

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 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

MFA.No. 212 of 2009 (B)

**AGAINST THE ORDER IN WC 276/2003 OF COMMISSIONER FOR WORKMEN'S
COMPENSATION (DEPUTY LABOUR COMMISSIONER),KOZHIKODE DATED 17-12-2008**

APPELLANT/APPLICANT:

**BABY P.,
AGED 49 YEARS, S/O.POULOSE, ROBY HOUSE
P.O.OTTAKKAL, THENMALA VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT.**

**BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA**

RESPONDENTS/OPPOSITE PARTIES:

- 1. BINU.K.MATHEW,
MANAGING DIRECTOR, POABS ROCK PRODUCTS (P) LTD.
WEST OATHARA, THIRUVALLA, PATHANAMTHITTA DISTRICT.**
- 2. THE NEW INDIA ASSURANCE COMPANY LTD.,
MUNDUKOTTACKAL CHAMBERS, KANHIKUZHI
KOTTAYAM DISTRICT.**

**R1 BY ADV. SRI.N.JAMES KOSHY
R2 BY ADV. SMT.P.K.SANTHAMMA**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Shg/

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

M.F.A.No.212 of 2009

Dated this the 5th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

This appeal is against the order passed by the Commissioner for Workmen's Compensation in W.C.No.276/2003. The only question is with regard to the percentage of disability and the adoption of the percentage as reported by the competent Medical Board.

2. We heard the learned counsel on both sides.

3. By an interim order dated 30.9.2013 a Division Bench of this Court directed that the appellant will present before the Medical Board and get himself examined accordingly. The Medical Board has forwarded a certificate dated 9.1.2015 and going by the same the permanent disability and occupation disability is reported as 30%.

4. Before the Commissioner for Workmen's Compensation both parties had adduced evidence and the Commissioner had assessed the disability at 13% going by

Ext.X1. Now that competent Medical Board has recertified the same and adopted 30% as the disability. Therefore there will have to be a recalculation of the amount payable by the respondents.

5. The age factor is 175.54 and the wages have been taken as Rs.4,000/-. Therefore the revised calculation will be the following: $4000 \times 175.54 \times 60 / 100 \times 30 / 100 =$ Rs.126388.80 which will be the total amount of compensation. Going by the policy, the first opposite party has taken the workmen's compensation policy by showing Rs.97.30/- as wages for the employees. By a process of calculation the Commissioner has noted that in proportion to the above the wages of the applicant for one month is Rs.2,819/-. The liability of the 2nd opposite party was accordingly calculated as Rs.38,598/- and going by the percentage of disability now reported it will be the following: $\text{Rs.}2819 \times 175.54 \times 60 / 100 \times 30 / 100 = \text{Rs.}89,072/-$ which we round off to Rs.89,000/-. The simple interest granted by the Commissioner is at the rate of 12% going by

the statute. Therefore the 2nd opposite party ie. the Insurance Company is directed to deposit an amount of Rs.89,000/- (Rupees eighty nine thousand only) and the balance (Rs.37,388.80) by the employer - 1st opposite party. They will pay the interest also. The order of the Commissioner for Workmen's Compensation is accordingly modified.

Appeal is thus allowed. No costs.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

shg/