

(1943) 04 MAD CK 0027
In the Madras High Court

Cheralodiyil Usankutty

APPELLANT

Vs

Kunhipennu

RESPONDENT

Date of Decision : 16-04-1943

Acts Referred:

Mines Act, 1952 — Section 3

Citation : AIR 1943 Mad 608 : (1944) ILR (Mad) 301 : (1943) 56 LW 395 :
(1943) 2 MLJ 170

Hon'ble Judges : Happell, J

Bench : Division Bench

Judgement

Happell, J.—This is an appeal against an order of the Commissioner for Workmen's Compensation made in Case No. 238 of 1941. The

applicant in Case No. 238 was the widow of a man who was employed by the appellant as a quarryman in a laterite quarry and who was killed, it

is not disputed, in the course of his employment. The learned Commissioner has awarded her a comdensation of Rs, 500. Substantially the only

point that was in controversy before the Commissioner is the only point, which has been raised in this appeal, namely, whether the deceased was a

workman within the meaning of the Workmen's Compensation Act at the time of the accident. He was a workman if he was employed in a mine

as defined in clause if) of Section 3 of the Indian Mines Act subject to the proviso to Clause (v) of Schedule II of the Workman's Compensation

Act or in the making of any excavation as defined in Clause (xvi) of Schedule II of the Workmen's Compensation Act., It is admitted that more

than 50 persons were not employed in the quarry on any day within the preceding 12 months and that no explosives were used. The question

therefore whether the applicant's husband was a workman within the meaning of

the Act turned on the question whether the excavation from its highest to its lowest point exceeded twenty feet. Curiously enough there was no evidence on this question at all. The learned Commissioner has considered the appellant's statement and the report which was made at the request of the Commissioner by the Revenue Divisional Officer of Calicut and he has preferred the report to the statement. In the report the Revenue Divisional Officer states that more than fifty persons were not employed on any day during the twelve months preceding the date of the accident, and that explosives were not used on any day during the same period and he then goes on to say, The depth of the excavation from its highest to its lowest point is now about ten feet. Inquiries show that at the time of the accident it was about 24 feet.

2. There appears to be nothing in the provisions of the Workmen's Compensation Act or in the Rules made under it which entitles the Commissioner to direct anyone to make a local inspection or to make a report after local inspection. Under Rule 20 of the rules made under the Act, the Commissioner may send an application to a Revenue Divisional Officer and direct that officer to examine the applicant and his witnesses and forward the record to the Commissioner. The Commissioner appears to have no power to direct a Revenue Divisional Officer to do anything more than this. On the other hand, Rules 32- and 33 provide that the Commissioner may himself make a local inspection and the manner in which the local inspection should be made. This indicates that if an inspection is to be made, it is to be made by the Commissioner only. Section 25 of the Act provides that the Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and that such memorandum shall form part of the record. Section 25 would appear to preclude the reception of a report from any person as evidence in the case. Apart, however, from the fact that the Commissioner had no power to call for the report from the Revenue Divisional Officer and act on it in the case, it is manifest that the report was not one on the basis of which the case could be properly decided without examining both the Revenue Divisional Officer and those from whom he got his information. As already stated, he says that when he saw

the excavation its depth was about 10 feet but that inquiries showed, that is, others told him, that at the time of the accident it was about 24 feet.

3. The order of the Commissioner is, therefore, set aside. The case is remanded to be re-heard and determined In the light of the observations

contained in this judgment. Both parties will be at liberty to adduce evidence but with regard to the depth of the excavation only. The

Commissioner will also be at liberty, if he thinks fit, to make a personal inspection in accordance with the provisions of Rule 33, but otherwise the

case will be heard and determined on the evidence adduced alone. Costs Will abide the result of the case in the Court of the Commissioner.