

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 30<sup>TH</sup> DAY OF APRIL 2024 / 10<sup>TH</sup> VAISAKHA, 1946

MFA (ECC) NO.52 OF 2018

AGAINST THE ORDER DATED 30.11.2017 IN ECC NO.42 OF 2016 OF INDUSTRIAL TRIBUNAL & EMPLOYEES COMPENSATION COMMISSIONER, KOZHIKODE

APPELLANT/OPPOSITE PARTY:

THE AREA MANAGER, FOOD CORPORATION OF INDIA,

BY ADV SRI.VIVEK VARGHESE P.J., SC, FOOD CORPORATION OF INDIA

RESPONDENT/APPLICANT:

SHRI. P.T.RAJEEVAN

BY ADV SMT.M.R.JAYALATHA

THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR ADMISSION ON 11.04.2024, ALONG WITH CO.13/2019, THE COURT ON 30.04.2024 DELIVERED THE FOLLOWING:

M.F.A (ECC) No.52 of 2018  
& Cross Objection No.13 of 2019

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CO NO.13 OF 2019

AGAINST THE ORDER DATED 30.11.2017 IN E.C.C.NO.42 OF 2016 ON  
THE FILES OF THE INDUSTRIAL TRIBUNAL & EMPLOYEES COMPENSATION  
COMMISSIONER, KOZHIKODE

CROSS OBJECTOR/RESPONDENT/APPLICANT:

P.T. RAJEEVAN

BY ADV M.R.JAYALATHA

RESPONDENT/APPELLANT/OPPOSITE PARTY:

THE AREA MANAGER, FOOD CORPORATION OF INDIA,

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OF INDIA

THIS CROSS OBJECTION/CROSS APPEAL HAVING COME UP FOR  
ADMISSION ON 11.04.2024, ALONG WITH MFA (ECC).52/2018, THE COURT  
ON 30.04.2024 DELIVERED THE FOLLOWING:

'CR'

**G.GIRISH, J.**

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**M.F.A (ECC)No.52 of 2018**  
**&**  
**Cross Objection No.13 of 2019**  
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**Dated this the 30<sup>th</sup> day of April, 2024**

**J U D G M E N T**

The order dated 30.11.2017 of the Employees' Compensation Commissioner, Kozhikode in E.C.C.No.42 of 2016, insofar as it relates to the award of an amount of Rs.35,001/- towards treatment expenses to the respondent, is under challenge in this M.F.A. In the Cross Objection, the respondent challenges the aforesaid order for fixing his monthly income as Rs.20,000/- instead of Rs.29,500/- claimed by him, for the calculation of the compensation due from the appellant.

2. The respondent admittedly suffered injury in an accident occurred on 08.12.2014 during the course of his employment as a headload worker under the appellant. He had undergone treatment for disc prolapse with neurological claudication caused due to the above accident, at Anand

Hospital, Payyoli, Baby Memorial Hospital, Kozhikode and Father Muller Medical College Hospital, Mangalore incurring medical bills amounting to Rs.35,001/-. He claimed a lump-sum amount of Rs.1,00,000/- as compensation in the application filed before the Employees' Compensation Commissioner. The learned Employees' Compensation Commissioner declined to accept the claim of the respondent that he has got monthly wages of Rs.29,500/-, and proceeded with the calculation of compensation by fixing the monthly wages at Rs.20,000/- as suggested by the appellant. The claim of the respondent for reimbursement of medical bills amounting to Rs.35,001/- was accepted by the Employees' Compensation Commissioner. Accordingly, the learned Employees' Compensation Commissioner fixed the compensation payable by the appellant to the respondent as Rs.50,000/- with simple interest @ 12% per annum from 08.12.2014 onwards together with an amount of Rs.35,001/- towards treatment expenses. In this M.F.A, the appellant challenges the award of the amount of Rs.35,001/- as medical expenses stating the reason that the respondent had not undergone treatment at the hospitals empanelled by the Food

Corporation of India as per Circular No.10/2005 issued by its Deputy General Manager, and hence the claim for medical expenses cannot be honoured. The respondent, on the other hand, would contend in his Cross Objection that the order of the learned Employees' Compensation Commissioner fixing his monthly wages at Rs.20,000/- as suggested by the appellant, was erroneous, and that the compensation due to him ought to have been calculated by reckoning his monthly wages at Rs.29,500/- as revealed from the Form-16 submitted by the appellant before the Income Tax authorities.

3. Heard the learned counsel for the appellant and the learned counsel for the respondent/Cross Objector.

4. The contention of the appellant that they are not bound to honour the medical bills submitted by the respondents for the treatment undergone in connection with the injuries sustained in an accident during the course of employment, due to the reason that the respondent had not preferred the empanelled hospitals as required by Circular No.10/2005 of their Deputy General Manager, is prima facie unacceptable. As rightly observed by the learned Employees' Compensation

Commissioner, no circular issued by the employer could override the mandate of Section 4(2A) of the Employees' Compensation Act, 1923, as per which the employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during the course of employment. Being a social welfare legislation, the purpose of the above enactment cannot be permitted to be defeated by the circulars or internal orders passed by the officers of the appellant-Corporation. When viewed upon a humanitarian angle also, there is absolutely no rationale or justification in saying that when an employee suffers injury in an accident during the course of employment, he has to prefer the hospital coming under the panel prepared by the respondent instead of seeking treatment from the hospital from where he could get the best medical care. The right of the employee to seek treatment from the hospital of his choice cannot be curtailed by the circulars issued by the officers of the appellant. Therefore, the challenge in this M.F.A against the award of compensation amounting to Rs.35,001/- under the head 'treatment expenses', is devoid of merit.

6. As regards the monthly income of the respondent from

the salary received from the appellant, it could be seen from Ext.A4 Form No.16 that the gross salary of the respondent is stated as Rs.3,61,984/- during the relevant period. It would necessarily mean that the respondent has been drawing a monthly salary of Rs.30,165/- from the appellant. Ext.A4 document relating to the gross salary income of the respondent has been issued by the appellant, and this aspect is admitted by RW1. That being so, there is absolutely no basis for the contention of the appellant that the monthly wages of the respondent was only Rs.20,000/- during the period when he suffered injuries due to accident during the course of employment. Obviously, the learned Employees' Compensation Commissioner went wrong in accepting the suggestion of the appellant that the monthly wages of the respondent was only Rs.20,000/- during the relevant period. Thus, the calculation of the learned Employees' Compensation Commissioner fixing the compensation due to the respondent at Rs.50,000/- is per-se erroneous. If the compensation due to the respondent is calculated under Section 4(1)(d) of the Employees' Compensation Act, 1923 by fixing his monthly wages at

Rs.30,165/-, the compensation amount due to the respondent would come to Rs.75,412.50/-. In addition to that, the respondent is entitled for an amount of Rs.35,001/-, being the treatment expenses incurred by him in connection with the injuries sustained during the course of employment with the appellant. Thus, the total consolidated compensation amount when worked out, would come to Rs.1,10,413.50/- (Rs.75,412.50 + Rs.35,001). However, it is seen from the Original Application for compensation preferred by the respondent in Form 'G' before the Commissioner for Employees' Compensation that he has limited the compensation claimed to a lumpsum of Rs.1,00,000/-. Since the above lumpsum compensation claimed by the respondent is less than the consolidated amount of Rs.1,10,413.50/- calculated above, the relief of enhanced compensation awarded by this appeal has to be limited to Rs.1,00,000/-. Therefore, the Cross Objection filed by the respondent is liable to be allowed to the extent of enhancing the total compensation amount to Rs.1,00,000/- as claimed by the respondent in Form 'G' before the Commissioner for Employees' Compensation.



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In the result, the appeal stands dismissed, and the Cross Objection allowed directing the appellant to pay a total compensation of Rs.1,00,000/- (Rupees One Lakh only) with simple interest @ 12% per annum with effect from 08.12.2014 till the actual date of payment, to the respondent with immediate effect.

Sd/-

**G.GIRISH, JUDGE**

jsr/vgd