



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

MFA (ECC) NO. 18 OF 2024

AGAINST THE ORDER DATED 21.09.2023 IN ECC NO.21 OF 2020 OF
EMPLOYEE'S COMPENSATION COMMISSIONER,
IDUKKI, PEERMADE

APPELLANT/OPPOSITE PARTY:

SAKKIR HUSAIN
AGED 45 YEARS
SON OF KASIM PILLAI,
PANAKKAL HOUSE,
NEAR MIDDA RABBER FACTORY,
VAZHOOR ESTATE VILLAGE,
KANJIRAPPALLI TALUK,
KOTTAYAM DISTRICT,
PIN - 686507

BY ADVS.
SRI ABRAHAM GEORGE JACOB
SRI C.MURALIKRISHNAN (PAYYANUR)
SMT.P.I.RAHEENA
SMT.SHAHNA

RESPONDENT/APPLICATN:

BINU MADHU
SON OF MADHU,
PUSHPASSERRY HOUSE,



2025:KER:114

2

LAMBAKKANDAM KARA,
KUMALY VILLAGE, PEERMADE,
IDUKKI DISTRICT, PIN - 685509

BY ADVS.
SRI C.S.MANILAL
SRI S.NIDHEESH (K/1061/2007)

THIS MFA (ECC) HAVING BEEN FINALLY HEARD ON 12.08.2024,
THE COURT ON 06.01.2025 DELIVERED THE FOLLOWING:



T.R. RAVI, J.

MFA(ECC) No.18 of 2024

Dated this the 6th day of January, 2025

JUDGMENT

The opposite party in ECC No.21 of 2020 before the Employees Compensation Tribunal, Idukki has filed this appeal being aggrieved by the order dated 21.09.2023 directing the appellant to pay a sum of Rs.6,93,969/- with interest as compensation to the respondent/applicant for an accident that has allegedly taken place during employment. The contention of the appellant is that the Commissioner has assumed the existence of the jurisdictional fact of an employer-employee relationship and proceeded to grant compensation even without any consideration of the evidence on record. It is hence contended that the findings are perverse, which is by itself a substantial question of law.

2. The application for compensation was filed alleging that the respondent sustained injuries while in employment as a general worker in M/s.Fathima Constructions, Kanjirappally,



Ponkunnam, allegedly owned by the appellant. The accident is said to have taken place on 25.6.2019 at about 11 a.m., while the applicant, along with his co-workers named Joy and Georgekutty, were drilling rock at about 65Ft. height using a jackhammer, and the applicant fell down from the rock to the ground with the jackhammer and sustained injuries. The injuries were multiple fractures over the backbone, head, ribs, hands, and legs, damage to the spinal cord, damage to the urinary bladder, etc. The respondent was taken to Medical College Hospital, Kottayam, and was admitted there for about one week. It is stated that after one week, he was discharged from Medical College, Kottayam, at the instigation of the appellant/respondent, and was admitted to Medical College Hospital, Theni, where he had undergone surgery for the spinal cord. It is alleged that the appellant visited the respondent at Medical College Hospital, Theni, and had also given Rs.40,000/- for treatment expenses in four installments. The respondent claimed that he was receiving Rs.1,000/- per day as wages, and he was 41 years old at the time of the accident.

3. The appellant filed a written statement specifically contending that the respondent was not a workman under him at



any point of time. The specific contention is that the appellant has not conducted any metal crusher unit in the name of Fathima Constructions, Kanjirappilly, Ponkunnam, and he has never conducted the business of crushed stone materials. He has denied the allegations in the claim petition including the allegation that he had given amounts to the respondent for treatment. According to the appellant he was conducting the business of leasing earth movers (JCB) and was not conducting any construction company at any time. It is also stated that he has employed only JCB operators as workers under him. It is further contended that he does not have any construction site in the place of the alleged accident.

4. The respondent examined himself as AW1 and one Vijayakumar as AW2 who is stated to be a co-worker. The appellant examined himself as RW1. Exts.A1 to A3 were marked on the side of the respondent. Ext.X1 is the Standing Disability Assessment Board Certificate issued by the Medical Board at Government Medical College Hospital, Kottayam. Ext.A1 is a copy of the aadhaar card of the respondent, which proves his identity. Ext.A2 is the discharge summary issued by the Government



Medical College Hospital, Theni which proves the injury. No document relating to the treatment afforded at the Medical College Hospital, Kottayam has been produced. Ext.A3 is a copy of a letter dated 15.9.2020, which has been issued by the Tahsildar, Kanjirappally, to the respondent. The contents of the letter, which is contested by the appellant, are dealt with later.

5. The Commissioner, in the impugned order, considered the question regarding the employer-employee relationship and whether the respondent sustained injuries in an accident arising out of and in the course of his employment under the appellant. A reading of the order would show that the Commissioner has merely narrated the oral evidence tendered by AW2 and AW1 and without any discussion regarding the evidence tendered by them in contrast to the evidence tendered by the appellant, has merely stated that from the statements of AW1 and AW2 and the documents marked on the side of the applicant, it is evident that the workman sustained injury in an accident during the course of his employment under the opposite party. There is absolutely no discussion of the evidence of RW1 regarding the fact that he never had any business in quarrying, and there was no occasion



7

for employing either AW1 or AW2 for blasting rocks using a jackhammer. There is nothing but oath against oath as far as the oral evidence is concerned, and none of the documents produced would really prove the factum of the employer-employee relationship.

6. The counsel for the appellant contended that when there is a total absence of the jurisdictional fact, the High Court would be justified in interfering with the order. It is submitted that the assumption of a jurisdictional fact itself is a substantial question of law. Reliance is placed on the judgments of the Hon'ble Supreme Court in **Raza Textiles Ltd., Rampur v. Income-tax Officer, Rampur [(1973) 1 SCC 633]**, **Arun Kumar & Ors. v. Union of India & Ors. [(2007) 1 SCC 732]**, **Smt. Swaran Lata Ghosh v. Harendra Kumar Banerjee & Anr. [AIR 1969 SC 1167]** and **Balraj Taneja v. Sunil Madan [(1999) 8 SCC 396]** in support of the said contention.

7. The counsel for the respondent on the other hand raised the following contentions;

a. The strict rule of evidence will not be applicable in the case of Tribunals. Reliance is placed on the



judgments in **Leonard Biermans Workers' Union v. Second Industrial Tribunal & Ors. [AIR 1962 Calcutta 375]**, **N.L. Lalan v. V.A. John [1972 KLT 132]** and **Bareilly Electricity Supply Co. Ltd v. The Workmen & Ors. [AIR 1972 SC 330]** in support of the said contention.

b. No substantial questions of law arise for a decision since the question of the existence of the employer-employee relationship is a question of fact which has already been decided by the Commissioner, who is the final authority on such facts.

c. The High Court cannot hear an appeal under the Employees Compensation Act as if hearing a first appeal under Section 96 of the Code of Civil Procedure.

d. The case is not one of absence of evidence and some evidence alone is required.

e. The Commissioner's view is probable, and hence, it cannot be treated as perversity.

f. Once the employee leads the evidence, the onus



shifts to the employer. In the case on hand, the evidence of AW1 is corroborated by the evidence of AW2.

8. The main document that is relied on to say that there is an employer-employee relationship is Ext.A3. Ext.A3 is a letter issued by the Tahsildar, Kanjirappally to the respondent on 15.09.2020, which is after the filing of the application before the Commissioner. The letter shows as reference a complaint which had been preferred by the respondent before the Chief Minister and a report of the Village Officer dated 11.08.2020. The contents of the report of the Village Officer are not available before the Court. The author of Ext.A3 was also not examined to prove the veracity of the contents. Apart from that, what is stated in Ext.A3 is that on inquiry, it is known that the respondent had suffered an injury while working at a building construction site in block No.12, Sy.No.171/3, as a contract worker of the appellant. According to the letter, the incident is stated to be as falling on crushed granite that had been collected at the site. The letter also says that on enquiry with the appellant, he had stated that he had spent about Rs.3 lakhs for the purpose of treatment



of the respondent. It is the above sentence that is relied on by the counsel for the respondent to submit that there is some evidence to show that the respondent was employed by the appellant. Such a reading of the evidence is nothing but perverse. Firstly, the incident stated by the Tahsildar in Ext.A3, does not in any manner correlate with the accident pleaded in the complaint and sought to be proved in the oral evidence of AW1 and AW2. Secondly, the place of occurrence of the accident is also totally different from what is stated in the claim petition and in the evidence of AW1 and AW2. The claimant does not have a case that the accident took place at a building construction site. His case is that it happened in a quarry while drilling rocks using a jackhammer. The fact that the respondent was injured is true, according to the medical records. But that does not mean that compensation can be claimed under the Workman's Compensation Act even without an iota of evidence regarding the employer-employee relationship. The question whether the appellant had any business under the name M/s Fathima Constructions, as stated in the claim petition and in the evidence of the claimant, has not even been examined. AW2, while



examined, did not even know the name of the firm where he was working, even though he had stated that he had been working for several years. AW1, who has stated that he has more than 20 years' experience in the field of quarrying rocks using a jackhammer, did not even know the name of the manufacturer of the jackhammer that he was using. There is a total lack of evidence regarding the jurisdictional fact of an employer-employee relationship between the appellant and the claimant. I find considerable justification in the contentions of the appellant based on the judgments of the Hon'ble Supreme Court relating to absence of jurisdictional fact.

9. I shall now consider decisions relied on by the counsel for the respondent.

10. In **Leonard Biermans Workers' Union (supra)**, the Calcutta High Court held that the proceedings before the Tribunal under the Industrial Disputes Act are quasi-judicial proceedings and the strict laws of evidence will not apply. In **State of Haryana & Anr. v. Rattan Singh [AIR 1977 SC 1512]**, the Hon'ble Supreme Court held that it is well settled that in a domestic enquiry, the strict and sophisticated rules of evidence



under the Indian Evidence Act may not apply. The court held that there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. However, the Court also held that if perversity or arbitrariness, bias, or surrender of independent judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. The said judgment cannot be said to be fully in support of the contentions of the respondent. In **N.L.Lalan (supra)**, a learned Single Judge of this Court held that an appeal under the Workmen's Compensation Act can be entertained only if there is a substantial question of law. The Court held that a question of fact, however substantial, cannot masquerade as a question of law. The Court, in the said case, took note of the fact that what is provided is only a restricted appeal, keeping in view the purpose of the Statute to see that the weaker sections of the community, namely, the working class, are not caught in the meshes of litigation. In **Golla Rajanna v. Divisional Manager & Anr. [AIR 2016 SC 5382 = 2017 1 SCC 45]**, the Hon'ble Supreme Court reiterated the requirement of the substantial question of law and found fault with the High Court for having ventured to



reappreciate the evidence and record its own finding regarding the percentage of disability. The question involved in this case is not of reappreciating evidence with regard to such findings of facts. This court is only examining whether there is a total absence of evidence, regarding the jurisdictional fact. The said judgment will not apply to the facts of this case. In **North East KRTC v. Sujatha [AIR OnLine 2018 SC 920]**, the question before the Hon'ble Supreme Court was again whether there was any substantial question of law involved. The Court held that whether there was an employer-employee relationship is a question of fact, which is to be proved with the aid of evidence. The Court, however, held that once the said fact is proved either way, the findings recorded thereon are regarded as findings of facts. The question here is whether the fact has been proven. On consideration of the evidence on record, it has to be concluded that there is absolutely no proof regarding the employer-employee relationship. The above said judgment also does not in any manner improve the case of the respondent. In **C.Manjamma & Anr. v. The Divisional Manager, New India Assurance Co. Ltd. [Civil Appeal No.2568 of 2022]**, the



Hon'ble Supreme Court was dealing with a case arising from the order of the Commissioner for Workmen's Compensation. The Hon'ble Supreme Court held that a question of law would arise when the finding is perverse and when no legal evidence is adduced to establish the jurisdictional fact. After noticing the law, on facts, the Hon'ble Supreme Court found that the conclusions and observations of the High Court in the said case are rather of an assumptive nature than a specific conclusion on perversity. There can be no dispute regarding the law laid down. In **Fulmati Dhramdev Yadav & Anr. v. New India Assurance Co. Ltd. [Civil Appeal No.4713 of 2023]**, the Hon'ble Supreme Court observed that the consideration would be whether the order of the Commissioner, in the light of materials on record can stand or not. The Court further observed that the impugned judgment must stand proved on two grounds, (i) statutory test and (ii) whether the materials on record support the conclusions drawn therein or not. Here again, there can be no dispute regarding the law stated. In the said judgment also the Hon'ble Supreme Court held that perversity in findings can be a reason for interference in cases where the jurisdiction is circumscribed by the requirement



of substantial question of law. The Hon'ble Supreme Court referred to the judgments in **Golla Rajamma (supra) and Manjamma (supra)** and on facts, held that the view taken was a probable one. A reading of all the judgments cited would clearly show that the High Court can exercise jurisdiction if there is a total absence of evidence regarding the question of employer-employee relationship, which is the jurisdictional fact that needs to exist for the exercise of jurisdiction by the Commissioner. The law laid down in the above-said decisions also permits an analysis of the evidence on record to see whether there is a total lack of evidence. However, if there is any evidence available, the court will not be justified in interfering in an appeal, which needs to be on a substantial question of law. Keeping in mind the law laid down when I consider the evidence on record, I find that no documents have been produced by the applicant to show his employment. The only document Ext.A3, which is relied upon, does not support the case of the respondent regarding the place of occurrence of the accident or the nature of the accident. It also does not support the contention of the respondent regarding his nature of work. Coupled with the fact



16

that the author of the letter was not examined and the documents stated to be the basis for the letter are also not produced, I am of the opinion that Ext.A3 does not show the existence of an employer-employee relationship between the appellant and the respondent.

In the above circumstances, the appellant is entitled to succeed. The appeal is allowed and the order of the Commissioner is set aside.

Sd/-

**T.R. RAVI
JUDGE**

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