**Kochappan Vs. Krishnan**

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**SooperKanoon Citation** : sooperkanoon.com/724426

**Court** : Kerala

**Decided On :** Oct-31-1986

**Reported in** : (1987)IILLJ174Ker

**Judge** : Kochu Thommen and; Balakrishnan, JJ.

**Appellant** : Kochappan

**Respondent** : Krishnan

**Judgement** :

**Kochu Thommen, J.**

1. This appeal is brought from the order or the Commissioner for Workmen's Compensation in W.C.C. No. 10 of 1980 ordering that a sum of Rs. 10,080/-be paid by the appellant to the respondent as compensation for the injury sustained by him in an accident which occurred on 20th March 1977 in the course of his employment under the appellant. The accident occurred while the respondent was climbing a coconut tree in the property of the appellant. He fell down and suffered injuries. He contended that he was an employee in the service of the appellant at the time of the accident. Section 3 of the Workmen's Compensation Act, 1923 says:

Employer's liability for compensation:- If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be

liable to pay compensation in accordance with the provisions of this Chapter....

The question is whether the accident by which the injury was caused arose out of and in the course of the injured's employment under the appellant. In other words, was he a 'workman' under the appellant within the meaning of Section 2(n) which says:

(n) '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-

(i) ...

(ii) employed on monthly wages, not exceeding one thousand rupees, in any such capacity as specified in Schedule II....

To come within that definition, it has to be ascertained whether the two ingredients mentioned under that sub-section within brackets are, on the facts of this case, conjunctively excluded in relation to the respondent. Those are: (1) 'whose employment is of a casual nature' and (2) 'who is employed otherwise than for the purposes of the employer's trade or business'. It is only when both the ingredients are together present, does the exclusion operate. If the person was employed for the purposes of the employer's trade or business, he would be a workman even if his employment was of a casual nature. Likewise if the employment was of a regular nature, the person concerned would be a workman even if he was not employed for the purposes of trade or business. In other words, a person can be excluded from the definition of 'workman' only if his employment was at once of a casual nature and otherwise than for the purpose of the employer's trade or business. It must, therefore, be ascertained before compensation is awarded that the claimant is a workman.

2. From the finding of the Commissioner, it is not clear whether or not the employment of the injured under the appellant was of a casual nature, and he was employed for the purposes of the employer's trade or business.

3. The employment would not be of a casual nature if there was such regularity or periodicity of employment as to indicate that there was such a degree of mutuality in their obligations as to regard one as the employee and the other as the employer. Was there any obligation, by express or implied contract, to employ the very same person during every season; or was there any statutory obligation to that effect. The question whether the employment was for the purposes of trade or business depends upon the extent of the land, the number of trees, the yield therefrom and other factors. It is a question of fact in each case whether the agricultural operation in which the person was employed was directed towards profit by trade or business or solely for domestic consumption.

4. If the appellant is in possession of more than one hectare of land, he would necessarily come within the ambit of the Kerala Agricultural Workers Act, 1974, thereby making it obligatory upon him to employ the very same person in every successive season of agricultural operation. That would then be sufficient basis for finding the employment as one otherwise than of a casual nature.

5. The parties did not seem to have joined issues before the Commissioner on these questions. We are of the view that it would be just and proper if they are given another opportunity to agitate these questions.

6. The appellant's counsel contends that the compensation determined by the Commissioner was excessive. We see no reason to interfere with that finding. The sole question is whether the respondent was a 'workman' under the appellant at the relevant time. The question must be determined on the basis of facts, which have yet to be determined by the Commissioner.

7. Accordingly we set aside the order under appeal and remit the matter to the Commissioner to determine the relevant facts after hearing the parties and affording them an opportunity to adduce fresh evidence, if they so desire.

8. We are told that out of the compensation now deposited with the Commissioner, a sum of Rs. 5,000/-has already been withdrawn. We are of the view that the respondent should be allowed to withdraw a further sum of Rs. 2,000/-without security. We order accordingly.

9. In view of the fact that this matter has been pending since 1980, we direct the Commissioner to expedite the proceedings and come to a finding within three months from the date of receipt of a copy of this judgment.