

**Assistant Executive Engineer Vs. Sunanda**

**Assistant Executive Engineer Vs. Sunanda**

**SooperKanoon Citation :** [sooperkanoon.com/375909](http://sooperkanoon.com/375909)

**Court :** Karnataka

**Decided On :** Dec-10-1993

**Reported in :** II(1994)ACC455; 1995ACJ218; [1994(68)FLR686];  
ILR1994KAR515

**Judge :** G.P. Shivaprakash and ; Vasantha Kumar, JJ.

**Appeal No. :** M.F.A. No. 2160 of 1993

**Appellant :** Assistant Executive Engineer

**Respondent :** Sunanda

**Judgement :**

**Shivaprakash, J.**

1. This is an Appeal presented by the 'employer' under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as 'Act').

2. The facts of the case in brief are as follows :

The deceased Krishna while working at Bhadra River left Bank Canal slipped into the Canal and died on 4-3-1992. Respondent No. 1 is the wife of the deceased and Respondent No. 2 is the mother of the deceased. They presented the claim petition before the Commissioner, who by his order, dated 6-9-1993 has awarded a sum of Rs. 68,977-00 with simple interest at 6% from 4-3-1992 till the date of

deposit.

3. Sri H. J. Sunderkumar, learned High Court Government Advocate submitted that the deceased was not a 'Workman' as defined in the Act. Section 2(1)(n) defines 'Workman' as follows :

'Workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business) who is

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II or

(ii) employed in any capacity as is specified in Schedule II.

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union) and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.'

Schedule II referred to in the definition enumerates the persons who are 'workman' within the meaning of Section 2(1)(n).

3. The Commissioner has held that the deceased was a 'workman' in terms of Item (x) in Schedule II. Item (x) reads as hereunder :

' (x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any aerial ropeway, canal, pipeline, or sewer.'

In the instant case, it is not in dispute that the deceased was working at the Canal as a 'Saudi' and, therefore, the Commissioner was right in holding that the deceased was a 'workman' in terms of the aforesaid Provisions.

4. The learned Government Advocate next contended that the 'workman' was a casual labourer and to start with was receiving daily wages of Rs. 20/- and in view

of the Government Order No. DPAR 26 SLC 90 dated 6th August, 1990, based on the Decision of the Supreme Court and this Court, he was being paid Rs. 790/- per month but he continued to be casual labourer. In this regard the learned Government Advocate invited out attention to the definition of 'workman' and emphasised that a person whose employment is of a casual nature cannot be considered to be 'workman' as defined. The submission overlooks the definition of 'workman' in section 2(1)(n), which clearly defines that a 'workmen' means any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business.

5. In this case even assuming that the employment of the deceased was of a casual nature, it cannot be disputed that he was an employee for the purposes of the work of the Appellant and therefore we are of the view that the submission of the learned Government Advocate cannot be accepted.

6. Lastly, the learned Government Advocate urged that the liability of an 'employer' under the provisions of Section 3 would arise only if the injury is caused to the 'workman' by accident arising out of the 'workman' by accident arising out of and in the course of his employment. Elaborating this submission the learned Government Advocate submitted that in the instant case the deceased must have fallen into the canal because of negligence on his part and therefore the 'employer' is not liable to pay any compensation.

7. As noticed above, the deceased was working for the Appellant at the above said canal and in the course of that work he fell into the canal and died. If we accept the submission that if there were to be negligence on the part of the 'workman' the liability of the 'employer' would be absolved it would defeat the very object of the Statute itself.

8. It is not as if that all accidents occur because of negligence on the part of the 'workman'. Even assuming there was some negligence on the part of the 'workman', we are of the view that by itself would not exonerate the 'employer' of his statutory liability under the provisions of the Act.

9. After hearing both the learned Government Advocate for the Appellant and Sri Mahesh R. Uppin, for the Respondents, we have passed the above order.

10. We see no merit in this Appeal. Appeal is, therefore, dismissed at the Admission stage itself.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**