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SooperKanoon Citation : sooperkanoon.com/731796

Court : Kerala

Decided On : Sep-18-2002

Reported in : I(2003)ACC4; 2004ACJ1016; (2003)ILLJ234Ker

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

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

Appeal No. : M.F.A. No. 1305 of 2001 (C)

Appellant : Funnous @ Kurian and ors.

Respondent : K.O. Devassay and ors.

Advocate for Def. : T.K. Koshy and; K.P. Paulose, Advs.

Advocate for Pet/Ap. : H.B. Shenoy and; B. Ashok Shenoy, Advs.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. An employer, opposite party in a workman's compensation case has approached this Court with this appeal challenging the award of compensation in favour of dependents of a deceased in an accident in the boat yard of the appellant. The death took place due to electric shock.

2. The main contention urged by the appellant is that the deceased was engaged only as a casual labourer, that too, for cleaning the compound, where both the residence as well as the factory building are situated and that the said casual employment was in no way related to the trade or business of the appellant. Therefore he was not a workman in terms of Section 2(n) as it stood before the amendment effected in 2000. The provision as it stood then reads as follows:

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

In order to exclude one from the term as defined, it shall have to be proved that his employment was of casual nature and his employment was otherwise than for employer's trade or business. That is why the appellant contends that he was employed only for the cleaning of the compound which does not have any relation with the trade or business of the appellant. Therefore the commissioner ought not have awarded any compensation on account of the death due to electric shock in the factory building, as the deceased was unauthorisedly operating an electric hand drill which was not expected from him. It is further submitted that this contention was specifically raised in the written statement, but the commissioner did not advert to that contention. It is pointed out from the order of the commissioner that the commissioner jumped into the conclusion that the deceased was a workman as defined in Section 2(n) to find as follows:

'The learned counsel for the opposite party argued that the deceased was not an employee of the opposite party. On the other hand the learned counsel for the petitioner argued that the opposite party admitted that the accident was occurred at the premises of the opposite party's establishment, and the opposite party is liable to pay compensation. In the circumstances stated above the petitioners are established that the deceased met with an accident while he was doing work in the opposite Party's establishment.'

3. In the light of the contention raised by the appellant it was incumbent on the commissioner to examine whether the casual nature of the employment of the deceased was in connection with the trade or business of the employer. Merely

because the accident took place in the establishment, especially when it is contended that both the factory building and residential building are in the same compound, the commissioner cannot jump into the conclusion that the deceased met with an accident while he was doing work in the opposite party's establishment. Therefore the order has to be set aside, counsel submits.

4. On the other hand it is submitted by the counsel for the respondent that there was sufficient evidence on record to show that the deceased had been employed, though casually in connection with the boat building work of the appellant on April 22, 1997. The deceased was doing work along with AW3 who had been summoned through commissioner's office to give evidence. His evidence revealed that both of them were doing screwing work and making holes. It was also stated by him that the accident occurred during the course of employment when the deceased had been casually employed in connection with the trade or business of the appellant. It has also come out in evidence that the deceased was a carpenter. He had been summarily engaged on the casual basis in the neighboring boat yards and on April 22, 1997 he had been engaged by the appellant. Therefore it can easily be seen from the evidence on record that though the deceased was a workman who had been engaged on casual basis for the appellant's trade or business. As both the ingredients of exclusion clause are not conjointly satisfied, the contention of the appellant cannot be accepted.

Of course, the discussion on evidence on that point to come to the conclusion is not in happy words. The evidence on records, especially that of AW3 ought to have been discussed in detail by the Commissioner. Sitting appeal necessarily we have to take into account that evidence before pronouncing one way or other. When we read the evidence given by AW3, it can easily be concluded that the deceased had been employed for the purpose of appellant's trade or business and therefore fall within the definition of workman. Therefore on the basis of evidence, necessarily the order impugned shall be supported and sustained. There arises no substantial question of law at all in this case.

5. Appeal fails and dismissed. No costs.

