

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 25189 of 2010 (W)

PETITIONER(S):

M/S.T.O.ITTOOP & ASSOCIATES,
ENGINEERS & CONTRACTORS, CHITTOOR ROAD, COCHIN
682012, REPRESENTED BY ITS MANAGING PARTNER
SHRI.GEORGE ITTOOP.

BY SRI.JOY THATTIL ITTOOP
SMT.RAKHI K.KUMAR

RESPONDENT(S):

1. THE EXECUTIVE ENGINEER, CENTRAL PUBLIC
WORK DEPARTMENT (CPWD), CALICUT CENTRAL DIVISION
CALICUT.-20
2. THE DEPUTY LABOUR COMMISSIONER &
WORKMEN COMPENSATION COMMISSIONER, LABOUR WELFARE
COMMISSIONERS OFFICE, CIVIL STATION, CALICUT-20.
3. THE UNITED INDIA INSURANCE COMPANY LTD.,
HANDICRAFTS BUILDING, INDIRA GANDHI ROAD
WILLINGTON ISLAND, COCHIN-682003.

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY GOVERNMENT PLEADER SRI. BIJU MEENATTOOR
BY SRI.K.K.CHANDRAN PILLAI (SR.)
BY SRI.A.S.SAJUSH PAUL
BY SRI.THOMAS JAMES MUNDACKAL
BY SRI.BOBBOY THOMAS
BY SRI.T.P.M.IBRAHIM KHAN,ASST.S.G OF INDI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

EXHIBITS

P1- A TRUE COPY OF THE INSURANCE POLICY
NO.100202/41/09/01/00000015

P2- A TRUE COPY OF THE INSURANCE POLICY
NO.760600/36/08/0100000020

P3- A TRUE COPY OF THE INSURANCE POLICY
NO.570104/41/08/8600000243

P4- A TRUE COPY OF THE COMMUNICATION DATED 19.06.2009 ISSUED
BY THE PETITIONER TO R3

P5- A TRUE COPY OF THE CLAIM FORM SUBMITTED BY THE PETITIONER
WITH R3

P6- A TRUE COPY OF THE COMMUNICATION SENT BY THE PETITIONER
TO THE FIRST RESPONDENT DATED 27.6.2009

P7- A TRUE COPY OF THE COMMUNICATION DATED 24.4.2010 ISSUED BY
R1 TO THE PETITIONER

P8- A TRUE COPY OF THE LETTER DATED 15.1.2010 ISSUED BY THE
PETITIONER TO R3

P9- A TRUE COPY OF THE COMMUNICATION ISSUED BY R1 TO R2

P10- A TRUE COPY OF THE COMMUNICATION ISSUED BY R2 TO R1 DATED
15.7.2010

R1(A)- TRUE COPY OF THE ACCIDENT REPORT OF AE

R1(B)- TRUE COPY OF THE LETTER DATED 27.6.2009

R1(C)- TRUE COPY OF THE LETTER NO.DLWC/Mis/345 DATED 16.9.2009

R1(D)- TRUE COPY OF THE LETTER NO.30/1/CLTCD/09/855 DATED 25.9.2009

R1(E)- TRUE COPY OF THE LETTER DATED 6.10.2009

R1(F)- TRUE COPY OF LETTER NO.30/1/CLTCD/09/1373 DATED 20.1.2010

R1(G)- COPY OF LETTER NO.117 DATED 24.4.2010

R1(H)-COPY OF LETTER DATED 15.6.2010

R1(I)-TRUE COPY OF LETTER NO.C.2557/09 DATED 15.7.2010

R1(J)- TRUE COPY OF THE LETTER NO.30/1/CLTCD/10/463 DATED 4.8.2010

//True Copy//

P.A. To Judge

K.VINOD CHANDRAN, J

W.P.(C).No. 25189 of 2010

Dated 13th February, 2015

JUDGMENT

The petitioner is aggrieved with Ext.P10 order by which the 1st respondent was directed to pay an amount of Rs.45,120/- as interest due to the claimant under the Employees Compensation Act, 1923 (at that time, termed as "Workmen's Compensation Act, 1923") (hereinafter referred to as the "Act of 1923").

2. The brief facts for disposal of the writ petition is that, the petitioner had been a contractor under the 1st respondent. An employee engaged by the contractor, ie, the petitioner, suffered an employment injury and succumbed to the injuries. Under the Act of 1923, the 1st respondent, being the Principal employer, informed the same to the Workmen's Compensation Commissioner, Kozhikode, (who was notified under

the Act at that time) and also directed the petitioner herein to deposit the amount before the Commissioner by Ext.R1(D).

3. The accident occurred on 26.06.2009 and Ext.R1 (D) communication is dated 25.09.2009. The petitioner definitely was aware of the said accident since the petitioner had also intimated the 1st respondent of the accident and the resultant death of the contract worker by Ext.P6. The petitioner having not deposited the amounts before the Workmen's Compensation Commissioner, again communication was issued by the 1st respondent by Ext.P7 dated 24.04.2010. The petitioner however, took a stand that the petitioner was insured and the compensation could be paid only when the insurance claim was met. So much is evident from Ext.P8.

4. Later, the 1st respondent, as the

Principal employer, deducted the amounts from that payable to the petitioner; as per the contract and remitted it before the Workmen's Compensation Commissioner, as per Ext.P9. For the delay caused, there was a further demand for interest raised by the Workmen's Compensation Commissioner as per Ext.P10. The petitioner had then approached this Court and obtained a stay in the above writ petition which has effectively interdicted the 1st respondent also from paying the amounts to the legal heirs of the deceased employee. It is also to be noticed that the legal heirs of the employee have also not been impleaded in the above writ petition.

5. The facts as disclosed from the records and taken note of in this judgment would reveal that the petitioner had been recalcitrant in paying off the compensation amount. The Act of 1923, mandates a report to the jurisdictional

Commissioner and deposit of the amounts which has to be computed by the employer himself. On any dispute existing as to the status of employer, definitely the person, who is said to be the alleged employer, has to file objections before the Commissioner. In the present case, there is absolutely no dispute as to the employer-employee relationship or the employment injury which was caused in the course of the employment; which led to the death of the employee. The petitioner also admits to be a contractor under the 1st respondent and the deceased was a person employed in such contract work by the petitioner.

6. In the above circumstances, the petitioner's stand that the legal heirs would be paid only at the time when insurance is processed and paid to the petitioner, would defeat the very purpose of the legislation. On

the finding that the delay was caused due to the attitude of the petitioner who had the sole responsibility to satisfy the liability, the writ petition would stand dismissed.

7. The 1st respondent shall immediately deposit the amounts demanded as per Ext.P10 with interest at the rate of 10% from 15.07.2010 till payment, to the jurisdictional Industrial Tribunal now notified as the Commissioner under the Employees Compensation Act, 1923. The same shall be done within a period of one month from today.

8. The 2nd respondent shall transmit the entire files of the subject case to the Industrial Tribunal, now constituted under the Act. The Industrial Tribunal shall intimate the legal heirs of the deceased about the deposit of the amounts and expedite payment of the same to

the legal heirs.

9. The 1st respondent shall be entitled to recover the entire amounts from the petitioner either by way of deduction from the contract amounts, if any, are still payable or by revenue recovery proceedings under the Kerala Revenue Recovery Act, 1968.

10. The 1st respondent shall raise a demand on the petitioner for any amounts due after payment to the Industrial Tribunal and if the same is not paid within a period of one month, the petitioner shall be mulcted with exemplary cost of Rs.10,000/- which again, shall be recovered under the provisions of the Revenue Recovery Act and shall be paid to the legal heirs of the victim.

The writ petition would stand dismissed. Parties are left to suffer their respective

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costs. The 2nd respondent shall file a report on the action taken, within one month.

Post the case for report on 24.03.2015.

Sd/-

K.VINOD CHANDRAN
Judge

Mrcs

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