



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

MONDAY, THE 20TH DAY OF NOVEMBER 2023 / 29TH KARTHIKA, 1945

MFA (ECC) NO. 90 OF 2016

ECC 109/2014 OF EMPLOYEE'S COMPENSATION (INDUSTRIAL TRIBUNAL), IDUKKI

APPELLANTS : [APPLICANTS]

1 LATHA
AGED 37 YEARS
D/O. VARGHESE, 2ND DIVISION, KOZHIKKANAM ESTATE, ELAPPARA.

2 VIJIMOL
C/O. LATHA, D/O. VARGHESE, 2ND DIVISION, KOZHIKKANAM
ESTATE, ELAPPARA (MINOR), REPRESENTED BY HER MOTHER 1ST
APPELLANT.

BY ADVS.
P.RAMAKRISHNAN
T.C.KRISHNA

RESPONDENTS [OPPOSITE PARTIES]

1 T.V.SAHADEVAN
THAYYILAYIL, 2ND DIVISION, KOZHIKKANAM ESTATE, ELAPPARA-
685 501.

2 S.SUKUMARAN
KANKILETHU HOUSE, 2ND DIVISION, KOZHIKKANAM ESTATE,
ELAPPARA-685 501. (DELETED) THE 2ND RESPONDENT IS DELETED
FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER AS PER
ORDER DATED 30/08/2017 IN IA 3170/2017.

3 SNDP YOGAM
KOZHIKKANAM BRANCH, KOZHIKKANAM ESTATE, ELAPPARA-685 501,
REPRESENTED BY ITS BRANCH SECRETARY.

BY ADVS.
SRI.GEORGE MATHEW
SRI.K.S.HARIHARAPUTHRAN

**THIS MFA (ECC) HAVING BEEN FINALLY HEARD ON 10.11.2023, THE
COURT ON 20.11.2023 DELIVERED THE FOLLOWING:**



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C.R.

C.PRATHEEP KUMAR, J.

M.F.A. (E.C.Act).No.90 of 2016

Dated : 20th November, 2023

JUDGMENT

1. This appeal has been filed under Section 30 of the Employees Compensation Act by the applicants in E.C.C.No.109/2014 (WCC No.30/2009 on the file of the Employees Compensation Commissioner (Industrial Tribunal), Idukki against the order dated 24.11.2015. The appellants are the dependents of one Babu @ Michle who was an electrician by profession who died as a result of electrocution in the incident that occurred on 21.9.2006. Late Babu used to provide light and sound for small programmes in and around Elappara. On 21.9.2006 the respondents engaged him for some programme of SNDP Yogam, Kozhikkanam Branch. Respondents 1 and 2 were the office bearers of SNDP Yogam. While Babu was throwing the cable for connecting the mike set, across the telephone post, the cable came in contact with the 11 KV electric line and as a result of which, he got electrocuted and succumbed to the injuries. The Employees Compensation Commissioner dismissed the claim on the ground that



the deceased was a contractor and not a workman. Aggrieved by the above order, they have preferred this appeal raising various grounds.

2. According to the appellants, the finding of the Commissioner that Babu was not an employee coming under Section 2(1) (dd) of Employee's Compensation Act, 1923 (in short, Act 8 of 1923) is not correct. He cannot be treated as a contractor. At the most, he can be considered as a petty contractor. Even then, the appellants are entitled to get compensation from the respondents. According to them, Act 8 of 1923 being a social security and welfare legislation, it should not be interpreted narrowly to deny compensation to the employee. Therefore, the appellants prayed for setting aside the impugned order passed by the Employees Compensation Commissioner and to allow the claim petition.

3. At the time of argument, the respondents did not turn up. The point that arise for consideration is the following :

Whether a person engaged in hiring mike set for rent is an employee coming within the purview of Section 2(1) (dd) of the Employees Compensation Act 1923?

4. Heard the learned counsel for the appellants.



5. Deceased Babu was an electrician and a mike operator. On 21.9.2006, while he was drawing electric line for providing mike set to the respondents 1 and 2 for some programme of SNDP Yogam, the cable came into contact with an electric line and he got electrocuted. The Employees Compensation Commissioner found that Babu was an independent contractor and not an employee of the respondents. It was argued by the learned counsel for the respondents that, at the most, he can be styled as a petty contractor and even then the respondents are liable to pay compensation as he died during the course of his employment.
6. In order to substantiate the above argument the learned counsel for the appellants relied upon a decision of a Division Bench of this Court in **Kunjoonjamma Daniel v. KSEB [2001 KHC 355]**. In the above decision, deceased Mathai Daniel was a repair worker of Electricity Board. After his retirement, he was working as a petty contractor of Electricity Board for definite items of work. While doing maintenance of an electric post, on 29.5.1991 the electric post was broken and he fell down and sustained fatal injuries. The Electricity Board denied the liability to pay compensation on the ground that Mathai Daniel was not their workman as defined under Section 2(1)(n) of the Employees



Compensation Act. After interpreting the definition of workman under Section 2(1)(n), the Division Bench held that, *“the above section shows that even if the employment is of casual nature, if the employment is for the purpose of employer's trade or business, one is a workman as defined under the Act.”*

7. In paragraph 5 the Division Bench held that :

“Here the only question is whether the deceased was a workman as defined under S.2(n) of the Act so as to get compensation to the fatal injuries. It is not disputed that while doing the work for the Electricity Board as per the petty contract given to him and while carrying out the work by himself under the supervision of the Electricity Board officials he met with the accident. Therefore, he was a workman as defined under the Act and was entitled to compensation.”

8. In the instant case, the deceased was the owner of a mike set brought by him for the programme of SNDP Yogam and respondents 1 and 2 were only its office bearers. They have not hired the service of the deceased for the purpose of any trade or business conducted by them.

9. In **Chintaman Rao & Another v. The State Of Madhya Pradesh [AIR 1958 SC 388]** the Hon'ble Supreme Court had occasion to consider the distinction between an independent contractor and a workman. In paragraph 9 of the above judgment the court held that:



“There is a well understood distinction between a contractor and a workman and between contract for service and contract of service. In Stroud's Judicial Dictionary (Third Edition, Volume 1, Page 616) the distinction between a contractor and a workman is brought out in bold relief in the following manner:

" Of course, every person who makes an agreement with another for the doing of work is a contractor, in a general sense; but as used in Workmen's Compensation Act, 1897 (60 & 61 Vict., c. 37), S.4 "contractor" and "WORKMAN" "have come to have a more restricted and distinctive meaning," and "contractor " means 'one who makes an agreement to carry out certain work specified, but not on a contract of service'."

10. In paragraph 10, the court held that :-

“A 'contractor' is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the details of the work.

There is, therefore, a clear cut distinction between a contractor and a workman. The identifying mark of the latter is that he should be under the control and supervision of the employer in respect of the details of the work.”

11. In **M.M.Mathew v. Industrial Tribunal, Aleppy [1959 KHC 139]**, this Court also had occasion to consider the difference between the workman and an independent contractor. After analyzing various decisions in paragraph 22 this Court held thus :



“The distinction between a workman and an independent contractor has again been very forcefully brought out by their Lordships in the decision mentioned above at page 270: The broad distinction between a workman and an independent contractor lies in this that while the former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is therefore a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not if he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status. The position is thus summarized in Halsburys Laws of England Vol.14, pages 651-652 :-

The workman must have consented to give his personal services and not merely to get the work done, but if he is found under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him.”

12. In **R. E. D'Souza v. S. Krishnan Nair [1968 KHC 79]**, another Bench of this Court considered the difference between the workers and an independent contractor and in paragraph 10 held thus :-

“From these decisions what clearly emerges is that the main



features or identifying marks that distinguish a worker from an independent contractor are that the latter is not controlled by the employer regarding the manner in which the work allotted to him is to be done; and that he need not do the work personally, but may get it done by employing others. with this principle in mind if the facts of the present case are considered, it will be apparent that the women and girls who assemble and do the work when a catch of prawns is brought to the premises of the petitioner are not “workers” coming within the definition of the Factories Act. The petitioner does not insist as to who should do the job or who it should be done; he only wants the work to be done for the agreed remuneration without spoiling the prawns, i.e.within a short time. (A quantity of prawn is taken for peeling, cleaning, washing, etc. by a particular individual for a fixed remuneration, and that individual, with the assistance of others whom she employs, finishes the job as quickly as possible.)”

13. On a perusal of the above decisions, it can be seen that in case of an independent contractor he is not controlled by an employer regarding the manner in which the work allotted to him is done. He also need not do the work personally and may get it done by employing others. In the instant case, the respondents for the purpose of conducting a public function, hired the mike set of deceased Babu who is an electrician. He used to hire mike set for small functions like the present one. Accordingly for the function on 21.9.2006 he hired his mike set to the respondents. While he was throwing the cable for



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connecting mike set across the telephone post the cable came in contact with 11 KV electric line and as a result of which he got electrocuted. The mike set used in this case belonged to the deceased. Since it was only a hiring of mike set for the purpose of a programme, there was no necessity for the deceased to do his work personally. Instead, he could have done the same by engaging his own employees. His work of connecting the mike set is not controlled by the respondents. In the above circumstances, it is to be held that deceased Babu was not an employee but an independent contractor. Therefore, the impugned order passed by the Commissioner is perfectly justified. I do not find any grounds to interfere with the impugned order. The point is answered accordingly.

In the result, the appeal stands dismissed.

Sd/-

C.Pratheep Kumar, Judge

Mrcs/13.11.