

Executive Engineer Vs. Santha

Executive Engineer Vs. Santha

SooperKanoon Citation : sooperkanoon.com/724830

Court : Kerala

Decided On : Feb-05-1985

Reported in : 1(1986)ACC197

Judge : Bhaskaran, Ag. C.J. and; Padmanabhan, J.

Appellant : Executive Engineer

Respondent : Santha

Judgement :

Bhaskaran, Ag. C.J.

1. The only question argued by the Government Pleader appearing for the appellant, who was the 4th respondent before the Workmen's Compensation Commissioner, is with respect to the indemnity under Section 12(2) of the Workmen's Compensation Act, 1923. That subsection reads as follows :

(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 relation of a contractor from whom the workman could have 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.

2. In the course of the discussion under issue No. 5, which related to 'whether the opposite party No. 4 is the principal employer, and if so, whether he is liable to pay the compensation to the applicant.' It has been stated as follows:

The work-site also belonged to the PWD. If so, opposite party No. 4 must be considered as the principal employer. Therefore, he is liable to pay compensation under Section 12 of the Act. The applicant impleaded opposite party No. 4 as the principal employer. She has also claimed compensation from him. Hence opposite party No. 4 is liable to pay the same. The opposite party No. 4 has not claimed any indemnity from opposite party No. 1. Therefore, no indemnity is ordered.

3. The argument of the Government Pleader was that, even in the absence of a plea with respect to indemnity, it was the statutory obligation of the Commissioner to decide that question. 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.

4. In the above circumstances, finding no merit in the appeal, we dismiss the appeal.