

Moideen Vs. Gopalan

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Court : Kerala

Decided On : Jul-31-1995

Reported in : 1996ACJ139; (1996)ILLJ1027Ker

Judge : K.T. Thomas and K.S. Radhakrishnan, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 2

Appeal No. : M.F.A. No. 349/1995

Appellant : Moideen

Respondent : Gopalan

Advocate for Pet/Ap. : K.K.M. Sheriff,; P.M. Mohammed Shiraz and; Anr., Adv

Disposition : Petition dismissed

Judgement :

Thomas, J

1. A wood cutter had a fall from a tree which he was culling down for its timber But that fall transformed him as a paraplegic since the injury sustained by him had involved his spinal cord. He made a claim on the appellant under the provisions of the Workmen's Compensation Act (for short 'the Act') contending that the accident happened in the course of his employment. The Commissioner under the Act (for short. The Commissioner') awarded nearly half a lakh of rupees to the claimant.

Appellant is challenging the award in this appeal.

2. The tragedy occurred on August 24, 1990. The claimant was aged 35 then. His wife and three tiny children were depending on him for their livelihood, but now he depends on them even for answering the nature's call. Appellant did not dispute that the claimant had fallen from the tree and that devastating catastrophe had befallen him. But appellant disclaims liability in this matter on the contention that the victim was not engaged by him at all.

3. The case of the claimant was that appellant was a trader in timber and firewood and he used to purchase tree from land owners to use the timber for his trade; and he used to employ the claimant for cutting down such trees and also for slicing the timber thereof. The mango tree from which he slipped down was standing on the land of second respondent, and according to the claimant, the timber in the said tree was purchased by the appellant for his trade. He further contended that he was engaged by the appellant on the tragic day for felling the tree and for converting its timber into splinters.

4. The finding of fact made by the Commissioner is that it was the appellant who employed the claimant for cutting the tree. The said finding is based on some evidence in the case. We find no reason to interfere with the said findings particularly because no question of law is involved on that aspect.

5. But, learned counsel made a bid to formulate a question of law upon the facts found by the Commissioner on the premises that the claimant was not a 'workman' as defined in Section 2(1) of the Act, since the employment of claimant was only of a casual nature of that day. We heard learned counsel on that point in extenso.

6. The definition of 'workman' in the Act is the following : (Only material portion is extracted)

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

7. Even assuming that claimant's employment on that day was of a casual nature, that by itself is not enough to push him out of ambit of the definition of workman. If a person has to be ousted out of the contours of the definition, the casual nature of his engagement must couple with the succeeding postulate in the definition that such employment should not be for the trade or business of the employer. The word 'and' used in the definition is for the conjunction of the two postulates together in one person. No interpretation to make the two postulates disjunctive is warranted in the context. There is a catena of decisions which adopted the said view, (vide *Arutnugam v. Nagammal*, AIR 1949 Madras 462; *Vinayaka v. Pottiyamma*, AIR 1953 Madras - 432; *Sitharama v. Ayyaswami*, AIR 1956 Madras 212; and *Ghodaka & Sons v. Mahboob Sab*: 1974 Lab.I.C. 290 - Mysore High Court)

8. Even otherwise, we cannot hold that the claimant's employment was of casual nature as envisaged in the definition clause. The word 'casual' must be given its normal meaning in the context in which the definition is formulated. The word 'casual' here only means just informal or a happening by chance or undesignated etc. Way back in 1936 Beaumont, C.J. was not inclined to give a different meaning to the term 'casual' in the definition (vide *N.H. Sidhwa v. Krishnabai Bala* AIR 1936 Bombay 199). Learned Judge has observed that even in England the expression casual employment was not given any straight jacket definition as there are some cases in which employment is not casual. Taking cue from the said observation Ghangani, J. has held in *Madanlal v. Magali* (AIR 1961 Rajasthan 145) that the term 'casual' in the definition of workman 'in the Act is not a matter of precision, but is a colloquial term and is not capable of being exactly defined'. At any rate, we are not disposed to treat the employment of the claimant for cutting down the tree as one of casual nature on the facts of this case.

We, therefore, dismiss this appeal in limine.