IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 11TH DAY OF AUGUST 2026 / 20TH SRAVANA, 1948

INS.APP NO. 13 OF 2021

AGAINST THE JUDGMENT DATED 23.11.2020 IN IC NO.3 OF 2013 OF EMPLOYEES' INSURANCE COURT, ALAPPUZHA

APPELLANT (RESPONDENT):

ESI CORPORATION
SUB REGIONAL OFFICE, MALU'S COMPLEX, ST. FRANCIS CHURCH ROAD, KALOOR, KOCHI - 682017, REPRESENTED BY ITS DIRECTOR.*(CORRECTED)
***(THE ADDRESS OF THE APPELLANT IN INSURANCE APPEAL NO.13 OF 2021 IS CORRECTED AS, "ESI CORPORATION, SUB REGIONAL OFFICE, PANCHADEEP BHAVAN, ASRAMAM, KOLLAM-691002, REPRESENTED BY ITS DEPUTY DIRECTOR" AS PER ORDER DATED 26.08.2021 IN I.A NO 2/2021)**

BY ADVS.
SHRI.ADARSH KUMAR, ADDITIONAL STANDING COUNSEL, E.S.I. CORPORATION
SRI.SHASHANK DEVAN

RESPONDENT(APPELLANT):

MOHANDAS
S/O.PAMANABHAN, POONJILIKAVU, PONNAD P.O, ALAPPUZHA - 688538.

BY ADVS.
SRI.MANU GOVIND

SHRI.A.JAYASANKAR

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 11.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

E.S.I Corporation has filed this appeal challenging the judgment dated 23.11.2020 in ICA No.03/2013 of the Employees' Insurance Court, Alappuzha ('EI Court' for short). The respondent, an insured employee, while working as toddy tapper attached to a toddy shop, met with an accident on 21.10.2010. The accident resulted in injury, which was diagnosed as "Stable Compression Fracture L2". He was treated as an inpatient at T.D.Medical College, Alappuzha from the date of accident till 29.10.2010. He was referred to the Medical Board for assessing loss of earning capacity on three occasions. Finally, the Medical Board assessed that the respondent has permanent disablement and the loss of earning capacity was assessed at 20%. Assailing the findings of the Medical Board, the respondent filed ICA No.03/2013. According to the respondent, the ESI Medical Board ought to have fixed the loss of earning capacity at 100%.

2. Before the EI Court, AWs 1 and 2 were examined and

Exhibits P1 to P5 were marked on the side of the respondent. DW 1 was examined and Exts.D1 to D3 were marked on the side of the appellant.

3. The appellant contended before the EI Court that the decision of the Medical Board was in accordance with the ESI Act, Rules and Regulations and was perfectly legal. It was contended that the Medical Board is the competent authority as per Section 54 of the ESI Act to decide the loss of earning capacity. The ESI Corporation contended that, on three occasions, the appellant was examined by the Medical Board and finally the disability was fixed at 20%. Hence the ESI Corporation submitted that there was no merit in the insurance case filed by the respondent.

4. The learned Judge of the EI Court appraised the contentions of both sides as also the evidence. The learned Judge held that the percentage of loss of earning capacity fixed at 20% by the ESI Medical Board was not realistic and correct in the light of the Medical Certificate issued by the Medical Board of General Hospital, Alappuzha,

wherein the loss of earning capacity was certified as 100%. Accordingly, the learned Judge allowed the insurance case and declared that the loss of earning capacity of the respondent was eligible to be fixed at 100% and consequently, the respondent was eligible to get PDB for 100% disability. The appellant was directed to disburse the PDB with arrears within two months.

5. The learned Counsel for the ESI Corporation contended that the learned Judge of the EI Court failed to appreciate the contentions raised in the instant case in the light of the principles laid down in **E.S.I Corporation v. Pushkaran** (1993 (2) KLT 187). The learned Counsel also placed reliance on a judgment of this Court in Insurance Appeal No.27/2020 dated 10.07.2026. The learned Counsel submitted that the medical evidence would clearly show that the respondent had not become incapacitated to do any work on account of the employment injury. He submitted that the crucial aspect to be examined is as to whether the insured employee became totally incapable of doing any

work and not whether he became disabled to do the particular job he was performing at the time of the employment injury. He therefore submitted that in view of the permanent disability assessed by the ESI Medical Board and other materials on record, the EI Court ought to have rejected the insurance case.

6. To the contrary, the learned Counsel for the respondent submitted that the ESI Corporation did not make any effort during the cross-examination of the respondent or to adduce evidence on its side to show that the respondent is actually capable of doing any work. She sought to distinguish the law laid down in **Pushkaran** (Supra) by submitting that unless there is any effort by the ESI Corporation to show that the injured employee was capable of doing any work other than that in which he was engaged at the time of employment injury, the contention that PDB for 100% disability cannot be granted may not be accepted.

7. I have referred to the law laid down by the Division Bench

of this Court in **Pushkaran** (Supra) and also by a Full Bench of this Court in **Vanajakshan v. Joseph** (2003 (2) KLT 462) in the judgment in Insurance Appeal No.27/2020.

8. In **Vanajakshan** (Supra), the Full Bench of this Court held as follows:

> "14. The above provisions clearly show that the compensation has to be determined with reference to the loss in earning capacity and not the ability to perform the duties of the job, which was being done by the workman at the relevant time.
> 15. It is undoubtedly true that the Act is a piece of social legislation. It embodies beneficent provisions. Normally the provisions have to be liberally considered. However, while considering the provisions the plain language cannot be overlooked. The words have to be given their plain and clear meaning. In our view the Legislature has made its intention absolutely clear in unambiguous words. The compensation has to be assessed on the basis of the percentage of the loss of earning capacity. While determining the loss of earning capacity the authority has to keep in view the loss of capacity of a workman "for all work which he was capable of performing" and not for the work which he was actually doing."

9. In **Pushkaran** (Supra), the Division Bench of this Court

held as follows:

> "7. From this it is clear that if only the injury is specified in Part I or Part II of the Second Schedule to the Act, the deeming provision contained in sub-s.15A or 15B of S.2 will be applicable. Therefore, if the injury is not one specified in either of these parts, the court will have to examine as to what extent the ingredients of the subsections are established in the case in hand. In other words, whether the employee has suffered permanent partial disablement or permanent total disablement will be a question of fact to be proved before the court, if the injury is not one specified in the Second Schedule. If such disablement is proved, then in the case of permanent partial disablement the court has to examine whether the earning capacity of the workman has been reduced in every employment he was capable of undertaking at the time of the accident and not merely the particular employment in which he has engaged at the time of the accident resulting in the disablement. (See Upper Doab Sugar Mills Ltd. v. Daulat Ram - AIR 1936 All. 493 & General Manager of the G.I.P. Rly. Bombay v. Shanker-AIR (37) 1950 Nag. 201). The court will have to enter a specific finding that the injury suffered, by the employee caused him disablement of a permanent nature -which reduces his earning capacity in every employment which he was capable of undertaking at the time of the accident. Sub-s. 15A contemplates reduction in the earning capacity and not reduction of the actual earning. This is clear from the fact that

the capacity' itself is determined with reference to every employment which he was capable of undertaking at the time of the accident. Thus the scope of the words used cannot be confined to the job which the employee was doing or carrying on at the time of the accident. The words refer to his capability generally of doing any job to earn his livelihood. (See Munshigiri v. E.S.I. Corporation 1988 Lab.1.C. 320 (M.P.)

8. In cases where the claim is on the basis that the employee has suffered permanent total disablement as defined under S.2(15B) of the Act, if the injury is not one included in the list of injuries in Part I of the Second Schedule, whether the employee has suffered permanent total disablement will be a question of fact to be proved before the court. The court has to examine whether the disablement is of such a character that the person concerned is unable to do any work and not only the work which he was doing at the time of the accident. (See General Manager G.I.P. Rly. v. Shanker - AIR 1950 Nag. 201, All India Construction Co. Ltd. v. Munshi Ram AIR 1931 Lah. 319 & Hutti Gold Miners Co. v. Ratnan - 1965 (II) LLJ. 20). The court will have to enter a specific finding that the injury suffered by the employee caused him total disablement of a permanent nature whereby he is unable to do any work and not only the work which he was doing at the time of the accident. In arriving at this conclusion the circumstance that the workman has no longer any earning power since no one could be persuaded to offer him any employment, whatever

may be his physical power, will be an important factor to be taken into account. But that should not be the sole criterion.

9. In the present case the E.S.I. Court has not referred to Ext.P5 decision of the Medical Board or the evidence of D.W. I who was one of the members of the Medical Board. According to the decision of the Medical Board the loss of earning capacity was finally determined as 20%, and was declared to be of a permanent nature. On the other hand, Ext.P4 certificate issued on the day previous to the examination of the employee by the Medical Board does not assess the loss of earning capacity. According to Ext. P4, he has pain at Lumbo Sacral junction with restriction of movement and a positive Lasegues Sign. The doctor who issued Ext.P4 was examined as P.W.2. As P.W.2 he stated that the employee cannot stand for a long time and cannot carry heavy weight. He cannot be in a stooping position. Squatting will be painful. He can sit in a chair. In cross examination he stated that he can do the work of coir winding. From a perusal of the order of the E.S.I. Court, it would appear that the decision turned on the circumstance that the employer is not willing to give him any suitable work and so his earning capacity was reduced to nil. We do not think that such an approach was justified. If the employer illegally refuses to give employment to the worker the court is not helpless in enforcing the rights of the worker. Therefore, the court will have to examine whether the employee is unable to do any kind of work. A decision on this point may be

> arrived at after considering any further evidence that may be adduced by the employee. In case the court considers it necessary, a further medical examination may be ordered by the court."

10. Obviously the EI Court has not analysed the dispute in tune with the law laid down in the judgment referred above and hence the impugned judgment cannot be sustained. Failure to follow the law laid down in the binding judgments give rise to a substantial question of law and I answer it in favour of the appellant.

11. The learned counsel for the respondent submitted that respondent has become actually incapable of performing any work involving physical labour. He submitted that if an opportunity is provided to adduce further evidence in the case, the same can be proved before the EI Court.

12. In view of the submission made by the learned counsel for the respondent, I am of the view that appropriate course to be adopted in this appeal in the interest of justice is to remit the insurance case for fresh consideration by the EI Court.

Accordingly, the impugned judgment dated 23.11.2020 in I.C.A.No.03/2013 shall stand set aside. The ICA shall be considered afresh by the EI Court. Parties shall be free to amend the pleadings if advised so and to adduce fresh evidence also. The learned Judge shall endeavour to pass fresh order in the ICA within a period of six months from the date of appearance of the parties. The parties shall appear before the EI Court on 01.09.2026 or any other date as notified by the Court. Registry is directed to return the records expeditiously to the EI Court.

Sd/-

S.MANU

JUDGE

ACS/MC