, the compensation payable to the appellant will be as follows.

$$\frac{4000 \times 60 \times 169.44 \times 5}{100 \times 100} = 20,330/-$$

7. The same will carry interest at 12% per annum from the date of accident. Two months time is granted to deposit the amount also.

Therefore, the appeal is allowed. The parties will bear their costs in the appeal.

Sd/-
T.R.RAMACHANDRAN NAIR, JUDGE

Sd/-
P.V.ASHA, JUDGE

/TRUE COPY/

PA TO JUDGE

VS