IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

MFA.No. 61 of 2013

AGAINST THE ORDER IN ECC 29/2010 IN THE COURT OF EMPLOYEES COMPENSATION COMMISSIONER (REGIONAL JOINT LABOUR COMMISSIONER), ERNAKULAM DATED 09-01-2013

APPELLANT/2ND OPPOSITE PARTY:-:

THE NATIONAL INSURANCE CO.LTD.,
PALARIVATTOM, KOCHI - 25
REPRESENTED BY ITS DEPUTY MANAGER, REGIONAL OFFICE
M.G.ROAD, ERNAKULAM, KOCHI - 35.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/RESPONDENTS/APPLICANTS/1ST OPPOSITE PARTY:-:
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1. SEENA VENUGOPAL,
W/O.VENUGOPAL, KALLUPARAMBIL HOUSE, CHAKKARAPARAMBU
THAMMANAM P.O., KOCHI - 682 032.

2. SREEKALSHMI (MINOR),
KALLUPARAMBIL HOUSE, CHAKKARAPARAMBU, THAMMANAM P.O.
KOCHI - 682 032.

3. SREEHARI (MINOR),
KALLUPARAMBIL HOUSE, CHAKKARAPARAMBU, THAMMANAM P.O.
KOCHI - 682 032. (RESPONDENTS 2 AND 3 ARE MINORS AND ARE REPRESENTED BY MOTHER SEENA VENUGOPAL FIRST RESPONDENT).

4. USMAN M.E.,
MANAGING PARTNER, D.F.S. FOUNDATIONS & STRUCTURES
149-4TH FLOOR, PENTA MENAKA, SHANMUGHAM ROAD
ERNAKULAM, PIN - 682 031.

R4 BY ADV. SRI.E.S.ASHRAF
R4 BY ADV. SRI.JABIN MUHAMMED
R1-R3 BY ADV. SRI.K.A.HASHIM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"CR"

P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.
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M.F.A.No.61 of 2013
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Dated this the 24th day of June, 2015

JUDGMENT

Ravindran, J.

The appellant is the second opposite party in E.C.C.No.29 of 2010 on the file of the Court of the Employees Compensation Commissioner (Regional Joint Labour Commissioner), Ernakulam. Respondents 1 to 3 are the applicants and the fourth respondent is the first opposite party therein.

2. Respondents 1 to 3 filed an application under section 22 of the Workmen's Compensation Act, 1923 before the Court of the Employees Compensation Commissioner (Regional Joint Labour Commissioner), Ernakulam claiming the sum of Rs.3,68,340/- as compensation together with interest as also funeral expenses. In the said application, the applicants had stated that they are the wife and two minor children of late Venugopal, aged 41 years, who was employed by the first opposite party as a piling worker at the work site of Tanzeel Builders. It was stated that in the course of his employment, Venugopal sustained grievous injuries and died on the way to Medical Trust

Hospital, Ernakulam. They had also stated that the deceased was earning a monthly income of Rs.6,000/-.

3. After preliminary enquiry, the application was admitted and notice issued to the opposite parties. Upon receipt of notice, the first opposite party, namely the employer entered appearance and filed a written statement dated 15.09.2010. The first opposite party admitted the accident as also the fact that the deceased was his employee. He also stated that the deceased was not a monthly paid worker but a daily rated worker who was being paid Rs.160/- per day as wages. In paragraph 3 of the written statement, the first opposite party contended that all its workers were covered by a policy of insurance issued by the second opposite party and that the said policy was valid during the period from 12.06.2009 to 11.06.2010. He contended that since the accident took place on 20.11.2009, it is covered by the policy of insurance. He had further averred that the insurer was intimated about the accident over telephone immediately after the accident. The second respondent insurer, the appellant in this appeal, entered appearance and filed a written statement dated 12.07.2011. Relying on the police records it was contended that the deceased was not a worker but the Project Manager of the first opposite party and therefore, he will not come within the definition of the term workman

occurring in section 2(n) of the Workmen's Compensation Act, 1923. The insurer also contended that the policy issued by it covers only workers whose wage is less than Rs.4000/-. It was contended that as the deceased was working as a Project Manager and was being paid a monthly salary of Rs.6000/-, he is not covered by the policy of insurance. The applicants thereupon filed a rejoinder dated 30.11.2009 wherein they contended that the deceased was an employee falling within the definition of the term "workman" occuring in section 2(n) of the Workmen's Compensation Act, 1923 and that the policy issued by the insurer covers the deceased workman.

4. Before the Employees Compensation Commissioner, the first applicant was examined as AW1 and Exhibits A1 to A6 were produced and marked on the side of the applicants. The first opposite party examined himself as CW1 and produced and marked Exts.B1 and B2. On the side of the second opposite party, namely the appellant herein, no oral evidence was adduced. The second opposite party however produced and marked Exts.B3 and B5. The Employees Compensation Commissioner considered the rival contentions and held that the deceased employee is a workman as defined in section 2(n) of the Workmen's Compensation Act, 1923. The Employees Compensation Commissioner also awarded the sum of Rs.3,68,340/- as

compensation taking the monthly wages of the deceased employee as Rs.4,000/- and directed the second opposite party, namely the appellant herein, to deposit the said sum. The first opposite party, namely the employer, was directed to pay interest on the said sum of Rs.3,68,340/- at the rate of 12% per annum from the date of accident, that is 20.11.2009. The second opposite party has, aggrieved by the order passed by the Employees Compensation Commissioner, filed this appeal.

5. The principal contention raised in the instant appeal is that as the deceased was an employee earning a monthly salary in excess of Rs.4000/-, the claim made by his legal heirs and dependents under the Workmen's Compensation Act, 1923 is not covered by Ext.B3(A) insurance policy. Relying on the stipulations in Ext.B3(A), it is contended that the policy covers only those workmen who were drawing wages less than Rs.4000/- per month and that an employee who is not a workman is not covered by the policy.

6. We heard Smt.K.S.Santhi, learned counsel appearing for the appellant, Sri.K.A.Hashim, learned counsel appearing for respondents 1 to 3 and Sri.E.S.Asharaf, learned counsel appearing for the fourth respondent. Smt.K.S.Santhi, learned counsel appearing for the appellant insurer contended that the brother of the deceased had in

the First Information Statement given by him to the police stated that the deceased was employed as Project Manager under the first opposite party, that in Ext.B5 death intimation given to the Sub Inspector of Police, Kadavantra Police Station from Medical Trust Hospital, Ernakulam it is stated that the deceased was working as Project Manager, that the applicants have in the claim petition stated that he was earning a monthly income of Rs.6000/- and therefore, on the terms of the policy of insurance issued by the appellant, the appellant cannot be held liable to indemnify the insured. Inviting our attention to the terms of Ext.B3(A) policy, learned counsel contended that policy covers only employees drawing wages less than Rs.4000/- and therefore, on the admitted facts, the insurer could not have been held liable to indemnify the insured. Learned counsel submitted that the liability to pay compensation rests on the employer namely the first opposite party in the Employees Compensation Court.

7. Per contra, Sri. K.Hashim, learned counsel appearing for the applicants and Sri.E.S.Asharaf, learned counsel appearing for the employer submitted that no reliance can be placed on the statement made by the brother of the deceased in Ext.A1 First Information Statement given by him to the police that the deceased was employed as Project Manager under the first opposite party in view of the fact

that the first opposite party has in his written statement admitted the fact that the deceased was a workman employed by him. Inviting our attention to the contents of the written statement filed by the first opposite party, learned counsel for the respondents submitted that the first opposite party has in the written statement admitted the fact that the deceased was being paid only Rs.160 per day as wages, that the first opposite party had also stated that the deceased was not a monthly paid worker but a daily rated worker and therefore, the statement given by the brother of the deceased to the police cannot be held out against the applicants. Learned counsel for the first opposite party also submitted that the employer has in Ext.A4 certificate reiterated the said stand and therefore, no exception can be taken to the finding entered by the Employees Compensation Court that the deceased was a workman and that he was covered by the policy of insurance issued by the second opposite party. Learned counsel for the respondents also submitted that the policy of insurance issued by the appellant is one which satisfies the requirement of section 4 of the Workmen's Compensation Act, 1923, that it covers all workmen for the reason that notwithstanding the fact that the workman might be earning more than Rs.4000/-per mensem, for the purpose of computation of compensation, the monthly wages will be limited to

Rs.4,000/- in view of the stipulations in section 4(1) (a) & (b) of the Act and therefore, the mere fact in the policy it is stated that it covers workman drawing wages below Rs.4,000/- is not a reason to hold that the insurer is not bound to indemnify the insured.

8. We have considered the submissions made at the Bar by the learned counsel appearing on either side. We have also gone through the pleadings and the materials on record. The applicants had in the petition filed by them under section 22 of the Workmens Compensation Act, 1923 averred that the deceased who was a workman was earning Rs.6000/- per mensem. The employer had in his written statement stated that the deceased was only a daily rated worker who was being paid Rs.160/- per day. The stand taken by the insurer was that as the workman was earning Rs.6,000/- per mensem, he is not covered under policy of insurance issued by it. It is evident from the materials before us that the deceased was being paid only Rs.160/- per day as wages. For the purpose of computing the compensation payable under the Act, even assuming that he was drawing more than Rs.4000/- per mensem, wages in excess of Rs.4000/- cannot be taken into account. This is clear from the stipulations in Explanation II to section 4(1)(a) and (b) of the Workmen's Compensation Act, 1923, which reads as follows:-

> "Explanation II- Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only."

9. It is evident from the policy issued by the appellant that it indemnifies the insured in respect of claims by workman, notwithstanding the fact that they are earning more than Rs.4000/- per mensem. As compensation can be awarded only on the basis that the monthly income is Rs.4000/-, even if the workmen is earning more than that amount, the policy issued by the appellant in our opinion is one which covers the liability of the employer under the Act to pay compensation for death or disablement on account of injuries caused to the workmen in the course of their employment. The deceased employee was working at a construction site. Any person who is employed in construction, maintenance, repair or demolition of any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof, is deemed to be a workman. Schedule II to the Act does not take out of the fold of such workman, anyone engaged in a Managerial or Supervisory capacity. The relevant portion of Schedule II to the Act reads as follows:-

> "The following persons are workmen within the meaning of section 2 (1) (n) and subject to the provisions of that section, that is to say, any person who is
> (i)xxxxxx
> xxxxxxx
> (viii) employed in the construction, maintenance, repair or demolition of---
> (a) any building which is designed to be or is or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or
> (b) any dam or embankment which is twelve feet or more in height from its lowest to its highest point; or
> (c) any road, bridge, tunnel or canal; or
> (d) any wharf, quay, sea wall or other marine work including any moorings or ships."

10. In the absence of any stipulation in Schedule II to the effect that the persons who are employed in a managerial or supervisory capacity in the construction, maintenance, repair or demolition of building will be excluded from the definition of the term workman, we find no reason to hold, even assuming that the deceased employee was a Project Manager, that he will not fall within the definition of the term workmen contained in the Workmen's Compensation Act, 1923. That apart, the employer has in unequivocal terms stated that the deceased was a daily rated workman who was being paid Rs.160/- per day as wages. In the light of the admission made by the employer who was held liable to

pay interest on the compensation awarded by the Employees Compensation Court (the liability of the insurer is only to pay the principal amount), we are of the considered opinion that the challenge to the impugned order is without any merit. In the light of Ext.A4 salary certificate and the stand taken by the employer, no reliance can, in our opinion, be placed on the police records to hold that the deceased was not a workman as defined in the Act. In any case, for the reasons stated earlier, having regard to the stipulations in Schedule II, we are of the view, even assuming that the deceased was a Project Manager that he would fall within the definition of the term workman occurring in the Act.

For the reasons stated above, we hold that there is no merit in the instant appeal. The appeal fails and it is accordingly dismissed. No costs.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj