

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).No. 22809 of 2007 (M)

PETITIONER :

SRI.N.SANKARAN NAIR,
S/O.CHERIYOMANA NAIR, AGED 86 YEARS, NADUKKANDI VEEDU
P.O.KURUVANGAD, KOYILANDY, KOZHIKODE DISTRICT. (DIED)

*SUPPLEMENTAL PETITIONERS 2 TO 11 ARE IMPEADED

ADDL.P2. PARVATHY AMMA, W/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P3. RAJAN, S/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P4. VIJAYAN, S/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P5. KUMARI, D/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P6. GEETHA, D/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P7. LATHA, D/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P8. MANOJ, S/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P9. ANITHA, D/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P10. MINIMOL, D/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS,
PERUVATTOOR.P.O., KOYILANDY.

ADDL.P11. SRI.SUNIL, S/O.LATE SRI.SANKARAN NAIR, S.N.G.NIVAS
PERUVATTOOR.P.O., KOYILANDY.

SUPPLEMENTAL P2 TO P11 ARE IMPEADED AS PER ORDER DATED 17/06/2014 IN IA 4443/2013.
BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS :

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1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, LABOUR AND REHABILITATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
 2. THE KERALA MOTOR TRANSPORT WORKERS', WELFARE FUND BOARD, KOZHIKODE REPRESENTED BY DISTRICT EXECUTIVE OFFICER.
 3. SRI.PREMAN, POONICHERRY VEEDU,
MUJUKUNNAM P.O., KOYILANDY, KOZHIKODE.

R2 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD

R3 BY ADVS. SMT.PREETHY KARUNAKARAN

SMT.M.M.DEEPA

SRI.JAYKAR.K.S.

R1 BY SR.GOVERNMENT PLEADER SRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 : COPY OF THE ORDER OF THE 1ST RESPONDENT WITH THE NO.GO.(RT)NO.1440/06/LBR DATED 28.6.2006

EXT.P2 : COPY OF THE REVISED FINAL DETERMINATION ORDER PASSED BY THE 2ND RESPONDENT WITH THE NO.B4/E2/66/86-00 DATED 15.9.2006

EXT.P3 : COPY OF THE APPEAL MEMORANDUM PREFERRED BY THE PETITIONER AGAINST EXHIBIT P2

EXT.P4 : COPY OF THE ORDER NO.GO.(RT)NO.1974/07/LBR DATED 22.6.07

EXT.P5 : COPY OF THE ORDER IN O.P.(MV)NO.1046/1994 OF MACT THRISSUR DISPOSED OF BY THE LOK ADALAT, THRISSUR

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

PA TO JUDGE

AV

K.SURENDRA MOHAN, J.

W.P.(C) No.22809 of 2007

Dated this the 22nd day of January, 2015

J U D G M E N T

The petitioner in this writ petition is no more. Therefore his legal representatives have been brought on the party array. The original petitioner was conducting a bus service. The 3rd respondent claimed that he was a workman under the petitioner. The original petitioner had conducted the bus service only from 1972 to 1994. Since he was not in a position to operate the bus service, he had wound up his business and sold off the buses. It was claimed by the 3rd respondent that, he was a workman of the petitioner from 1986 to 2000. The 2nd respondent assessed the petitioner to contribution under the Kerala Motor Transport Workers Welfare Fund Act, 1985 (hereinafter referred to as 'the Act' for short). Being aggrieved by the order of assessment demanding contribution from the petitioner, he challenged the same in appeal. As per Ext.P1 order dated 28.06.2006, the 1st respondent allowed the petitioner's appeal and directed the 2nd respondent to conduct a *de novo* enquiry and to dispose of the complaint afresh.

2. Accordingly, the matter was considered afresh by the 2nd respondent and by Ext.P2 order dated 15.09.2006, the petitioner was assessed to contribution and was directed to pay the said amount in respect of the 3rd respondent employee. Aggrieved by Ext.P2, the petitioner preferred Ext.P3 appeal. By Ext.P4 order, the petitioner's

appeal has been rejected. This writ petition has been filed challenging Ext.P5.

3. According to Adv.Sri.Salil Narayanan.K.A. who appears for the petitioner, Ext.P5 is unsustainable and liable to be set aside. The 1st respondent has omitted to consider the fact that the claim of the 3rd respondent was highly belated. According to the petitioner, he had produced Ext.P5 before the 1st respondent which shows that the 3rd respondent had been employed under some other person at the relevant time. The fact that the petitioner had not employed the 3rd respondent, being a negative factor, was not capable of being proved by positive evidence. The assessing authority as well as appellate authority have finalised the assessment placing implicit reliance on the award passed by the Industrial Tribunal. According to the petitioner, the claim of the workman had been subsequently settled among the parties outside Court. Since the 1st respondent had not considered any of the above aspects, it is contended that, Ext.P4 is liable to be set aside.

4. Heard the learned counsel Sri.P.Ramakrishnan who appears for the 2nd respondent as well the learned Government Pleader who appears for the 1st respondent also.

5. Ext.P1 shows that, originally the appellate authority had set aside the assessment made, finding that the claim of the 3rd respondent was not established. The petitioner had been remitting the

contributions in respect of all his employees during the time that he had been conducting his business. Therefore, it was unnatural that contribution in respect of the 3rd respondent alone had not been remitted. Ext.P2 assessment has been passed entirely relying on the award passed by the Industrial Tribunal. The award has subsequently been satisfied through an out of Court settlement.

6. It is the specific case of the petitioner that the 3rd respondent had been employed by some other person. Ext.P5 award in O.P.(M.V.) No.1046/1994 of the Motor Accidents Claims Tribunal, Thrissur is relied upon to contend that the 3rd respondent had preferred the said petition claiming that, he was the conductor of a bus operated by one Sri.V.K.Sasidharan of Sreekrishna Sadanam in Koyilandy. Ext.P5 award is dated 12.06.1999. As per Ext.P5, the 3rd respondent has been awarded compensation of an amount of ₹10,000/- (Rupees Ten thousand only) for injuries sustained. Ext.P1 appellate order also refers to the above aspect. It is stated therein that, the accident in which the 3rd respondent had claimed compensation for injuries had occurred at 13.04.1994 which comes within the assessment period. The vehicle number is KED-1467. However, the above aspect has not been considered by either Ext.P2 or P4.

7. As already noticed above, if the 3rd respondent had been working as a conductor in another bus during the relevant period, there is no justification for demanding contribution in respect of the said

person from the petitioner or his legal representatives. The above aspect therefore requires to be examined and probed. The learned counsel for the petitioner submits that the petitioner would be in a position to secure and produce a copy of the claim petition filed by the 3rd respondent before the Motor Accidents Claims Tribunal. It is only appropriate that the assessment proceedings are finalised only after considering the above aspects also. Inasmuch as Exts.P2 and P4 have omitted to consider the effect of the proceedings in O.P.(M.V) No.1046/94 and Ext.P5 award on the claim made by the 3rd respondent, the said proceedings cannot be sustained.

In view of the above, this writ petition is allowed. Exts.P2 and P4 are set aside. The 2nd respondent is directed to consider the matter afresh and to pass fresh orders after affording an opportunity of being heard to the petitioner as well as the 3rd respondent and permitting them to produce any fresh evidence, if such an opportunity is sought for.

Sd/-

K.SURENDRA MOHAN, JUDGE.

AV