

**C.V. Subba Reddy Vs. Executive Engineer, Telgu Ganga Project and ors.**

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**Court :** Andhra Pradesh

**Decided On :** Apr-15-2005

**Reported in :** III(2005)ACC792; 2005(4)ALD186; 2005(4)ALT41

**Judge :** P.S. Narayana, J.

**Acts :** Workmen's Compensation Act, 1923 - Sections 8, 10A(3), 10A(4), 10B(1), 12, 12(1), 12(2) and 12(3); Code of Civil Procedure (CPC) - Sections 80

**Appeal No. :** SA No. 247 of 1997

**Appellant :** C.V. Subba Reddy

**Respondent :** Executive Engineer, Telgu Ganga Project and ors.

**Advocate for Def. :** Government Pleader

**Advocate for Pet/Ap. :** N. Parameswara Reddy, Adv.

**Judgement :**

**P.S. Narayana, J.**

1. Heard Sri Parameswara Reddy, Counsel representing the appellant and Government Pleader for Appeals representing the respondents.
2. The following substantial questions of law arise for consideration in the present Second Appeal:

1. Whether the deduction of money from the bills of appellant/contractor without there being an adjudication under Section 12 of the Workmen's Compensation Act be sustained ?

2. Whether withdrawing of the amount on the ground that compensation had been awarded to the heirs of the deceased workmen from the appellant/ contractor without making him as a party to the claim and without following due procedure be in accordance with law ?

Both the Counsel advanced elaborate submissions. The Counsel for appellant placed strong reliance on *Triveedhi Peerayya v. Executive Engineer*, 1986 (1) APLJ 585 = 1988 II LLN 483.

3. C.B. Subba Rao, the unsuccessful plaintiff, being aggrieved by the reversing judgment made in A.S. No. 26/93 on the file of II Additional District Judge, Cuddapah, reversing the judgment made in O.S. No. 1 16/ 87 on the file of Subordinate Judge, Gudur had preferred the present Second Appeal.

4. The appellant/plaintiff filed a suit for recovery of a sum of Rs. 32,856-50 with future interest @ 12%. The case of the plaintiff is that the plaintiff is a first class contractor of civil works and entered into an agreement with defendants to construct administrative building in at Telugu Ganga Project Colony, Mamillapalli Village, Cuddapah Mandal during the year 1986 and completed the same. The plaintiff, to his surprise, came to know that one Venkataramana said to have been employed by him in doing plastering work fell down sustaining injuries and ultimately expired in the Government Hospital, Cuddapah on 16-4-1986. The plaintiff had personally and in writing stated that he had nothing to do with the deceased employee Janapati Venkataramana without any liability to pay the compensation under Workmen's Compensation Act. Defendants 1 and 2 who are the employees under 3rd defendant had been persuading the matter with the Commissioner for Workmen's Compensation, Kurnool Region and had been trying to implicate the plaintiff for payment of compensation without any actual and legal basis. On 28-2-1987 the Commissioner for Workmen's Compensation, Kurnool Division, also appears to have decided to pay the amount of Rs. 32,536-50 to the heirs of Janapati Venkataramana and directed to the 1st defendant to deposit the

amount by way of demand draft in favour of the Commissioner, Kurnool on State Bank of India, Kurnool Branch. The direction excludes the liability of plaintiff to pay the said amount. The plaintiff had been asserting that he is not liable for the accident and also not liable to pay the compensation to the heirs of the deceased Venkataramana. On 21-10-1986 the son of late Venkataramana issued lawyer's notice to the plaintiff and also the 2nd defendant demanding compensation of Rs. 40,000/- and a suitable reply was given by the plaintiff. That being so, while making the final payment of all the works executed by the plaintiff the 1st defendant on 13-7-1987 deducted a sum of Rs. 32,536-50 ps. from the total bill amount in spite of the resistances made by the plaintiff without any authority arbitrarily and unlawfully withheld the said amount and hence the suit.

5. The 1st defendant filed written statement which was adopted by defendants 2 and 3. The fact the work was done by the plaintiff is not in dispute. It was further pleaded that one Janapati Venkataramana, one of the employees of the plaintiff in the said work died while he was on duty and the same was reported to the Executive Engineer that the employee of the plaintiff died in the course of the work under the plaintiff on 16-4-1986. The same was informed to the higher authorities in Form 'B'. The injured Venkataramana died on 16-4-1986 and the same was informed to the Secretary of the Government and also to the Deputy Commissioner of Labour, Kurnool and to the Chairman, Telugu Ganga Project Board, Hyderabad by way of telegrams dated 16-4-1986 and later by confirmation by a detailed report in Forms A and B were submitted to the Superintending Engineer, Telugu Ganga Project Circle submitting copies to the Chief Engineer, Telugu Ganga Project, Cuddapah, Deputy Commissioner of Labour, Kurnool and District Collector, Kurnool in Letter No. 223, SE, dated 16-4-1986. Meanwhile, the plaintiff was asked by the Executive Engineer under the Letter No. 441M, dated 26-5-1986 to submit his report with regard to the particulars of employment of deceased required to pay the compensation under Workmen's Compensation Act and to enable the Department to finalise the case. No reply was given by the plaintiff. The Deputy Commissioner of Labour, Kurnool requested the plaintiff to send particulars for disposal of the case marking copies to the plaintiff and to the Superintending Engineer. The plaintiff sent a reply on 2-7-1986 stating that the Department Field Officers had already sent necessary report and that he is not

liable to pay any compensation. To the notice issued by the Department dated 6-2-1987 to the plaintiff as per Clause 9(a) of Schedule of Agreement No. 16/83-84 and P.S.No. 45 of Andhra Pradesh Standard Specifications, the contractor has to pay the compensation under Workmen's Compensation Act but no reply was received from the plaintiff. The Deputy Commissioner of Labour in his letter dated 28-2-1987 stated that a sum of Rs. 32,536-60 has to be recovered from the contractor and the same was recovered from the final bill of the plaintiff and deposited with the Pay and Accounts Officer, Telugu Ganga Project and later the amount was remitted to the Deputy Commissioner of Labour through D.D.No. O/L/A37/195933 dated 24-10-1987. It was further pleaded that it is false to say that J. Venkataramana was not an employee of the plaintiff and that the plaintiff is not responsible with respect to his death. It is admitted that the Assistant Commissioner for Workmen's Compensation, Kurnool, ordered to pay the sum of Rs. 32,536-60 ps. behind the back of the plaintiff and that the 1st defendant is not liable to pay the same to the heirs of late J. Venkataramana because the said amount was deposited by the Commissioner of Workmen's Compensation on behalf of the plaintiff and the defendants are entitled to withheld the said amount out of the amount payable to the plaintiff rightly. The suit is not maintainable without making the Government of Andhra Pradesh as party to the suit and without issuing statutory notice under Section 80 of the Code of Civil Procedure.

6. On the strength of the plea of the parties, the following Issues were settled:

1. Whether the plaintiff is entitled for a decree of Rs. 32,856-50 paise with interest at 12% per annum ?

2. To what relief ?

7. In the light of the specific objection taken, I.A. No. 771/88 was filed and Government of Andhra Pradesh was added as 4th defendant being a necessary party. It is also pertinent to note that in I.A. No. 538/ 88 dated 27-8-1988 notice under Section 80 CPC to the 4th respondent had been dispensed with.

8. The son of the plaintiff was examined as PW-1 and Exs.A-1 to A-6 were marked and DW-1 was examined on behalf of defendants and Exs.B-1 to B-19 were

marked. The Court of first instance on appreciation of the evidence available on record decreed the suit as prayed for with interest @ 12% per annum from the date of judgment and decree till realization of the amount. Aggrieved by the same, the matter was carried by way of appeal, A.S. No. 26/92, wherein the following Points for consideration were framed by the appellate Court :

(1) Whether the lower Court erred in giving a finding without framing an Issue whether the appellant/defendant is entitled to deduct the compensation amount awarded by the Assistant Commissioner in the final bill of the respondent in lieu of Ex.B-1 ?

(2) Whether the judgment of the lower Court is contrary to law and sustainable as per the terms of Ex.B-1 ?

The appellate Court reversed the judgment and decree of the Court of first instance mainly on the ground that in the light of the correspondence the plaintiff had knowledge about the claim of compensation by the heirs of the deceased and in the light of the fact that the plaintiff had sufficient knowledge about the amount awarded by the Assistant Commissioner, the deduction is in accordance with law and hence the plaintiff is not entitled to the amount prayed for. Aggrieved by the same, the present Second Appeal is preferred.

9. Several of the facts are not in controversy. The son of the plaintiff as PW-1 deposed about all the details. Equally DW-1 had narrated the factual details and DW-2 also was examined. The plaintiff entered into an agreement Ex.B-1 dated 19-3-1984 with the 2nd defendant for construction of the administrative building. The death of Venkataramana on 16-4-1986 during the course of employment under the plaintiff by falling down from the terrace and the cause of death due to injuries sustained by him is in some controversy since the plaintiff is disputing the same. No doubt the evidence of DW-1, the Deputy Executive Engineer is available who deposed that he was supervising the work when the deceased Venkataramana had fallen down and sustained fatal injuries on 15-4-1986 and died on 16-4-1986. The report is Ex.B-2 sent to the Executive Engineer. Ex.B-3 is a copy of the letter along with Form A and report for taking necessary action. Exs.B-4 to B-19 also are different letters and the correspondence in this regard.

DW-2 also supported the version of DW-1. As against this evidence, the evidence of PW-1 is available who deposed about Ex.A-1, office copy of the letter dated 26-5-1986 and Ex.A-2, office copy of the reply of the plaintiff to the 1st defendant stating that the deceased Venkataramana never worked under the plaintiff. Ex.A-3 is the office copy of the letter of the plaintiff to the 1st defendant informing that the defendants are liable for payment of compensation. Ex.A-4 is notice dated 21-10-1986 by the wife of the deceased Venkataramana to the plaintiff calling upon him to pay Rs. 40,000/- towards compensation within two weeks. Ex.A-5 is dated 3-11-1986, office copy of the reply notice issued by the plaintiff's Counsel for Ex.A-4 that he is not liable to pay the compensation. Ex.A-6 is the letter addressed by the defendant to the plaintiff asking him to submit the workmen's compensation and the date on which the case was finally disposed of.

10. Findings in detail had been recorded by the Court of first instance and in the light of the language employed in Section 12 of the Workmen's Compensation Act 1923 in general and Section 12(2) of the said Act in particular, and also placing reliance on the decision in *Triveedhi Peerayya v. Executive Engineer*, referred (supra), the Court of first instance had arrived at the conclusion that deduction of the amount from the bills of the plaintiff would be unauthorised unless there is adjudication in this regard made by the competent authority under the Workmen's Compensation Act 1923 and hence the plaintiff is entitled for a decree. The same had been reversed by the appellate Court specifically observing that the plaintiff had knowledge about the claim of compensation and hence the deduction of the amount from the bills cannot be said to be either illegal or unauthorized.

11. The factual matrix being plain and simple as referred to supra, need not be repeated again. A similar question in relation to deductions from the bills without adjudication by the competent authority under the Workmen's Compensation Act 1923 had fallen for consideration before this Court in *Laxmi Construction Co., Hyderabad v. The Financial Adviser and Chief Accounts Officer, South Central Railway, Secunderabad* and another (W.P.No. 6921/ 97 dated 20-1-2005) reported in : AIR 2005 AP199 and this Court affirmatively held that such deductions without following the procedure as specified under Section 12(2) of the Workmen's Compensation Act 1923 would amount to unauthorized deductions.

12. Section 12(2) of the Act of 1923 specifically says as follows:

'Sub-section (2) of Section 12:--Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation], and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.'

Sub-section (3) of Section 12 of the Act further clarifies the situation to the effect that nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal. For the purpose of claiming indemnification, the procedure specified under Section 12 of the Act of 1923 may have to be followed. Sub-section (3) of Section 10-A specifically says as follows:

'If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.'

Sub-section (4) of Section 10-A specifically says as follows:

'Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.'

It is no doubt true under Sub-section (1) of Section 10-B, the proviso specifies as follows:

'Where, by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, of any accident occurring on his premises which results in death (or serious bodily injury), the person required to give the notice shall, within seven days of the death (or serious bodily injury), send

a report to the Commissioner giving the circumstances attending the death (or serious bodily injury):

Provided that where the State Government has so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.'

13. In the decision in *Triveedhi Peerayya v. Executive Engineer* referred (supra), the appellant was a contractor for construction of a portion of project. A female worker engaged by him in the project died of electrocution and her husband preferred a claim under the Workmen's Compensation Act. The Commissioner held the contractor is liable for the payment of compensation. The project authorities paid the compensation and deducted the amount of compensation from out of the bills payable to the appellant-contractor. The appellant-contractor filed the instant appeal against the order of the Commissioner. Thus the question is whether the deduction made by the project authorities from the dues payable to the appellant is justifiable or not. It was held that:

'The project authorities, being the principals were primarily liable under Section 12(1) of the Workmen's Compensation Act of 1923, subject to their seeking reimbursement from the contractor under Section 12(2). It was not open to them to straightway deduct the compensation amount from the bills payable to the appellant.'

In *Madina Sahee v. Province of Madras*, AIR 1946 Mad. 113 = 1945 (2) MLJ 522, it was pointed out by Rajamannar, J., that an order awarding compensation was distinct and different from an order allowing or disallowing a claim for indemnity for the amount of compensation paid. The fact that the Government has assumed the liability as the principal employer and paid the compensation does not ipso facto entitle it to initiate the process of indemnification, without adjudication by the Commissioner for indemnity. In *Srinivasarao v. Commissioner for Workmen's Compensation*, 1972 (1) An.WR 235, it was held that withholding of the amount in such a situation lacks legal sanction and the right to claim indemnity can be enforced only when there is an adjudication by the Commissioner because the employer has disputed his liability to indemnify the principal employer. Reliance

was also placed on the decision of a Division Bench in *K.S.E. Board v. Sundaram Estate*, 1987 Lab.I.C. 1152. In *G. Sreedharan v. Hindustan Ideal Insurance Corporation Ltd.*, 1976 Lab.I.C. 732, a Division Bench of this Court, at Para 16, held that:

'Section 12(1) entitles the injured workman or the dependants of a deceased workman to claim compensation against the principal although the injured or deceased workman, as the case may be, was actually employed by the contractor who had undertaken to execute the work or job of the principal. The liability to pay compensation for the personal injury caused to the workman by accident arising out of and in the course of his employment is fastened statutorily on the principal. For the purpose of claiming compensation under the Act, the principal is deemed to be the employer of the concerned injured workman. It is pertinent to notice that the principal must have engaged the contractor in the course of or for the purpose of his trade or business for the execution of the whole or any part of his work, in order to attract the provisions of Section 12. But, however, the amount of compensation payable by the principal has to be calculated with reference to the wages of the workman under the employer by whom he is immediately employed. The provisions of Section 12 would not come into play where the accident occurs elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes to execute the work or which are otherwise under his control or management. The Legislature has thought fit and proper to make primarily the principal liable to pay compensation to the workman, perhaps on account of the better status and financial stability of the principal than that of his immediate employer. However, the choice lies with the injured workman or the dependants of a deceased workman to proceed against the principal or the contractor or subcontractor. There is no statutory prohibition under Section 12 preventing a workman from recovering compensation from the employer instead of the principal. Section 12 is enacted only to provide for cases where there are contractors or intermediaries between the principal and the injured or deceased workman in the execution of the work of the principal, Section 12 has no application at all. The injured workman or dependants of a deceased workman can claim compensation against the employer as per the provisions of Section 3. The question of paying indemnity by the insurance company to the assured does not

arise under Section 12(2) of the Act. It is only the principal or the contractor who had to pay compensation to the injured workman or the dependants of the deceased workman, on the application of the provisions of Section 12(1) of the Act, that is entitled to claim indemnity under Sub-section (2) to Section 12. The actual liability to pay compensation to an injured workman is on the immediate employer of such workman. Whoever pays for and on behalf of such employer by virtue of the statutory provisions of Section 12(1) would be entitled to be indemnified under Sub-section (2) thereof. In the case on hand, there is no contractor or sub-contractor. The appellant is the employer of the deceased workman. Admittedly, the deceased Apparao died in the accident while he was actually discharging his duties as a cleaner. The appellant is liable to pay compensation under Section 3. The dependants of the deceased workman have filed an application before the Commissioner for application before the Commissioner for compensation against the appellant employer only. The insurer was not made a party respondent by the dependants of the deceased workman in the main application before the Commissioner claiming compensation. Hence, the provisions of Section 12(2) are not attracted.'

In *The Assistant Director, Anna Pannai and Anr. v. Andi and Anr.*, 1997 (2) LLJ (HC) Mad. 568, it was held that:

'The principal employer is made liable even in respect of the worker engaged under the contractor if the work entrusted with the contractor is connected with the trade or business of the principal employer.'

In *M. Veeranjanyulu v. Soma Seetharamaiah*, 1997 (2) ALD 602, it was held at Para 7 that:

'On a deep probe into the matter, there appears to be all the force in the contention of the learned Advocate for the appellant. Section 3 of the Act deals with the employer's liability for compensation under the circumstances enumerated in the provision to be paid to the dependants of the injured/deceased workman and Section 4 deals with the amount of compensation to be determined by the Commissioner and Section 4-A deals with compensation to be paid within a particular time and penalty for default. These provisions have nothing to do either

with the apportionment of the compensation or apportionment of liability in paying the compensation. Because, Section 8 of the Act deals with the distribution of compensation. In regard to the liability of the employer, Section 3 itself imposes an obligation on an employer to pay the compensation as directed by the Commissioner. Section 3 has nothing to do with the determination of liability of any other person apart from the employer. But Section 12 of the Act deals with the obligation of parties to the contract in case of payment of compensation to a workman or the dependants. Sub-clause

(1) of Section 12 of the Act makes the contractor liable along with the principal to pay the compensation, if so ordered. Sub-clause

(2) of Section 12 makes the principal liable to pay the compensation, however subject to indemnification by the contractor, regarding which all the questions as to the right to and amount of any such indemnity shall be settled by the Commissioner. Sub-clause

(3) of Section 12 leaves open an option to the workman (including the dependants) from recovering the compensation from the contractor instead of the principal. The sum and substance of these provisions, if read with Section 3 of the Act, means that if the Commissioner determines and directs payment of compensation under Section 3 of the Act, the employer and the principal will be liable in addition to the contract, however, with the option to the claimants to seek recovery of the compensation either against one or both of them. But Sub-clause

(2) of Section 12 if properly read within the following words would bring out the clear meaning that the determination of question of indemnity by the learned Commissioner is quite independent of determination of compensation and directing payment to the claimants under Section 3 of the Act:

'12(2): Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor (or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to

him in the relation of a contractor from whom the workman could have recovered compensation) and all questions as to the right and the amount of any such indemnity shall in default of agreement be settled by the Commissioner'.

On the face of it, such a liability of indemnification on the part of the employer or principal shall be, in the absence of a contract to the contrary. Patently it requires basic facts to determine the nature, the extent and the legality of the liability of the indemnity to be fastened on the contractor to indemnify the employer from paying the compensation. As the very provision implies an agreement to the contrary, meaning thereby, that the employer and the contractor may agree in regard to the nature, extent and the limits of liability to indemnify. In other words, such questions arise out of the plea and the denial. The Commissioner, to assume jurisdiction without the jurisdictional facts to determine such facts to determine such questions appears to be beyond the scope of the provision. That is what the High Court of Kerala in Executive Engineer's case, in Para 3 held as follows:

'...It is true that in default of agreement, it is both the right and duty of the Commissioner to settle all questions as to the right to and the amount of any such indemnity. Even so, due regard having had to the wording of Sub-section (2) of Section 12 of the Act, we find it difficult to agree with the argument of the Government Pleader, that the Commissioner is under a statutory obligation to decide such questions even when neither of the parties raised that question, and there was no issue before him. It appears to us that the true import of the wording in Sub-section (2) of Section 12 of the Act is that, in default of agreement, where any question as to the right to and the amount of indemnity is raised by all or any of the parties to the proceedings, it is for the Commissioner to settle such questions. It would be unreasonable to construe that the statute lays down an obligation on the part of the Commissioner to decide suo motu a question the parties before him were not interested in raising.'

Having due regard to the true and correct implications of the provisions supra, this Court respectfully agrees with the High Court of Kerala as above. In Mulla Madina Saheb's case (supra), the question relating to the liability of indemnification under Section 12 of the Act was considered. It was held therein that an order awarding

compensation was distinct and different from an order allowing or disallowing a claim for indemnity for the amount of compensation paid and an order holding the principal liable to pay compensation under Section 12(1) did not give the principal an absolute right to claim indemnity from the contractor under Section 12(2). It was further held that Section 12(2) gave the Commissioner jurisdiction to decide all cases of disputed right to indemnity and the dispute between the Government and contractor came within Section 12(2) and as it was the Government which claimed a right of indemnity, it was for the Government and not the contractor to move the Commissioner to have the right adjudicated upon under Section 12(2). This Court respectfully agrees with such a view having due regard to such an implication of law under the provision. It may be concluded that the Commissioner cannot suo motu determine the question of indemnification by a contractor to the employer or the principal in regard to the payment of compensation under Section 3 of the Act and Section 4-A of the Act unless such a question is raised by necessary pleading and necessary facts either as a part of the proceedings under Section 3 of the Act or independently by separate proceedings giving opportunity to the contractor or the party against whom such liability of indemnification as such has to be mulcted and after holding an enquiry into such questions and by passing appropriate orders in accordance with the said provision and not otherwise. In the present case, the order of the learned Commissioner issuing directions to Opposite party No. 3 to indemnify Opposite party Nos. 1 and 2 regarding the compensation to be paid to the claimants is beyond the scope of Section 12(2) of the Act and patently illegal and requires to be set aside. However, this shall not be taken as an expression that Opposite party Nos. 1 and 2 are debarred from seeking such reliefs quite independent of the present proceedings, if law permits.'

In H.P. State Forest Corporation Ltd. v. Vimala Devi, 2002(2) LLJ (HP) 500, it was held at Paras 16, 17 and 19 that:

'In the circumstances, we are of the view that Section 12 of the Act is applicable to the facts of the case on hand and there cannot be any doubt about the legal position that the second opposite party i.e., appellant-Corporation is also liable to pay compensation payable under the Act to the workman even if workman was engaged actually only by the second opposite party i.e., respondent-Contractor.

Section 12(2) in unambiguous terms confers a right on the principal who is made liable to pay compensation under the said section to get himself indemnified by the contractor. As such we would hold that the second opposite party-appellant Corporation as principal employer will be entitled to be indemnified by the respondent-contractor by virtue of Section 12(2) of the Act. We say so because in this case the second opposite party appellant-Corporation has specifically contended that as per Clause 16 of the agreement entered into between the Corporation and the contractor, the contractor has expressly undertaken the responsibility for payment of compensation to the labour employed by him.

We do not think that there is any merit in the contention of the learned Counsel for the appellant-Corporation that in the light of the contract entered into between the two opposite parties regarding the liability to pay compensation as per Clause 16 of the agreement and that clause will override the provisions of Section 12. The avowed object with which Section 12 was enacted as part of the Act as seen is to enable the workmen or the dependents of the workmen to proceed against the contractor or against the principal or both and to make the contractor liable to indemnify the principal in all cases in the absence of any agreement to the contrary. If these were the avowed objects with which Section 12 of this Act was incorporated in an enactment which itself is a beneficial legislation intended to confer benefits on the workmen, we are of the view that the provisions in Section 12(2) would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. At best agreements or contracts entered into between the principal and contractor can govern only their inter se rights and liabilities and cannot affect the right of the workmen or their dependents to get compensation either from the principal or from the contractor at their option. Right to get indemnified from the contractor specifically conferred on the principal under Section 12(2) of the Act sufficiently safeguards the interest of the principal who has entrusted the work to the contractor.'

In *Malankara Rubber and Produce Co. Ltd. v. Hameed*, 2000 II LLJ (Ker.) 630, where the work by contractor for expansion of factory building in premises of principal employer and the expansion being connected with latter's, principal

employer was held to be liable to pay compensation for the death of workman engaged by the contractor. In *K. Koodalingam v. S.E. and Ors.*, 1995 (1) LANDLORD J. (Ker.) 334, a Division Bench of Kerala High Court at Paras 10 and 11, held that:

'Section 12(2) in unambiguous terms confers a right on the principal who is made liable to pay compensation under the said section to get himself indemnified by the contractor. As such, we would hold that the first opposite party as principal will be entitled to be indemnified by the contractor by virtue of Section 12(2) of the Act and to recover the amount of compensation, if any paid to the workmen, from the second opposite party in execution of the orders passed in the two cases itself. We say so because in this case the first opposite party has specifically contended that as per Clause 15 of the agreement entered into between the department the contractor, the contractor has expressly undertaken the responsibility for payment of compensation under the Act and the Court as per the impugned order has accepted the above contention and held the second opposite party exclusively liable to pay the compensation found due. Though notice was issued to the second opposite party, he has remained *ex parte* before the Court below and in this Court. In the circumstances, we would hold that the first opposite party is entitled to recover the amounts, if any, paid to the appellants in the two cases from Opposite party No. 2 by way of indemnity.

We do not think that there is any merit in the contention of the learned Government Pleader that in the light of the contract entered into between the two opposite parties regarding the liability to pay compensation under the Act. Section 12 cannot be applied in the case to fasten liability for payment of compensation under the Act on the first opposite party. The avowed object with which Section 12 was enacted as part of the Act as seen from the Report of the Select Committee is to enable the workmen or the dependents of the workmen to proceed against the contractor or against the principal or both and to make the contractor liable to indemnify the principal in all cases in the absence of any agreement to the contrary. The Report of the Select Committee would also show that while finalizing the provision the Committee has eliminated the provision, which in the Bill as introduced exempted the Government and local authorities from liability imposed

by this clause. The Committee has observed that these authorities are liable just in the same manner as private individuals. If these were the avowed objects with which Section 12 of the Act was incorporated in an enactment which itself is a beneficial legislation intended to confer benefits on the workmen, we are of the view that the provisions in Section 12(1) would apply notwithstanding the agreement or contract entered into between the principal and contractor regarding their liability for payment of compensation under the Act. So long as the section has not been made specifically subject to any contract to the contrary, the section would have application in all cases where the conditions specified in the section are satisfied. The fact that no non-obstante provision is used in the section may not be a sufficient reason to exclude the application of the section to cases where the conditions are satisfied. At best, agreements or contracts entered into between the principal and contractor can govern only their inter se rights and liabilities and cannot affect the right of the workmen or their dependents to get compensation either from the principal or from the contractor at their option. Right to get indemnified from the contractor specifically conferred on the principal under Section 12(2) of the Act sufficiently safeguards the interest of the principal who has entrusted the work to the contractor stipulating the liability under the Act. Accordingly, we would reject the contention of the learned Government Pleader.'

In *Century Chemicals and Oils Pvt. Ltd. v. E. Maragatham and Ors.*, 1998 LLJ (Mad.) 473, while dealing with Section 12(1) of the Act of 1923, it was held that principal (employer) would be liable to pay compensation to workman of contractor for execution of principal employer's work. In *Bala Mallamma v. Registrar, Osmania University, Hyderabad*, : (2001) IILLJ268AP (DB), it was held that:

'This judgment reiterates a principle of interpretation and the principle is that the meaning of the word must be gleaned from the context in which is used. Meaning assigned to a word in a particular Act may mean one thing and the meaning of the same term may give a different meaning when used in a different Act. Therefore, the word 'trade' or 'business' as used in this Act have to be understood in the context in which this Act has been enacted. Basically the Act has been enacted to provide compensation to the workers suffering during the course of employment. It is also the purpose of the Act that they should get speedy remedies and it appears

that the intention of enacting the Section 12 of the Act was only to ensure that compensation is paid by the principal expeditiously and if this purpose of the Act and the provisions are kept in mind, then the word 'trade' or 'business' may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute. If the plea of the University is accepted that they are engaged in imparting education, conducting examinations and conferring degrees only and cannot be termed to be doing any business or trade and hence they are not liable to pay compensation, then any person engaged for similar activity by any Government Department, any University, any hospital if faced with an accident, would not be able to get compensation in terms of Section 12 of the Act although such a person would be a workman under the Act. Similarly if an individual who wants to construct a residential house of his own engages a person for construction of the house and if such a person faces an accident during the course of the building of the house, he would be remediless under the Act. Even otherwise the normal activity of the University is imparting education, conducting examinations and conferring degrees, this they cannot do without having proper buildings. In a similar case where PVM had engaged contractors for the purpose of construction of bridges and roads and an accident occurred and a worker died, the contentions raised before the Jammu and Kashmir High Court in *Public Works Department v. Commissioner, Workmen's Compensation*, 1981 LAB IC 493, were also raised before this Court. Para 7 of the judgment is reproduced below:

'The only object behind the provisions of Section 12 appears to be to secure speedy payment of compensation resulting from injuries to a workman. The Legislature intended to make doubly sure payment of such compensation to the workman, or to his dependants in the event of his death, as it could not exclude the possibility of the contractor being in some cases a man of straw, whose straitened circumstances might jeopardize the chances of recovery of such compensation. If, therefore, a restricted meaning is given to the word 'business' so as to imply an activity with the object of earning profit only, the object of earning profit only, the object behind Section 12 is likely to be defeated. Not only to speak of the Government performing its various functions of a welfare State, even many other persons may have to be kept out of the purview of Section 12 by assigning such a limited meaning to the word 'business' occurring in it. Such an

interpretation would absolve from liability to pay compensation even a person who would appoint a contractor for building his residential house, as building one's residential house cannot be said to have the object of earning profit or gain behind it. It cannot, as such, be said to partake of 'business' or 'trade' in commercial sense. Merely because the word 'business' is clubbed with the word 'trade' in Section 12, it should not be inferred that it has been used in simple commercial sense. Both these words have to be read disjunctively and not conjunctively. Similarly, the doctrine of immunity attached to sovereign acts of State cannot be extended to acts like constructing roads or bridges, as such acts are not of such a nature as cannot be done by a private person. Viewed thus, the word 'business' occurring in Section 12 has to be given an extended meaning, so as to include even an activity which engages time, attention, or labour as a principal serious concern or interest of the Government or an individual without an element of profit in it. It is one of the meanings given to the word 'business' in dictionary. (See Webster's New International Dictionary, Vol. 1, Ed. 1926). Construction of roads being one of the principal concerns of the Public Works Department of the Government inviting its serious attention, it is 'business' within the meaning of Section 12 and the appellant was thus the principal employer vis-a-vis the deceased labourers. With utmost respect to the learned Judge, if I may say so, I am unable to agree with the view taken by him in Y. Srinivasa Rao's case (1972 ACJ 398) that 'business' means and includes only that activity which is aimed at earning profit. Such an interpretation, as already observed, is bound to destroy the very *raison d'être* of Section 12. On the other hand, I am in respectful agreement with the view taken by the High Court of Punjab in *Sardara Singh v. Sub-Divisional Officer, Chanpur*, , and *Gopal Singh and Sundar Singh v. Punjab State and Ors.*, AIR 1955 NUC (Punj) 4976, that in such cases even Government can be made liable to pay compensation as principal employer under Section 12. To this extent, therefore, the impugned award is not open to question.'

In *Koli Mansukh Rana v. Patel Nath Ramji*, 1995 III LLJ (Suppl.) 669 (Guj.), Section 12 of the Act of 1923 had been well explained. The scope and ambit of Section 12 of the Act of 1923 and applicability thereof also had been considered in the under noted cases:

1. Travencore Devaswom Board v. Urushothoman, 1989 II LLJ 114 (Ker.)
2. Koli Mansukh Rana v. Patel Natha Ramji, 1995 III LLJ (Suppl.) 669 (Guj.)
3. Executive Engineer, Public Works Department, Dindigul v. Subbaiah Naicker, 1983 II LLJ 320 (Mad.)
4. Sarjerao Unkar Jadhav v. Gurindar Singh, 1992 I LLJ 156 (Bom.)
5. Kerala State Electricity Board v. Undaram Estate, 1987 II LLJ 311 (Ker.)
6. Administrator of Indore Nagar Palika Nigam v. Rannsingh, 1999 III LLJ (Suppl.) 340 (MP)
7. Divisional Forest Officer v. Ram Prasad, 1997 III LLJ (Suppl.) 71 (Raj.)

In Union of India v. Rasik Munda, 1997 III LLJ 665 (Ori.), where a contractor was engaged by Railways to do railway work and the workmen were employed by the contractor and the workmen sustained injuries in the course of employment, the Railways was held to be liable to pay compensation and entitled to be indemnified by the contractor.

14. In the light of the findings recorded above, there cannot be any dispute or controversy that the competent authority had never adjudicated the claim of the alleged deceased employee and unless the same is decided in accordance with law or the procedure prescribed under the aforesaid Act any deduction made in this regard would be definitely unauthorized or illegal deductions and hence such deductions cannot be sustained. In view of the same, the Court of first instance had arrived at the correct conclusion and the appellate Court on certain untenable grounds had reversed the same. Hence the judgment and decree of the Court of first instance are hereby restored and the judgment and decree of the appellate Court are hereby set aside. Accordingly, the second appeal is allowed. In the light of the facts and circumstances, this Court makes no order as to costs.