

**Muhammad Vs. Ruckey**

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**SooperKanoon Citation :** [sooperkanoon.com/718551](http://sooperkanoon.com/718551)

**Court :** Kerala

**Decided On :** Jan-18-1961

**Reported in :** AIR1962Ker63; (1962)ILLJ339Ker

**Judge :** S. Velu Pillai, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 60(1)

**Appeal No. :** Second Appeal No. 634 of 1960

**Appellant :** Muhammad

**Respondent :** Ruckey

**Advocate for Def. :** N.D.P. Nambooripad, Adv.

**Advocate for Pet/Ap. :** S. Narayanan Potti, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**S. Velu Pillai, J.**

1. The question involved in this appeal is, whether the bonus received by the judgment-debtor-appellant, is exempted from attachment under Section 60(1) proviso Clause (h) of the Civil Procedure Code. That clause exempts from attachment, 'the wages of labourers and domestic servants whether payable in

money or in kind'. The bonus Paid to the appellant by his employer was under the provisions of the Memorandum of Settlement between the employer and the employees, which is Ext. D-1, the relevant clauses of which are 27 and 29. The material part of Clause 27 is as follows :

'The quantum of bonus shall be 15% of the net profits of the company for the financial years 1958-59, 1959-60, 1960-61 and 1961-62'.

and Clause 29 reads:

'In case of inadequate profits, there shall be a minimum of 15 days' salary payable as minimum bonus provided the profit is not turned into a loss'.

If anything at all is clear from these provisions, it is, that bonus is payable only if profits have accrued and have left a balance after meeting prior demands on the same. For this reason, the Calcutta High Court has held in *Seodutt Singh v. All Muhammad*, 63 Cal WN 207 adopting the principle laid down by the Supreme Court in *Munir Mills Co, Ltd, v. Suti Mills Mazdoor Union*. Kanpur, (S) AIR 1955 SC 170 and *Meenakshi Mills Ltd. v. Their Workmen*, 1958 SCA 440 : (AIR 1958 SC 1531 that bonus dependent upon the availability of profits, is a contingent payment like a profit-sharing bonus and is not part of the wages of the workmen, within the meaning of Section 60(1) proviso (h) of the Civil Procedure Code.

2. The learned counsel for the appellant has invited my attention to other decided cases, which, according to him, support his contention that bonus whether dependent on profits or not, forms part of the wages so as to be exempt from attachment under Section 60(1) proviso Clause (h), In *Nathmal Sanchethi v. Dasarath*, AIR 1959 Mys 96 the right to bonus was based on an agreement between the representatives of the workmen and of the management. On the provisions of the agreement, the learned Judge held, that the payment by way of bonus was not ex gratia and that there was no material to conclude, that it was given as a share of the profits. It was also held that bonus was intended to be by way of addition to the wages..

In *Jivan Lal v. Ramtuji Bhajji*, AIR 1945 Bom 119 the payment of bonus was dependent upon the kind of work turned out by the workmen and the number of, days for which they worked, and this was construed to mean a temporary increase in the wages. On this ground, this case was distinguished by the Calcutta High Court in the case cited. *Haji Malla v. Karsanji Vakhatchand*, AIR 1954 Sau 19 has relied on the Bombay case but from the facts set forth in the opening paragraph of the judgment it does appear, that the payment of bonus was contingent upon the accrual of profits, although it does appear, that it was paid out of the profits. In *Muniswami v. Viswanatha Nair*, AIR 1957 Mad 773 Ramaswami, J. considered the meaning of the term 'bonus' as can be gathered from standard lexicons, various statutes and case-law on the subject, and distinguishing AIR 1945 Bom 119 summarised the rule in these terms :

'The sum and substance of the entire discussion is that bonus is not a regular part of the wages, deferred or otherwise and in essence is an *ex gratia* payment. But by statute or by agreement it can assume permanency and become part of the wages. Section 60 C. P. Code covers only a limited class of wage-earners, viz., labourers who earn their daily bread by personal manual labour or in occupations which require little or no art, skill or previous education. If these conditions are fulfilled, bonus will stand protected under Section 60, C. P. Code.'

In none of these cases, are the facts similar to those of the present case, where the bonus is contingent upon the accrual of profits. The contention of the learned counsel, that bonus which has its origin in a statute or agreement or the payment of which, is governed or regulated by it, is part of the wages, cannot be accepted in the broad form in which it is formulated. Bonus contingent on profits, though founded On Ext. D-1, has not that permanency in the words of Ramaswami J., which is an attribute of wages.

3. It was faintly argued, relying on Clause 29 of Ext D1, that bonus is always payable at minimum rate whether profits accrued or not. Even in Clause 29, there is an element of contingency, in that bonus is not payable 'if the profit is turned into a loss'. In my opinion, the appellant cannot build a case of exemption from attachment under Section 60(1) proviso Clause (h), C. P. C., upon Clauses 27 and

29 of Ext. D-1. It seems to me, that the case here is on all fours with the Calcutta case. The Second Appeal is dismissed with costs.

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