

Arunkumar Vs. Omana Amma

Arunkumar Vs. Omana Amma

SooperKanoon Citation : sooperkanoon.com/724873

Court : Kerala

Decided On : Feb-06-2003

Reported in : 2004ACJ204; 2003(2)KLT625

Judge : K.A. Abdul Gafoor and; K. Thankappan, JJ.

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

Appeal No. : M.F.A. No. 968 of 1999

Appellant : Arunkumar

Respondent : Omana Amma

Advocate for Def. : R.S. Kalkura, Adv.

Advocate for Pet/Ap. : V.R. Venkitakrishnan,; S. Ananthakrishnan and; N.K. Subr

Disposition : MFA dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. Employer has approached this Court with this appeal assailing an order of Commissioner for Workmen's Compensation when his contention that the deceased was not his workman and the accident had not arisen out of and during the course of employment were turned down. It is contended that there is no

evidence at all to come to the conclusion that the deceased who died out of an injury sustained on falling into a well in the appellant's establishment was a workman and that the accident had occurred during the course of employment. In the absence of evidence such finding can be said only as perverse and any finding without evidence will necessarily give rise to a substantial question of law. Therefore whether such a finding is possible on the basis of the evidence is a substantial question of law to maintain an appeal under Section 30 of the Workmen's Compensation Act, 1923.

2. True, if the finding is rendered based on no evidence or the finding is such that it is so perverse as a reasonable authority will not arrive at based on the evidence on record, necessarily such a perversity in finding can lead to a question of law.

3. The accident is admitted by the appellant. That the deceased fell in the well in the premises of his bakery is also admitted. Immediately he was taken to hospital and succumbed to injuries. There was a statement given by the deceased to the police. It was given in connection with an earlier case. The statement disclosed that he had stated that he had been the workman in the bakery of the appellant. This statement forms part of the record. Further, evidence from AW.3, an independent witness, a Panchayat member shows that the deceased was a workman under the appellant in this bakery. He was working as salesman. AW.3 had visited, on earlier occasions also, the bakery and the deceased had served him tea. Thus it is in evidence that apart from baked items, tea was also sold in the bakery. It was stated that it was a bakery where soft drinks and beverages were also being served. In such circumstances it cannot be taken that there was no evidence on record to prove that the deceased was a workman. The version given by the co-worker of the deceased produced before the Commissioner and the direct evidence of AW.3 are sufficient enough, in a trial before the Workmen's Compensation Commissioner, to come to a conclusion that the deceased was a workman in the bakery owned by the appellant. That much evidence is sufficient, in a trial before the Workmen's Compensation Commissioner to arrive at such finding. Therefore it cannot be taken that there was no evidence at all to prove that he was a workman.

The next question is as to whether the accident had arisen out of and during the course of employment. It is submitted that the deceased was a salesman, even admittedly in the claim petition and as deposed by AW.3. Therefore there was no occasion for him to go to the well and draw water. It was not as a part of his duty. So the injury sustained and consequent death cannot be said to be during the course of employment. In other words it is contended that there shall be cogent relationship with the activity which resulted in the accident and the duty to be performed by the workmen concerned. In this respect much reliance is placed on the decision reported in *Regional Director, E.S.I. Corporation and Anr. v. Francis De Costa and Anr.* (AIR 1997 SC 432) and *Travancore Titanium Products Ltd. v. Jerro* (2000 (1) KLJ 643).

4. Both these cases arise out of the claim under Employees State Insurance Act. Of course consideration shall be with reference to the employment, almost in the same line. In the case considered by the Supreme Court, the accident had occurred while the injured was driving a bicycle purchased from out of the loan obtained from the employer and on his way to the factory. He had not reached the factory. Therefore the accident did have no relationship at all to his duty or his performance of duty in the factory. The case considered by a Division Bench of this Court was in relation to an accident occurred in the factory prior to the commencement of the duty hours of the injured. Admittedly his duty hour was to begin at 2 p.m. on the date of the accident. The accident occurred much prior to that. Therefore the Division Bench of this Court relying on *Dover Navigation Co. v. Isabella Craig* (1940 AC 190) held that in order to succeed, a workman has to prove that (1) there was an accident, and (2) that the accident occurred while he was on duty. It was further held that even if it is stated that there was no connection with his employment in the factory, it cannot be said to have been sustained while on duty. It is therefore submitted that, being a salesman, even if the accident had occurred during the duty period, the drawal of water from well was not a part of his duty and did have no connection with his duty as a salesman and cannot be said to be one during the course of employment to attract the provisions of Workmen's Compensation Act, 1923.

5. As already mentioned above, AW.3 has stated that the deceased was a salesman in the bakery of the appellant. The claim petition by the widow of the deceased also indicates so. Much reliance cannot be placed to the nomenclature of the post held by the deceased in the establishment of the appellant, as shown in the claim petition by the widow who may not have direct knowledge with regard to the functional aspect of his employment. AW.3, an independent witness had on the other hand categorically stated that he had been earlier to the bakery and at that time the deceased had served tea. Necessary serving of tea in a bakery, where tea is also sold cannot be said to be the work of a salesman, in the ordinary course. Though normally called as a salesman he was doing the duty of serving tea as well. The appellant/employer had a case that he did have only three workmen in the bakery. What are the functions enjoined on them has not been disclosed. In such circumstances, if a person termed as a salesman or considered as a salesman really even serving tea to the customers had gone to the well in the establishment for drawing water during the duty hours, it cannot be stated that the said drawal of water in the well does not have any connection with his duty, to follow the aforesaid two decisions and to negative the claim of the claimant. When it is thus proved that he had been working, though known as a salesman and serving even tea, drawal of water probably for the purpose of making tea, during his duty hours cannot be said to be beyond the course of employment. So the evidence on record revealed that the accident had occurred during the duty time and in the course of his employment. Thus this is a case where there was some evidence available before the Commissioner to find that the deceased was a workman and that accident had occurred during the course of his employment. When so revealed, there involves no substantial question of law in this case, as posed at the threshold, to invite interference in an appeal under Section 30 of the Act.

Hence the MFA fails and is dismissed.