

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

MFA.No. 43 of 2010 ()

**AGAINST THE ORDER IN WC 201/2000 OF COMMISSIONER FOR WORKMEN'S
COMPENSATION (DEPUTY LABOUR COMMISSIONER), KOZHIKODE DATED 02-05-2008
APPELLANT/APPLICANT:**

**KURUMBAN, S/O.VELLAN
KOTTUKUNNUMMAL HOUSE, POST URALLOOR, ARIKKULAM
KOYILANDI, KOZHIKODE DISTRICT.**

BY ADV. SRI.B.VJOY SANKER,

RESPONDENTS/OPPOSITE PARTIES:

- 1. THE SECRETARY, ARIKKULAM GRAMA PANCHAYAT
P.O.ARIKKULAM, KOYILANDI
KOZHIKODE DT.**
- 2. THE ORIENTAL INSURANCE COMPANY LTD.,
JASEELA COMPLEX, P.B.NO.3, MANJERY
MALAPPURAM DT.676 121.**

**R1 BY ADV. SRI.SANTHARAM.P
R2 BY ADV. SRI.VPK.PANICKER**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

M.F.A.No.43 of 2010

Dated this the 13th day of August, 2015

J U D G M E N T

Ramachandran Nair, J.

In this appeal the applicant before the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode has challenged the order by which claim for compensation stands rejected. The reason mainly pointed out by the Commissioner is that the applicant had failed to establish that he is a workman as defined under the Workmen's Compensation Act, 1923.

2. The applicant had adduced evidence before the Commissioner. He was examined as AW1 and produced Exts.A1 to A4. AW2 was also examined on the side of the applicant. The applicant was engaged as a helper in operating a power triller owned by the first opposite party

Panchayat. He had sustained severe injuries and was admitted to the Medical College Hospital, Kozhikode. He lost his little finger and ring finger due to the injuries sustained.

3. The first opposite party Panchayat denied any employer-employee relationship and stated that he was engaged by a contractor. The Insurance Company in their written statement denied the same. It is the contention of the learned counsel for the Panchayat that the applicant was actually engaged by a contractor at the time of accident and therefore there is no employer-employee relationship between the applicant and the first opposite party.

4. The details from the cross-examination of applicant have been extracted under question No.1. He admitted that the Panchayat had not issued any order appointing him or no document is available to show that he was entrusted to do any work by the Panchayat. To a specific question as to whether he has received any wages

from the Panchayat also the answer was in the negative. Lastly, he was asked whether he was asked to take money and to remit any amount before the Panchayat, and then also the answer is in negative. On the basis of the above evidence the Commissioner concluded that the employer-employee relationship do not exists. It was further found that the contractor was not impleaded.

5. It was contented vehemently by the learned counsel for the appellant that the contractor was engaged by the Panchayat and therefore the claimant is not barred from claiming amount from the Panchayat.

6. The learned counsel for the Panchayat submitted that the Panchayat had nothing to do with the engagement of the applicant and since the claim of the applicant stands disproved, the same amounts to a finding of fact which cannot be interfered by this court.

7. We heard learned counsel for the Insurance Company also to find out whether any of the clauses in the policy will come to the help of the appellant. On a perusal

of the policy it can be seen that it is subject to various endorsements including the endorsements No.36 & 71. We have gone thorough the Indian Motor Tariff and its Regulations. The vehicle herein being a power triller is a miscellaneous type vehicle and it was used for agricultural operations. None of the provisions in the Indian Motor Tariff, going by the stipulations therein will come to the rescue of the appellant. We have verified the same to find out whether irrespective of the question of any proof regarding employer-employee relationship, going by the policy any benefit will be available to the appellant being a helper engaged by the driver at the time when the accident occurred. The Indian Motor Tariff and the Regulations do not cover such a situation also.

8. As far as the finding on the question whether there was any employer - employee relationship between the Panchayat and the appellant, the same has been arrived after analysing the evidence. It is not a case of any rejection of any valid evidence or acceptance of any

evidence which was not relevant. Therefore, we do not find that here is any substantial question of law which has arisen in this case so as to interfere with the order of the Commissioner. Hence, the appeal is dismissed. No costs.

Sd/-

T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-

K.P. JYOTHINDRANATH
JUDGE

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P.A. TO JUDGE

shg/