

(1994) 06 KL CK 0018
In the High Court Of Kerala
Case No : M.F.A. No. 162 of 1994

E.S.I. Corporation

APPELLANT

Vs

Raju

RESPONDENT

Date of Decision : 09-06-1994

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(15B)

Citation : (1994) ACJ 1041 : (1995) 70 FLR 1143 : (1994) 3 ILR (Ker) 534 : (1995) 1 LLJ 21

Hon'ble Judges : K.P. Balanarayana Marar, J;K.K. Usha, J

Bench : Division Bench

Advocate : T.D. Rajalekshmy, for the Appellant;

Final Decision : Dismissed

Judgement

Usha, J.—Appeal at the instance of the Employees State Insurance Corporation is against the judgment of the Employees Insurance Court, Alleppey in I.C.A. No. 22/91 granting the respondent herein full rate of benefit till the date of superannuation or till he gets a suitable employment elsewhere. The respondent herein was working as a toddy tapper. He met with an accident in the course of his employment on January 25, 1990. He is an employee covered by the Employees State Insurance Scheme.

2. Employees State Insurance Medical Board fixed his disability at 40%. The finding of the Medical Board on his condition was "post Traumatic Spondylo-listhesis L5 S1 with Sciatica left side." It is contended before the E.I. Court on behalf of the injured employee that since he is incapable of doing the work of toddy tapper as a result of the injury sustained by him, he is entitled to be awarded 100% disablement benefit. The E.I. Court came to the conclusion on the evidence of DW1, Dr. K. Balachandran, that the respondent herein is incapable of attending the work of toddy tapper. Even though he is capable of doing some other work which will not strain his spinal column, the employer was not inclined to allot him such work. Under these circumstances, following the dictum laid

down by the Supreme Court in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, the E.I. Court came to the conclusion that the respondent herein was entitled to full rate of benefit as he was incapable of doing the duties which he could do before the accident. Reliance was also placed on a judgment of this Court in M.F.A. 182/91. The above finding is under challenge in this appeal.

3. Learned counsel appearing on behalf of the appellant contended that the E.I. Court has committed a grave error of law in granting full rate of benefit to the respondent herein when the Medical Board has assessed his disability only at 40%. It was further contended that a worker who has sustained an injury in the course of employment which does not come within fee proviso to Section 2(15-B) has to prove that he is incapable of doing not only the work which he was doing at the time of the accident, but he is unable to do any work in order to claim full benefit. In support of the above contention, the learned counsel relied on a decision of this court in *E.S.I.C. Vs. K.K. Pushkaran*, A reading of the above judgment would show that no reference has been made to an earlier Bench decision of this court in M.F.A. 182/91 which has been relied on by the E.I. Court in the impugned judgment. In M.F.A. 182/91, an employee lost his fingers in an accident in the course of his employment. It was contended that he was incapable of doing the work which he was capable of doing immediately before the accident and therefore he was entitled to the full benefit. The Division Bench of this court accepted the above contention and upheld the judgment of the Employees Insurance Court granting the worker full benefit. The Division Bench had considered the definition of the term "permanent total disablement" and relying on an earlier judgment of this court in *Kochu Vein v. Joseph and Ors.* 1984 KLT Case 129(SN) and the decision of the Supreme Court in *Pratap Narain Singh Deo Vs. Srinivas Sabata and Another*, took the view that since the employee was not in a position to do the work which he was capable of doing at the time of accident by loss of three fingers, it would come within the term "permanent total disablement" as defined u/s 2(15-B) of the Employees' State Insurance Act.

4. *Kochu Velu's* case arose under the Workmen's Compensation Act, 1923. There also, permanent disablement is defined as a disablement which reduces the employee's earning capacity in every employment which he was capable of undertaking at the time of the accident. This Court upheld the claim put forward by a worker who was a coconut climber that due to loss of finger, he cannot climb trees after the accident and therefore entitled to total and permanent disablement benefit. In *Pratap Narain Singh Deo's* case, a carpenter due to injuries sustained in the course of employment, had to suffer amputation of his left hand above elbow. Reference was made to the definition of the expression "total disablement" in Section 2(1)(i) of the Workmen's Compensation Act, 1923, which reads as follows(P 237):

"(1) "Total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable

of performing at the time of the accident resulting in such disablement."

It was then considered whether the disablement suffered by the worker incapacitated him for all work which he was capable of performing at the time of accident. The Commissioner under the Workmen's Compensation Act had held that the injured workman was a carpenter by profession. By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only. The Supreme Court took the view that the above finding was reasonable and correct.

5. It is therefore seen that a Division Bench of this court in M.F.A. 182/91 which arose under the provisions of Employees' State Insurance Act itself has taken the view that it is sufficient that the injured workman proves that he is incapable of performing the work which he was capable of performing at the time of the accident in order to claim the benefit for permanent total disablement, relying on the Supreme Court decision as well as an earlier Bench decision of this court in Kochu Veto's case, wherein, even though the consideration was under the Workmen's Compensation Act, the definition of the term "permanent total disablement" was similarly worded to that in the Employees' State Insurance Act, Neither the Supreme Court decision nor the earlier Bench decisions of this Court are seen referred in the later Bench decision of this Court relied on by the appellant. The learned counsel was not able to refer to a decision of the Supreme Court taking a different view. Whether an employee has suffered permanent total disablement is a question of fact. On the basis of the medical evidence adduced in this Court, the E.I. Court has entered a finding in favour of the employee. We are therefore not inclined to accept the contention raised by the appellant that the E.I. Court has committed an error of law in granting total disablement benefit to the respondent herein. No substantial question of law arises for consideration in this appeal.

6. In the result, the appeal fails and it stands dismissed.