

K.V. Aboo Vs. Commissioner for Workmen's Compensation and Anr.

LegalCrystal Citation : legalcrystal.com/722411

Court : Kerala

Decided On : Feb-24-1977

Reported in : (1977)IILLJ134Ker

Judge : T. Chandrasekhara Menon, J.

Appellant : K.V. Aboo

Respondent : Commissioner for Workmen's Compensation and Anr.

Judgement :

T. Chandrasekhara Menon, J.

1. The 2nd respondent in this original petition had filed an application before the Workmen's Compensation Commissioner, Kozhikode, stating that he was a workman employed by the petitioner herein and that he had received personal injury on 14.1.1973 by accident arising out of and in the course of his employment. It is stated in the application that the cause of injury was that one Alavi the driver of lorry K.L.D. 9833 negligently started the lorry, as a result of which the 2nd respondent fell down when he was trying to load the vehicle and sustained injury on his face resulting in disfigurement of the face. According to the petitioner, he was not the employer of the 2nd respondent. Though he was initially the owner of the said lorry he is alleged to have sold the vehicle to one N.P. Aboo Backer on 10.9.1972 as per an agreement executed on that day. The petitioner contended that he never employed the 2nd respondent and, therefore, he was not a workman under the petitioner. According to the petitioner, the 2nd respondent was employed by Aboo Backer, the purchaser of the vehicle. Alavi, the driver of the vehicle was also not employed by the petitioner. A written statement to this effect had been filed before the 1st respondent on 12.10.1973.

2. Thereafter, the 2nd respondent filed a petition praying to implead Aboo Backer, as additional respondent. The petitioner filed a counter-affidavit to this application for impleading stating that the petition is not maintainable and the 2nd respondent is not entitled to implead another person as an opposite party and, therefore, the petition is liable to be dismissed.

3. An application under the Workmen's Compensation Act, it was contended by the petitioner, can. be filed against an employer by whom the applicant was employed. The petitioner, therefore, prayed that the impleading petition filed by the 2nd respondent be dismissed. However, the 1st respondent did not accept this objection and passed an order dated 30.12.1974 allowing the impleading. It is against this order which is marked as Ext. P4 in the cage, that the petitioner had come up to this Court invoking this Court's extraordinary jurisdiction under Articles 226 and 227 of

the Constitution.

4. It was contended on behalf of the petitioner that though under Section 23 of the Workmen's Compensation Act, the Commissioner shall have all the powers of a civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath (which such Commissioner has been empowered to impose) and of enforcing the attendance of witnesses and compulsion for the production of documents and material objects and the Commissioner shall be deemed to be a civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1908, that provision will not empower the Commissioner to impeach a person because the Commissioner has not got the powers of a civil Court bestowed, under Order 1, Rule 10 of the Code of Civil Procedure. Though some of the provisions of the Civil Procedure Code may be applicable to proceedings under the Act, provisions regarding impleading in the Code of Civil Procedure are not applicable under the Act.

5. I am not impressed by the argument of the petitioner. It is no doubt true that specifically the provisions of Order 1, Rule 10 as such has not been made applicable to the proceedings under the Workman's Compensation Act. But, there is no prohibition in the Act and the Rules framed thereunder that a person cannot be brought on record subsequent to the filing of the application. As pointed out by the Bombay High Court in Santolina Fernandes v. Mackinnon Mackenzie and Co. 1968-II L.L.J. 189 in law all procedure is permissible as is not specifically prohibited-see in the connection Abdul Guni Sumar v. Reception Committee Indian National Congress (1935) 38 Bom. L.R. 380 and Narsingh Das v. Mangal Dubey 1882 I.L.R. 5 All. 163.

6. It might be noted that the principle of inherent power to remedy injustice applies to quasi-judicial authorities also. The Madhya Pradesh High Court has held in Sunderlal Mannalal v. Nandramdas Dwarkadas A.I.R. 1958 Madhya Pradesh 760(261) (D.B.) that an Election Tribunal has inherent power, ex debito justitiae to restore an election petition dismissed by it for default. Thus, whether or not Section 151 of the Civil Procedure Code itself applies to proceedings under the Madras Rent Control Act, XV of 1946, a quasi-judicial Tribunal like the Rent Controller or the Appellate Tribunal has an inherent power to set right to mistakes made by inadvertence. See Rajammal v. R Gopaldaswami Naidu : AIR1957Mad766 Also it was held in Manohar Lal v. Mohan Lal Gianchand A.I.R. 1997 Punj. 72, 73, that the Rent Controller under East Punjab Rent Restriction Act 3 of 1949 has inherent power to set aside ex parte order passed by him-self. In Subbanna v. Labour Officer A.I.R. 1930 Madras 618, it was held that a Court or an Officer exercising judicial functions can exercise inherent power.

7. In this view the original petition has only to be dismissed. I dismiss this original petition, but in the circumstances of the case, I make no order as to costs.