

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

CRP.No. 649 of 2014

O.S.NO.76/2013 OF SUB COURT, PERUMBAVOOR

REVISION PETITIONER(S)(4TH RESPONDENT) :

**M/S.KITEX GARMENTS LTD., KIZHAKKAMBALAM P.O,
KIZHAKKAMBALAM VILLAGE, PIN- 683 5632**

**BY ADVS.SRI.P.THOMAS GEEVERGHESE
SRI.TONY THOMAS (INCHIPARAMBIL)**

RESPONDENT(S)(PLAINTIFFS AND OTHER DEFENDANTS :

- 1. T.C.JOSE, AGED 58 YEARS,
S/O.SAKARIA, THEKKUMPURAM HOUSE, DUNDOOR,
KARARA P.O, AGALI VILLAGE, ATTAPPADY,
PALAKKAD DISTRICT- 6878581.**
- 2. LEELAMMA JOSE, AGED 52 YEARS,
W/O.JOSE, THEKKUMPURAM HOUSE, DUNDOOR, KARARA P.O,
AGALI VILLAGE, ATTAPPADY, PALAKKAD DISTRICT- 6878581.**
- 3. JOJU, AGED 29 YEARS,
S/O.JOSE, THEKKUMPURAM HOUSE, DUNDOOR, KARARA P.O,
AGALI VILLAGE, ATTAPPADY, PALAKKAD DISTRICT- 6878581.**
- 4. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY CHAIRMAN & MANAGING DIRECTOR,
VYDUTHI BHAVAN, THIRUVANANTHAPURAM.**
- 5. ASSISTANT EXECUTIVE ENGINEER,
OFFICE OF THE KERALA STATE ELECTRICITY BOARD,
MAJOR CIRCLE, KIZHAKKAMBALAM P.O, KIZHAKKAMBALAM
VILLAGE, PIN- 683 562.**
- 6. ASSISTANT ENGINEER,
OFFICE OF KERALA STATE ELECTRICITY BOARD,
MAJOR CIRCLE, KIZHAKKAMBALAM P.O,
KIZHAKKAMBALAM VILLAGE, PIN- 683 562.**

**R1 TO R3 BY ADVS. SRI.K.G.CLEETUS
SRI.K.P.POULOSE**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Msd.

P.BHAVADASAN, J.

C.R.P. No. 649 of 2014

Dated this the 03rd day of February, 2015

ORDER

Under challenge is the order dated 07.08.2014 in O.S.No. 76/2013 whereby the court below deferred the question of maintainability to be decided at the time of final disposal of the suit.

2. The facts absolutely necessary for the disposal of this petition are as follows:

Admittedly, Joemon, the son of the first and the second plaintiffs died of electrocution while working in the premises of the petitioner herein.

3. The plaintiffs before the court below first approached the authority under the Workmen's Compensation Act for compensation. That authority finding that the person is covered by Employees' State Insurance Scheme, declined to grant compensation and advised the applicants before it to approach the ESI Court.

4. This Court is given to understand that the plaintiffs then approached the Human Rights Commission which after considering the matter elaborately, went on to hold that in such cases, the aggrieved has to take recourse to provisions of Employees' State Insurance Act.

5. Though advised so, the plaintiffs have approached the Civil court seeking compensation. The petitioner entered appearance in the suit and pointed out that the suit itself is not maintainable in view of the provisions under the various Acts and more so, since the plaintiffs had already approached before the authority under Workmen's Compensation Act.

6. It would appear that from a copy of the order passed by the Workmen's Compensation Commission, the employer admitted that it was an employment injury and contended for the position that action is not maintainable before the said authority. It was specifically pointed out by the petitioner herein that the employee is covered by the

Employees' State Insurance Scheme and the registration number was also furnished.

7. The authority under the Workmen's Compensation Act relying on Section 53 of the Employees' State Insurance Act found that the petition before the authority under Workmen's Compensation Act is not maintainable and dismissed the same.

8. It would appear that the parents of the deceased employee chose to dispute the fact that their son was covered by the Employees' State Insurance Scheme and even went to the extent of contending for the position that the employer had forged his signature to make it appear as if he is an employee. However, it is to be noticed that the employer candidly admitted that it was an employment injury and that the person who died was an employee of the firm and also furnished his E.S.I. number.

9. The court below relegated the consideration of the question of maintainability to the final stage of the suit.

10. The learned counsel appearing for the petitioner contended that the court below was not justified in postponing the decision in the light of the statutory provisions which are very clear to the effect that in such cases, a suit is not maintainable. Even assuming that a claim against the Electricity Board and its officer is made also, still in the light of the provisions contained in Employees' State Insurance Act, a suit will not lie. The only remedy available to the plaintiffs is to approach the ESI Court.

11. Even though this petition was posted for hearing on several days, the learned counsel appearing for the respondent did not feel it necessary to address this Court and finally, today when the matter was taken up and the petitioners' counsel was heard and this Court has decided to dispose of the matter.

12. There seems to be considerable force in the contention raised by the learned counsel for the petitioner

that the suit is not maintainable. Section 53 of the Employees' State Insurance Act reads as follows:

“53. Bar against receiving or recovery of compensation or damages under any other law:- An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.”

13. Section 61 and Section 75(3) of the Employees' State Insurance Act read as follows:

“61. Bar of benefits under other enactments:- When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

75(3): “No Civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which

by or under this Act is to be decided by [a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.]”

14. The Employees' Compensation Act also deals with the situation and relevant provision reads as follows:

“Sec.3(5): Nothing herein contained shall be deemed to confer any right to compensation on [an employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by [an employee] in any Court of law in respect of any injury-

“(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the [employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

15. The Employees' State Insurance Act defines an employment injury as follows:

“Sec.2(8): “employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.”

16. In this context, Section 51 of the Employees' State Insurance Act may also be of some relevance which reads as follows:

“Sec.51: **Disablement benefit:** Subject to the provisions of this Act -

(a) a person who sustains temporary disablement for not less than three days (excluding the day of accident) shall be entitled to periodical payment [at such rates and for such period and subject to such conditions as may be prescribed by the Central Government

(b) a person who sustains permanent disablement, whether total or partial, shall be entitled to periodical payment [at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.”

17. Going by the provisions of the Employees' State Insurance Act, the question as to whether a person is an employee has also to be considered by the authority under the Act. A conjoint reading of the above provisions leave one in no doubt that it is an employment injury which caused the death of the person concerned, the only forum available to the plaintiffs is the Employees' State Insurance court or any such authorities as the case may be under the Employees' State Insurance Act.

18. The petitioner had produced documents to show that the deceased was covered by a scheme under the Act and the registration number was also disclosed. Under these circumstances, the court below was not justified in deferring the matter for decision to the final stage. One must remember that the passage of time will be only to the prejudice of the plaintiffs.

19. For the above reason this petition is allowed and the impugned order is set aside and it is held that the suit is

not maintainable and the suit shall stand dismissed.

It is made clear that in case the respondents approach the proper forum, the fact that they have been prosecuting the matter under different forums shall be taken into consideration and time taken for prosecuting the matter shall be excluded.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge