

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

MFA.No. 101 of 2010 ()

WCC NO.75/2000 of COMMISSIONER FOR WORKMEN'S COMPENSATION & DEPUTY LABOUR
COMMISSIONER, KANNUR.

APPELANT/2ND OPP.PARTY.:

UNITED INDIA INSURANCE CO.LTD,
NOORNAL BUILDINGS, CHUNGAM, SULATHAN BATHERY.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS/APPLICANT AND OP.1.:

1. VELAYUDHAN C.K, S/O.KRISHNAN,
CHAKKUMKUNNEL HOUSE, KARADIPARA POST, AMBALAVAYAL
WAYANAD DISTRICT.

2. C.MOIDEEN, S/O.KHADER,
GRANITE QUARRY OWNER, AYIRAMKOLLY, AMBALAVAYAL
WAYANAD DISTRICT.

R2 BY ADV. SMT.CELINE JOSEPH

R1 BY ADV. SRILALJI P.THOMAS

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

P.B.SURESH KUMAR, J.

M.F.A. No.101 of 2010

Dated 3rd March, 2015.

J U D G M E N T

The insurer in a proceedings for compensation under the Workmen's Compensation Act (hereinafter referred to as 'the Act', for short) has come up in this appeal challenging the decision in the proceedings.

2. The first respondent instituted the proceedings for compensation alleging that he sustained injuries on 22.12.1998 in an accident arising out of and in the course of his employment under the second respondent. It is alleged in the application that the second respondent was holding at the time of the accident an insurance policy issued by the appellant covering the claim of the first respondent under the Act. The appellant contested the application, contending *inter alia* that the policy of insurance issued by them to the second respondent is only a personal accident insurance policy which does not cover the claim made by the first respondent under the Act. According to the appellant, as per the terms of the said

policy, the first respondent is entitled only to a sum of Rs.9,000/- and the said amount has been disbursed to him. The Commissioner found that the first respondent is entitled to a sum of Rs.15,980/- by way of compensation under the Act and passed an order directing the appellant to pay the said amount to him. The appellant is aggrieved by the said decision of the Commissioner and hence this appeal.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents.

4. There is no provision in the Act which makes it obligatory for the employer to enter into a contract of insurance to cover the liability arising under the Act. There is also no law restraining an employer from entering into a contract of insurance to cover a particular claim of his employees or to cover the claim of his employees upto a particular amount. As such, the rights and liabilities of the parties in cases of this nature have to be decided with reference to the terms and conditions of the policy of insurance. [See **National Insurance Company Ltd. v. Murali** (2013(3) KLT 209)]. The contention

raised by the appellant that the policy of insurance issued by them does not cover the claim of the first respondent under the Act is not seen considered by the Commissioner. Ext.R2 is the proposal based on which the policy of insurance relied on by the second respondent was issued by the appellant. Ext.R2 indicates that the proposal was for an individual personal accident insurance. Ext.R7 is the schedule of the policy. Ext.R7 indicates that the nomenclature of the policy issued by the appellant to the second respondent was a personal accident policy. The policy certificate is not seen produced. The terms and conditions of the policy in question are not discernible from the documents produced by the appellant. As such, I am unable to consider the question as to whether the policy in question is a policy which covers the claim of the first respondent under the Act or not.

5. The fact that the first respondent has been paid a sum of Rs.9,000/- by the appellant in terms of the policy issued to the second respondent has not been disputed at the time of arguments. In the circumstances, the impugned order

is liable to be modified for the purpose of adjusting the said amount towards the amount payable by the appellant pursuant to the impugned order.

In the result, the appeal is allowed in part and the impugned order is modified to the effect that the first respondent will be entitled to only a sum of Rs.6,980/- with interest. The excess amount deposited by the appellant with the Commissioner for Workmen Compensation shall be refunded to them.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)