

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 31ST OCTOBER 2006 / 9TH KARTHIKA 1928

MFA.No. 6 of 2002()

WCC.102/1999 of W.C.C., KANNUR
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APPELLANT: OPP: PARTY NO.2

NATIONAL INSURANCE COMPANY LTD. REP.
BY ITS ASST. ADMINISTRATIVE OFFICER, KOCHI,
REGIONAL OFFICE - T.P.CELL, M.G. ROAD, ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: APPLLENT & OPP: PARTY NO.1

1. SUNDRA S/O.KUTTIMOOLYA AND RAMAKKU,
PAYYAR HOUSE, HEROOR P.O., MANGALPADY,
KASARAGOD.

2. MOOSA K.P. S/O.ABDUL RAHMAN, DO.DO.

BY ADV. SRI.A.P.CHANDRASEKHARAN FOR R1
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 31/10/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B.KOSHY & M.N.KRISHNAN, JJ.

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&

C.M.APPLN.NO.30 OF 2002

Dated this the 31st day of October, 2006

J U D G M E N T

KOSHY,J.

First respondent in this appeal met with an accident during the course of employment. He was an autorickshaw driver. The Doctor assessed physical disability at 30% and occupational disability at 80%. Commissioner reduced the loss of earning capacity to 60% and assessed compensation. Only Rs.2,000/- was taken as the monthly income, though claimant was a professional driver. Accident occurred on 29.1.1998. Ext.A2 is the wound certificate. Later he was discharged and advised rest. There was non union of fracture. Finally he was admitted in Kasturba Medical College, Mangalore for expert treatment on 23.5.1998. Ext.A4 disability certificate was proved by AW2 Doctor. His evidence is summarised by the Commissioner as follows:

“The witness, Dr.Prem Kotian Orthopaedic Surgeon and Associated Professor Department of Orthopaedics, Kasturba Medical College Mangalore was examined as AW2 and in his chief examination he deposed that “I have treated Mr.Sundara. He was admitted on 23.5.1998 for the treatment of fracture non-union of the right tibia at the junction of middle third and lowerthird. Patient sustained fracture right tibia on 29.1.1998 for which was treated elsewhere. On 27.5.1998 the Ilisarov ring fixator was applied for the (Rt) tibia fracture non-union. He was readmitted on 10.12.1998, the fixator was removed and patellar tenon bearing walking cast was given. He was advised partial weight bearing walking with cruches and was discharged on 14.12.1998. On 14.1.1999 he was readmitted for removal of the cast. He was put on physiotherapy for the right lower limb. He was discharged on 28.1.1999. He was further seen in the out-patient on 25.5.1999, 13.5.1999 and 29.6.1999. He was last seen on 9.5.2000. On examination his ankle movements are restricted. Dorsiflexion is 0 degree, planter flexion is 15 degree subtaler movements are totally

restricted. He has a shortening of one inch of the right lower limb. He has partial permanent disability of 30% of the right lower limb function. Because of the disability the applicant is not able to drive in future disability 80%". Claimant deposed that in view of the injuries he cannot drive vehicle and he lost his earning power totally as he is unable to do any hard work. Though doctor assessed 80% loss of earning capacity, Commissioner awarded compensation for loss of earning capacity. Considering the mandate of Section 4(1)c(ii) only workman can question the award as Commissioner has awarded compensation for 60% loss of earning capacity even though qualified medical practitioner assessed 80% personal disability.

2. This appeal is filed by the Insurance company with 136 days delay. The percentage of loss of earning capacity assessed by the Commissioner is the only question raised by the Insurance company. The reasons stated in the delay condonation is only the administrative delay. The judgment

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was pronounced on 18.6.2001. Appeal was filed only on 1.1.2004. It is stated that they tried to obtain opinion from different advocates. When appeal was filed against the award of the Workmen's Compensation Commissioner, considering the plight of injured workman, statute has fixed the time limit in filing the appeal and unless sufficient reasons are stated delay cannot be condoned and ought to have become more delegant. No satisfactory reasons are averred to condone the long delay in filing the appeal. Hence delay condonation petition is dismissed. Consequently appeal is also dismissed.

J.B.KOSHY, JUDGE

M.N.KRISHNAN, JUDGE

prp

J.B.KOSHY & M.N.KRISHNAN, JJ.

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J U D G M E N T

31st October, 2006