

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 28112 of 2014 (L)

PETITIONER :

**N.S.SAINUDHEEN,
INS NO.4702840073, HOUSE NO.2/1043, GCDA COLONY,
THURUTHY NARPARAMBATH HOUSE, FORT COCHIN 0682 001.**

**BY ADVS.SRI.DIPU.R
SRI.SANAL P.RAJ
SMT.DHANYA BABU**

RESPONDENTS :

- 1. EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY REGIONAL DIRECTOR, REGIONAL OFFICE,
PANCHDEEP BHAWAN, NORTH SWARAJA ROUND,
THRISSUR-680 020.**
- 2. STATE MEDICAL COMMISSIONER,
ESI CORPORATION, REGIONAL OFFICE, PANCHDEEP BHAWAN,
NORTH SWARAJA ROUND, THRISSUR-680 020.**
- 3. DEPUTY DIRECTOR,
ESI CORPORATION, REGIONAL OFFICE, MALU'S COMPLEX,
ST. FRANCIS CHURCH ROAD, KALOOR, KOCHI-682 017.**
- 4. THE BRANCH MANAGER
ESI CORPORATION, BRANCH OFFICE, FORT COCHIN-682 001.**
- 5. THE CHAIRMAN
KERALA HEAD LOAD WORKERS WELFARE BOARD,
COCHIN PORT TRUST AREA COMMITTEE, W/ISLAND
KOCHI-682 005.**

**R1 TO R3 BY SRI.P.SANKARANKUTTY NAIR, SC,
BY ADV. SRI.K.SANDESH RAJA R
R5 BY ADVS.SRI.C.S. AJITH PRAKASH, SC, KHWWB
SRI.C.A.MAJEED, SC, KHWWB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER.
- EXT.P1(A): TRUE COPY OF THE IDENTITY CARD ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.
- EXT.P2: TRUE COPY OF THE OUTPATIENT TICKET DATED 28/11/2013 ISSUED TO THE PETITIONER FROM THE COCHIN PORT TRUST HOSPITAL.
- EXT.P3: TRUE COPY OF THE COMMUNICATION FROM THE LOURDES HOSPITAL TO THE SUPERINTENDENT OF ESI HOSPITAL, ERNAKULAM.
- EXT.P4: TRUE COPY OF THE DISCHARGE SUMMARY ISSUED TO THE PETITIONER FROM THE LOURDES HOSPITAL.
- EXT.P5: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 10/3/2014.
- EXT.P6: TRUE COPY OF THE COMMUNICATION DATED 10/3/2014.
- EXT.P7: TRUE COPY OF THE NOTICE DATED 1/7/2014.
- EXT.P8: TRUE COPY OF THE COMMUNICATION NO.47.R.12.21(550) BFTS, DATED 5/8/2014.
- EXT.P9: TRUE COPY OF THE PETITIONER'S OUT PATIENT REGISTRATION CARD.
- EXT.P9(A): TRUE COPY OF THE MEDICAL CERTIFICATE DATED 4.6.2014.
- EXT.P10: TRUE COPY OF THE REQUEST DATED 24/9/2014.
- EXT.P11: TRUE COPY OF THE ORDER NO.47-R-12/212/(566) BFTS DATED 14/10/2014.

RESPONDENT(S)' EXHIBITS :

- EXT.R1: COPY OF THE FORM B1-2 REPORT OF THE MEDICAL BOARD.
- EXT.R1(A): COPY OF THE FORM B1-3 DECISION OF THE MEDICAL BOARD.

//TRUE COPY//

P.S. TO JUDGE

K.Vinod Chandran, J.

W.P.(C).No.28112 of 2014-L

Dated this the 12th day of January, 2015

JUDGMENT

The petitioner is aggrieved with the order passed at Exhibit P8, which is in consequence of a certificate issued by the Medical Board, that, the petitioner has no permanent disability and is not entitled to any compensation under the provisions of the Employees' State Insurance Act, 1948 [for brevity "the Act"].

2. The petitioner, admittedly, suffered an employment injury on 28.11.2013. He was incapacitated from his work from 28.11.2013 to 28.02.2014, on which later date he was issued with a certificate of fitness. However, the petitioner claims that, despite the petitioner having reported for work, he was unable to carry on such work due to physical disability. The petitioner, hence, claimed permanent disability and approached the Employees' State Insurance Corporation [for brevity "ESI Corporation"]. The petitioner's case was referred to the Medical Board, wherein he was examined and by Exhibit R1, the Medical Board found him to have no loss of

earning capacity due to the employment injury. It was in such circumstance Exhibit P8 order was issued.

3. The petitioner, on issuance of Exhibit P8 order, filed an application for review, as indicated at Exhibit P10. The learned counsel for the petitioner, on the basis of Exhibit P10, would contend that, he had, in fact, produced medical certificates of the hospitals in which he had undergone treatment, which was not at all considered by the Medical Board.

4. The learned Standing Counsel for the ESI Corporation, however, would contend that such a ground could only be urged in an appeal under Section 54-A of the Act and not under Section 55, since the power of review is confined to non-disclosure or misrepresentation by either the employee or any other person, of a material fact and also if there is any unforeseen aggravation of the condition which is a consequence of the relevant injury, the latter by sub-section (2) of Section 55.

5. A reading of Exhibit P10 would indicate that neither of these are urged in the review petition. The petitioner's ground specifically is that the medical reports produced by the petitioner before the Medical Board were not considered. That, as argued by

the learned Standing Counsel for the ESI Corporation, would be a fit ground to be urged in appeal, if at all and definitely not in the confined jurisdiction of review, as conferred under Section 55 of the Act. In such circumstance, the writ petition seeking consideration of the application for review is found to be devoid of merit. However, the petitioner would be left with the remedy under Section 54-A. If at all there is a provision for delay, the period, when the petitioner had been agitating for a review before the Medical Board and the present writ petition before this Court, has to be deducted in computing the delay under the statute, since the same being *bona fide* proceedings prosecuted by the petitioner.

The writ petition is dismissed, however, reserving liberty as aforesaid. It is made clear that the reference to the ground being one fit to be urged in appeal, shall not be taken as conclusive, since on merits the appellate authority would have to consider the same.

Sd/-
K.Vinod Chandran
Judge

vkul/-

(true copy)