

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

MFA.No. 114 of 2012

**JUDGMENT DATED 31-03-2012 IN WCC 16/2001 OF WORKMEN'S OCOMPENSATION
COMMISSIONER, KOLLAM**
.....

APPELLANT(S)/RESPONDENT:

**RADHAKRISHNA PILLAI,
PROPRIETOR, R.G.BRICKS, RESIDING AT
KARIPPAMAON KUNNATHU VEEDU,
THAZHATHUKULAKKADA P.O., PUTHOOR VIA, KOLLAM.**

**BY ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.V.S.SHIRAZ BAVA**

RESPONDENT(S)/PETITIONER:

**GOPALAKRISHNA PILLAI,
S/O.BHASKARAN PILLAI, G.K.MANDIRAM,
MUTHUPILAKKADU WEST,
SASTHAMKOTTA VILLAGE, PIN - 691 001.**

BY ADV. SRI.K.S.MANU (PUNUKKONNOOR)

**THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

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M.F.A.No.114 of 2012.

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Dated this the 12th day of October, 2015.

J U D G M E N T

The opposite party in an application for compensation under the Workmen's Compensation Act is the appellant in this appeal.

2. The application was filed by the respondent alleging that he sustained injuries in an accident arising out of and in the course of his employment under the opposite party. A sum of Rs.1,00,000/- was claimed in the application by way of compensation. The opposite party contested the application on the ground that the applicant is not a workman employed by him. The Commissioner for Workmen's Compensation rejected the contention of the opposite party and allowed the application, directing the opposite party to pay a sum of Rs.24,462/- by way of compensation. The opposite party is aggrieved by the said

decision of the Commissioner for Workmen's Compensation. Hence, this appeal under Section 30 of the Workmen's Compensation Act.

3. Heard the learned counsel for the appellant.

4. The learned counsel for the appellant contended that the applicant has not established that he is employed by the opposite party in his establishment. According to the learned counsel, the opposite party has produced sufficient evidence to show that the applicant is not a workman employed by him. He relied on the muster roll of the employees maintained by the opposite party as also the return filed by the opposite party in respect of his employees under the Employees' State Insurance Act to contend that the applicant has nothing to do with his establishment.

5. An order passed by the Commissioner for Workmen's Compensation can be challenged before this Court invoking Section 30 of the Workmen's Compensation

Act, only on a substantial question of law. The essence of the contentions raised by the learned counsel for the appellant is that the finding rendered by the Commissioner that the applicant is a person employed by the opposite party is incorrect. The question whether the applicant was a person employed by the opposite party in his establishment is a pure question of fact. As such, according to me, the appeal is not maintainable.

6. That apart, the applicant has given evidence as AW1. In his evidence, the applicant deposed that he was working in the establishment of the opposite party. A co-worker of the applicant was examined as AW2 in the proceedings. AW2 also deposed that the applicant was a person employed by the opposite party in his establishment. AW2 also deposed that the applicant sustained injuries on 29.6.1999 as claimed by him in the application. In the aforesaid circumstances, merely for the reason that the name of the applicant is not included in the muster roll

maintained by the opposite party as also in the returns filed by the opposite party under the Employees' State Insurance Act, it cannot be contended that the applicant is not a workman employed by him in his establishment, especially when the said documents are maintained/submitted by the opposite party.

There is, therefore, no merit in the appeal and the same is accordingly dismissed. All the interlocutory applications in the appeal are closed.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Kvs/-

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PA TO JUDGE.