IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 31ST DAY OF MARCH 2026 / 10TH CHAITHRA, 1948

MFA (ECC) NO. 29 OF 2023

AGAINST THE ORDER DATED 05.11.2022 IN ECC NO.59 OF 2017 (OLD No.9/2009) OF THE EMPLOYEES COMPENSATION COMMISSIONER, (INDUSTRIAL TRIBUNAL), THIRUVANANTHAPURAM

APPELLANT/OPPOSITE PARTY:

THE REGIONAL MANAGER,
FOOD CORPORATION OF INDIA,
REGIONAL OFFICE, KESAVADASAPURAM,
THIRUVANANTHAPURAM, PIN - 695004.

BY ADV SHRI.R.HARIKRISHNAN (KAMBISSERIL)

RESPONDENT/APPLICANT:

MOHANDAS
S/O NARAYANAN, TC 78/4011,
RESHMA BHAVAN, NEAR WIRELESS STATION,
BEACH P.O, THIRUVANANTHAPURAM, PIN - 695007.

THIS MFA (ECC) HAVING BEEN FINALLY HEARD ON 24.03.2026, THE COURT ON 31.03.2026 DELIVERED THE FOLLOWING:

[CR]

S.MANU, J.

M.F.A.(ECC)No.29 of 2023

Dated this the 31st day of March, 2026

JUDGMENT

The opposite party in ECC No.59/2017 on the file of the Employees Compensation Commissioner, Thiruvananthapuram has filed this appeal aggrieved by the order granting compensation to the respondent for injuries sustained in an accident during the course of his employment under the appellant.

2. The respondent was employed as a paid headload worker in a godown of the appellant. On 17.11.2007 at about 11:30 am, while he was loading rice bags, one of the bags fell on his legs and he sustained fracture of both bones of both legs leading to deformity of both lower limbs. He had to undergo surgical procedures and treatment as inpatient. The application for compensation was filed claiming an amount of Rs.1,17,410/-.

3. The respondent was examined as PW1 before the Commissioner. On the side of the appellant RW1 and RW2 were examined. Exts.A1 to A7 were marked on the side of the respondent. Exts.B1 to B7 were brought on record by the appellant.

4. The learned Commissioner, on appreciation of the pleadings and evidence concluded that the respondent was entitled for compensation and granted an amount of Rs.2,62,216/- together with interest at the rate of 12% from the date of accident till the realization. Cost was also awarded to the respondent.

5. Though notice was issued there is no appearance for the respondent.

6. Heard the learned counsel for the appellant. Perused the impugned order as well as relevant records.

7. The learned counsel for the appellant raised two legal issues as substantial questions of law involved in the appeal. He contended that the learned Commissioner surpassed his jurisdiction by granting a compensation of Rs.2,62,216/- as the

claim of the respondent was only for an amount of Rs.1,17,410/-. He argued that the Commissioner has no jurisdiction to grant a compensation higher than that was sought for by the claimant. However, this question is covered against the appellant by the judgment of this Court in **Chairman and Managing Director, Kerala State Electricity Board Ltd. v. Sudhish** [(2026) KLT OnLine 1553]. It has been held in the said judgment that the Commissioner has the authority and duty to award just compensation even if the same is higher than the compensation claimed. Hence, the first substantial question of law raised by the learned counsel for the appellant is answered against the appellant.

8. The next substantial question of law canvassed by the learned counsel for the appellant is regarding want of a notice as contemplated under Section 10 of the Employees Compensation Act, 1923. He submitted that no notice was issued to the appellant by the employee as provided under S.10. However, the said contention was rejected by the learned Commissioner holding that since there was mediation between

the parties, the accident was well within the knowledge of the appellant and hence the failure to issue notice is inconsequential. He submitted that the opening words of Section 10(1) are unequivocal and no claim for compensation can be entertained by the Commissioner unless notice of the accident has been given. The learned counsel contended that the Commissioner overlooked the mandatory nature of Section 10(1) and rendered a finding, that cannot be sustained in law. He urged that for want of proper notice, the proceedings before the learned Commissioner were not maintainable.

9. The relevant provisions of Section 10 are extracted hereunder for ready reference: -

> "10. **Notice and claim**.—(1)No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death.
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> …...
> ....
>
> Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if the claim is preferred in respect of the death of a employee resulting from an accident which occurred on the premises of the employer, or at any place where the employee at the time of the accident was working under the control of the employer or of any person employed by him, and the employee died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured employee was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further, that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause."

10. A close reading of Section 10 would show that though sub-section (1) provides that no claim for compensation shall be entertained by a Commissioner unless notice of accident has been given in the manner provided in the latter parts of the Section, the fourth proviso to sub-section (1) dilutes the rigour

of the sub-section. Two different circumstances are covered by clauses (a) and (b) under the fourth proviso wherein it has been provided that want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim. It is relevant to note the fifth proviso also in this regard. It has been provided therein that the Commissioner may entertain and decide any claim for compensation in any case, notwithstanding that the notice has not been given or the claim has not been preferred in due time as provided in sub-section (1) if he is satisfied that the failure to give the notice or prefer the claim as the case may be was due to sufficient cause.

11. Proviso is a legislative tool often used to carve out exceptions to the preceding provisions. Learned author P.M.Bakshi in his “Interpretation of Statutes” describes the main roles that can be properly assigned to the proviso in legal drafting as follows:

(a) exclusionary,

(b) qualifying,

(c) clarificatory.

In its exclusionary role, the proviso excludes something which would otherwise fall within the main part of the statutory provision. In its qualifying role, the proviso qualifies, or attaches conditions to the proposition laid down in the main enactment. In its clarificatory role, the proviso clarifies some doubt or ambiguity which might possibly arise from the apparently elastic phraseology of the main part.

12. In **Romesh Kumar Sharma v. Union of India and Others** [(2006) 6 SCC 510], Hon'ble Supreme Court held as under,

> "12. "10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey [(1880) 5 QBD 170 : 42 LT 128] (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha [(1962) 2 SCR 159 : AIR 1961 SC 1596] and Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta [(1965) 3 SCR 354 : AIR 1965 SC 1728], when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that

> case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. 'If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso. …' said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society [1897 AC 647 : 77 LT 284 (HL)]. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See A.N. Sehgal v. Raje Ram Sheoran [1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675 : (1993) 24 ATC 559 : AIR 1991 SC 1406], Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal [(1991) 3 SCC 442 : AIR 1991 SC 1538] and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd. [(1994) 5 SCC 672].
> …..."

13. Provisos are often employed by the legislature to carve out exceptions to the general provisions. The rigour as well as application of the main provision can be watered down and varied by incorporating provisos. While understanding the scope of a provision of a statute it should be read as a whole. The impact of the main provision would be subject to what is provided under the provisos if any.

14. The rigour of sub-section (1) of Section 10 has been ostensibly diluted by incorporating the fourth and fifth provisos. In view of clause (b) under the fourth proviso, if the employer had knowledge of the accident from any other source at or about the time when it occurred, want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim.

15. There are quite a few reported judgments of various High Courts holding that the provisions of Section 10 regarding the issuance of notice to the employer cannot be considered indispensable. The said interpretation has been adopted in the following judgments:-

1) **C. Nanoo v. Mariamma Kuruvila and another** [1959 K.L.R. 47],
2) **Bhagwandas v. Pyarelal** [1952 SCC OnLine MP 34],
3) **Chhatiya Devi Gowalin (Smt.) and another v. Rup Lal Sao and another** [1978 SCC OnLine Pat 58],
4) **Divisional Supdt. Northern Rly., Moradabad v. Umrao** [1959 SCC OnLine All 261],

5) **Makhan Lal Marwari v. Audh Behari Lal** [1958 SCC OnLine All 41],

6) **National Insurance Company Ltd. v. Seema Devi and Others** [2020 SCC OnLine All 1954].

16. In the instant case, the learned Commissioner noted that there was a mediation between the parties before the application for compensation was filed. Therefore, the Commissioner held that the accident was within the knowledge of the appellant and hence want of notice was not a bar to entertain the claim. The conclusion of the learned Commissioner is perfectly valid in view of the fourth proviso to sub-section (1). Once it is proved that the employer had knowledge of the accident, the Commissioner need not reject the claim though no notice regarding the accident was served on the employer. Apparently, the purpose of the notice under Section 10 of the Act is to bring the accident to the notice of the employer. Hence,

the second substantial question of law raised is also answered against the appellant.

In fine, the appeal fails. It is accordingly dismissed.

Sd/-

S.MANU
JUDGE

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