IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

THURSDAY, THE 08TH DAY OF OCTOBER 2020 / 16TH ASWINA, 1942

MFA.No.100 OF 2012

AGAINST THE ORDER IN WCC 20/2008 DATED 28-07-2011 OF THE COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER), KOZHIKODE

APPELLANTS/SUPPLEMENTAL OPPOSITE PARTIES:

1 THANKAM
W/O.LATE K.P.MOHANAN, RESIDING AT ERADATH MEETHAL HOUSE, VELLIPARAMBA POST, KOZHIKODE.

2 JAGADEESH
S/O.LATE K.P.MOHANAN, RESIDING AT ERADATH MEETHAL HOUSE, VELLIPARAMBA POST, KOZHIKODE.

3 SATHEESH
S/O.LATE K.P.MOHANAN, RESIDING AT ERADATH MEETHAL HOUSE, VELLIPARAMBA POST, KOZHIKODE.

BY ADVS.
SRI.HANSON.P.MATHEW
SRI.P.V.ANOOP

RESPONDENTS/APPLICANTS:

1 SUMITHRA
W/O.LATE MOHANAN, RESIDING AT PARAKANDIYIL HOUSE, KUTTIKKATTOOR POST, KOZHIKODE 673 008.

2 MONISHA
D/O. LATE MOHANAN, RESIDING AT PARAKANDIYIL HOUSE, KUTTIKKATTOOR POST, KOZHIKODE 673 008.

3 PRAVEEN (MINOR)
S/O.LATE MOHANAN,REPRESENTED BY HIS MOTHER AND LEGAL GUARDIAN SUMITRA, RESIDING AT PARAKANDIYIL HOUSE, KUTTIKKATTOOR POST, KOZHIKODE 673 008.

4 LAKSHMI
W/O.MADHAVAN, RESIDING AT PARAKANDIYIL HOUSE, KUTTIKKATTOOR POST, KOZHIKODE 673 008.

5 PRANAV (MINOR), S/O.LATE MOHANAN, IS REPRESENTED
* BY HIS MOTHER AND LEGAL GUARDIAN SUMITRA, W/O.LATE MOHANAN, RESIDING AT PARAKANDIYIL HOUSE, KUTTIKKATTOOR POST, KOZHIKODE.
IS IMPLEADED AS ADDITIONAL RESPONDENT 5 AS PER ORDER DATED 8.11.2012 IN MFA 100/2012 IN IA 2311/12.

R1-4 BY ADV. SMT.M.MANJU
R1-4 BY ADV. SRI.K.R.RANJITH
R1-4 BY ADV. SRI.R.SUDHISH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08.10.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 8th day of October, 2020

J U D G M E N T

The supplemental opposite parties in W.C.C.No.20/2008 before the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode, are the appellants herein. They challenge the order dated 28.7.2011 granting compensation amount of Rs.1,69,400/- with interest to the applicants before the Commissioner.

2. The applicants are the dependents of deceased Mohanan. According to them, he was engaged by the opposite party on 5.7.2007 for digging a well in his property and during the course of the digging, the well collapsed and as a result of mud falling upon him, he sustained the injuries to which he succumbed the next day.

3. The sole opposite party who contested the claim died during the pendency of the proceeding

before the Commissioner and the appellants herein were substituted his legal representatives.

4. The appellants contended that the deceased was not engaged by him for any work on the particular day. On the other hand, he happened to fall into the well while he was sitting outside and watching the work as an onlooker. The opposite party further claimed to be a poor carpenter and suffering from cancer.

5. The Commissioner examined the widow of the deceased as AW1 and the worker engaged in the digging of well as AW2. Exts.A1 to A4 documents were admitted on the side of the applicants. On the side of the supplemental opposite parties, an autorickshaw driver who claims to have witnessed the accident was examined as RW1.

6. The learned Commissioner after appreciating the evidence, held that the accident arose and

deceased died during the course of his employment with the opposite party. This finding is challenged in this appeal.

7. The learned counsel for the appellants submitted that the finding that the deceased was employed by the opposite party is against evidence and therefore illegal. On the other hand, the learned counsel for the respondents submitted that, in fact, no question of law arises in this matter since the finding of the Commissioner was based on facts and evidence and is not therefore liable to be interfered with.

8. Relying on **Secretary, KSEB v. M.N.Kunjappan & ors. (2019(2) KHC 400), Ravi Madhavan v. Shekhara Panicker [2003(2) KLT SN 38 (C.No.48)], Arunkumar v. Omana Amma (2003(2) KLT 625)** and **Raveendran v. Somavally (1995(2) KLT 125),** it was contended on behalf of the respondents that whether employer and

employee relationship existed in a particular case is a question of fact rather than a question of law and therefore this appeal should not be entertained at all.

9. It was contended by the learned counsel for the appellants that there is material inconsistency between the testimonies of AW1 and AW2 and that the evidence tendered by RW1, an eye witness, supporting the case of the appellants, alone was reliable. I find my way difficult to accept this contention. I do not find any material contradiction between the testimonies of AW1 and AW2. AW2, Sri.Baburaj, was admittedly a worker engaged in digging the well. He had been injured inside the well during the course of the digging work. He was saved by fire-force along with another person. Though the deceased was also taken out of the well and hospitalised, he breathed his last on

the next day.

10. The learned counsel for the appellants points out that in fact the deceased was engaged for the work of one Edakkandi Biju and not of the opposite party. In this respect, he referred to the testimony of AW1. I do not find that AW1 has made a categoric statement that the deceased was working on the day under the employment of Edakkandi Biju. Further she is a hearsay witness too. The Commissioner relied on the testimony of AW2, a co-worker who was engaged in digging the well. AW2 said that the deceased was a co-worker engaged in the work by the opposite party. There is no reason to disbelieve his evidence. RW1, an auto driver, however, said that what he found on the day was that the deceased was sitting outside the well as an onlooker watching the digging work. He was disbelieved by the Commissioner and in my opinion,

there is no reason to take a different view. Since there is no misreading of evidence, whether the accident arose out of and in the course of the employment of the deceased under the opposite party, is no longer a question of law.

11. The learned counsel for the appellants relied on a Division Bench decision of this Court in **Thomas v. Babu (1995 KHC 2)** and contended that in any event, the deceased not being a permanent employee of the opposite party, he is not a workman within the meaning of Section 2(n) of the Workmen's Compensation Act, 1906 (for short, 'the Act'). This decision cannot apply to the accident in question which happened on 5.7.2007. The definition of 'workman' in Section 2(n) of the Act relied on in the aforesaid **Thomas**'s case underwent amendment in 2000 and after the amendment, even a casual employee is also entitled to compensation under the

Act. The learned Commissioner rightly understood the legal position and accordingly passed the impugned order awarding compensation. The contention that the opposite party was not proved to be the owner of property in which well was being dug is actually not correct since the totality of evidence indicates that he hired the service of the deceased for digging the well. On the whole, I do not find any reason to interfere with the impugned order. It is only liable to be confirmed.

In the result, the appeal fails and it is accordingly dismissed.

All pending interlocutory applications are closed.

Sd/-

T.V.ANILKUMAR
JUDGE

ami/