

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

RP.No. 828 of 2013 () IN Ins.APP.49/2004

AGAINST THE JUDGMENT IN Ins.APP 49/2004 of HIGH COURT OF KERALA

REVIEW PETITIONER/APPELLANT/APPLICANT:

HASSANKUNJU
S/O.ABDUL RAHIMAN, THAIPPARAMBU VADAL, KANAL WARD
ALAPPUZHA.

BY ADVS.SRI.C.RAJENDRAN
SRI.R.PARAMESWARAN NAIR

REVIEW RESPONDENT/RESPONDENT/OPPOSITE PARTY:

REGIONAL DIRECTOR
ESI CORPORATION, TRICHUR-20.

BY ADV. SRI.T.V.AJAYAKUMAR, SC, ESI CORPN.

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON
30-07-2015 ALONG WITH INS.APPEAL NO.49/2004, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

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

**R.P.No.828 of 2013,
C.M.Appln.No.2409/2013 in
R.P.No.828 of 2013 &
Ins.Appeal No.49 of 2004**

Dated this the 30th day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This review petition is filed by the applicant in Ins.Appeal No.49/2004. He filed the appeal challenging the order passed by the Employees Insurance Court, Alappuzha dated 31.05.2004. That was an application seeking for payment of temporary disablement benefit to him by the opposite party on account of the employment injury. The accident occurred on 18.4.2002.

2. One of the main contentions raised was that monthly wages exceeded ₹ 6,500/-. On this aspect, the finding was against the applicant. The Division Bench while disposing of the appeal considered the same and found in paragraph 3 that in the light of the above factual position, the applicant ceased to be an employee as on the

date of the accident and he is not entitled for any benefit thereafter . In this review petition, the appellant has produced additional materials as Annexures A1 to A5.

3. We heard the learned counsel for the review petitioner/appellant Sri.C.Rajendran and the learned counsel for the Corporation Sri.T.V.Ajayakumar.

4. There is a delay of 1777 days in filing the review petition. The learned counsel for the respondent opposed the prayer for condonation of delay. Since the applicant is seeking the benefit under the coverage, according to us, even though there is a delay in the matter, this Court will be justified in considering the merits of the review petition. Therefore, we condone the delay as reasons stated in support of the application are sufficient.

5. It is argued by Sri.C.Rajendran that going by Annexure A1, it can be seen that the monthly wages were below ₹6,500/- at the relevant period. The learned standing counsel for the Corporation submits that the said contention is not correct.

6. Since it is a disputed question of fact, according to us, this will have to be considered by the Employees Insurance Court itself and not in this review petition. Of course, what is produced by the review petitioner is additional materials and he will have to produce it before the Employees Insurance Court.

In that view of the matter, we recall the judgment in Ins.Appeal No.49/2004 and the review petition is allowed. As far as Ins.Appeal No.49/2004 is concerned, in the light of the view taken by the us above the appeal will stand allowed and the matter is remanded back for consideration afresh. The appellant, who is the petitioner in the review petition and the respondent are allowed all opportunities to adduce fresh evidence in the matter and appropriate orders will be passed on merits after hearing both sides. We direct the Employees Insurance Court to dispose of the matter expeditiously.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.