

KERALA HIGH COURT

Oriental Insurance Company Ltd

Vs

Asokan

(Raghavan, J.)

26.02.1997

JUDGEMENT

Raghavan, J.

(1.) THIS is an appeal filed by the Oriental Insurance Company against the order dated December 20, 1995 passed by the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode in W. C. Case No. 320 of 1993. The respondent was a loading and unloading worker in Lorry KRD 2929 owned by one Basheer. On January 29,1990 at about 11. 15 A. M. while the respondent was engaged in work in the lorry, he fell down from the lorry. As a result of the accident, the respondent sustained injuries to his spine and neck. He alleged that his monthly wages was Rs. 1500/- He claimed a compensation of Rs. 1,20,00/ -.

(2.) THE respondent was examined by the Commissioner and the medical certificates produced were also perused by the Commissioner. After considering the evidence on record, the Commissioner came to the conclusion that a sum of Rs. 1,87,182/- is to be paid as compensation. It is also stipulated that the said amount is to be paid within 30 days and in default the said amount will carry simple interest at the rate of 12% per annum from the date of filing of the application. In the appeal, preferred by the Insurance Company, it is alleged that the Commissioner was not justified in holding that there was total disablement as the medical certificate (Ext. A9) showed only disability to the extent of 55%. It was also alleged that the Commissioner erred in calculating the compensation payable to the respondent on the basis of the amended provision of Section 4 of the Workmen's Compensation Act. According to the appellant, the compensation payable to the respondent should have been fixed on the basis of the unamended provisions of Section 4 of the Act, as the accident occurred on January 29, 1990 and the Workmen's Compensation (Amendment) Act, 1995 (Act 30 of 1995) came into effect only on September 15, 1995. We heard counsel for the appellant as also counsel for the respondent.

(3.) AS regards the percentage of disability, there cannot be any dispute because the matter was referred to the Medical Board attached to the District Hospital, Kozhikode and a Certificate dated

January 28, 1997 has been issued by the Medical Board. In the report, it is stated that the respondent is having old cervical spine injury with quadre- paresis and the loss of earning capacity as a loading and unloading worker is 100%. In view of the Certificate issued by the Medical Board, we hold that the permanent disability of the respondent is hundred percent and the Commissioner was justified in assessing the disability at 100%. The next question that arises for consideration is whether the respondent is entitled to get compensation on the basis of the amended Act or on the basis of the law that was in force as on January 29, 1990, the date of the accident. ;