

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

MFA.No. 287 of 2009 ()

AGAINST THE ORDER/JUDGMENT IN WCC 32/2005 OF COMMISSIONER FOR WORKMEN'S
COMPENSATION, THIRUVANANTHAPURAM DATED 22-07-2009
APPELLANT/IST OPPOSITE PARTY:

E. KAMARUDEEN, GANDHIMATHI CLAYS AND RUBBER
IDA PLOT NO.7, KOCHUVELI
THIRUVANANTHAPURAM.

BY ADVS.SRI.M.R.ANANDAKUTTAN
SMT.M.A.ZOHRA
SRI. MAHESH ANANDAKUTTAN

RESPONDENTS/APPLICANT AND 2ND OPPOSITE PARTY:

1. K.J. MATHEW, K.R.V. BHAVAN
PATTOM.P.O, KESAVADASAPURAM, PAROTTUKONAM KUNNIL
P.K.R.A -50, THIRUVANANTHAPURAM.
2. THE DIVISIONAL MANAGER, NEW INDIA
ASSURANCE CO. LTD., K.N. MATHEW BUILDING
GANDHARI AMMAN KOVIL ROAD, THIRUVANANTHAPURAM - 1.

R1 BY ADV. SRI.GOPAKUMAR R.THALIYAL
SRI.N.P.PRAJEESH
R2 BY ADV. SRI.VPK.PANICKER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

shg/

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

M.F.A.No.287 of 2009

Dated this the 20th day of July, 2015

J U D G M E N T

K.P. Jyothindranath, J.

This appeal is preferred against the Erratum Gist of Order of the Commissioner for Workmen's Compensation, Thiruvananthapuram made in W.C.C.No.32/2005 dated 22.07.2009.

2. The facts in a nutshell are as follows:

The appellant is the first opposite party in WCC 32/2005. The first respondent in this appeal preferred an application for compensation as he sustained an injury while he was working in a clay factory of the appellant herein.

3. The contention of the appellant herein is that there was an insurance policy with the second respondent herein and an order was passed by the Commissioner fastening the liability to pay the amount with interest on the Insurance Company. Now, the case of the appellant is that

the impugned communication received by the appellant herein which has to be set aside as it is not as per the law. As per the said communication, the Insurance Company is absolved from the liability to pay the interest.

4. When, the appeal came up for hearing learned counsel for the appellant specifically pointed out that the so-called order dated 15.6.2009 passed by the Commissioner is not communicated. But it appears that after passing the so-called order, wherein the Insurance Company was made liable, thereafter a change in the order is seen made and a communication is seen given as erratum gist and the appeal is preferred against the said erratum gist, which is produced as the basis of the appeal. The records are called for from the Commissioner.

5. We heard the learned counsel for the Insurance Company as well as the learned counsel for the appellant and claimant.

6. From the submissions as well as the erratum gist of order, it can be seen that there was an order passed

directing the Insurance Company to pay the amount. As per the file, it can be seen that there is only a handwritten copy of the order which also includes the erratum gist, now under challenge. From the perusal, it can be further seen that the original operative portion is seen struck off and the erratum gist is included. We have perused the proceeding sheets. It is recorded on 8.6.2004 as follows:

“Counsel for applicant heard and counsel for opposite parties heard.

Filed argument note. Taken for orders.”

Thus, it can be seen that no specific posting or date for the pronouncement of the order was there. Thereafter, it is seen that no entry is in the proceeding sheet to the effect that the order was passed on a specific date.

7. As per Rule 32 of the Workmen's Compensation Rules 1924, it can be seen that the order should be pronounced. Rule 32 states as follows:

“32. **Judgment.**-(1) The Commissioner, in passing orders, shall record concisely a judgment, his finding on each of the issues framed and his reasons for such finding.

(2) The Commissioner, at the time of signing and dating his judgment, shall pronounce, his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission."

8. Here, the grievance is that the order is not pronounced as contemplated and it appears that alterations are made in the order. In the decision reported in **Abdul Karim v. Kunjali [1996 (1) KLT 11]** it is categorically held that no correction can be made by the Commissioner for Workmen's Compensation in respect of the persons liable to pay the amount i.e. changing of liability is not a clerical mistake.

9. In this case, it can be seen that as per the records there is no pronouncement of the order. Secondly it can be further seen that there is an alteration made by the Commissioner in the so-called draft. Under such circumstances, we are constrained to set aside all the proceedings done by the Commissioner from the date 8.6.2004.

10. Thus, the proceeding of the Commissioner in W.C.C.No.32/2005 on the file of Commissioner for Workmen's Compensation, Thiruvananthapuram from the date 8.6.2004 is hereby set aside and the matter is send back to the Industrial Tribunal, Kollam or to the Tribunal which is having the jurisdiction now in respect of Thiruvananthapuram District, to deal claim under the Workmen Compensation Act (Employees' Compensation Act). It is further made clear that the parties will be entitled to make their fresh submissions as well as they are entitled to file argument notes, if found necessary, before the Industrial Tribunal, and the Industrial Tribunal shall dispose of the matter in accordance with law. The Industrial Tribunal shall dispose of the matter with an outer time limit of six months after getting the file.

11. It is submitted by the learned counsel for the Insurance Company that principal amount has been already deposited before the Commissioner for Workmen's Compensation. We make it clear that the adjustment of

such deposit will be made subject to the final order to be passed by the Industrial Tribunal. After the receipt of records, the Industrial Tribunal will issue notice to the parties for appearance.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

The word and date "on 8.6.2004" mentioned in paragraph 6 of the judgment is deleted. The date "8.6.2004" mentioned in paragraphs 9 and 10 of the judgment is deleted and substituted with the words "of taking the case for orders", vide order dated 6.1.2016 in M.F.A. (W.C.C.)No.287/2009.

Sd/-

Registrar(Judicial)

//True copy//

P.A. TO JUDGE

shg/