

(1988) 09 KL CK 0034
In the High Court Of Kerala
Case No : M.F.A. No. 428 of 1983

C.K. Pathrose

APPELLANT

Vs

Ammini John Kallookaran

RESPONDENT

Date of Decision : 30-09-1988

Acts Referred:

Workmens Compensation Act, 1923 — Section 22

Citation : (1988) 2 KLJ 686

Hon'ble Judges : V. Sivaraman Nair, J;M. Fathima Beevi, J

Bench : Division Bench

Advocate : M.V. Joseph, for the Appellant; B.S. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

Sivaraman Nair J

1. The appellant has filed Workmen's Compensation Claim No.19 of 1980 before the Commissioner for Workmen's compensation. Trichur u/s 22 of the Workmen's Compensation Act, 1923 That application was dated 22-12-1979. He claimed exemption from production of court-fee stamp for the time being under rule 34 of the Kerala Workmen's Compensation Rules, 1958. Allegations of the applicant in the petition were, that while working as a Printer in the Press owned by the opposite party on 18-1-1979, his right hand was accidentally caught in the machine and he sustained injuries to all the fingers in the right hand. He was removed to the District Hospital, Trichur. All the fingers had to be amputated. He was treated in the Hospital from 18-1-1979 to 17-3-1979. As a consequence of the injuries he sustained loss of earning capacity to the extent of 60% as certified by the Orthopaedic Surgeon of the District Hospital. That certificate is dated 28-4-1979. He was receiving monthly wages at the rate of Rs. 250/- at the time of the accident. He, therefore, claimed an amount of Rs. 15, 120/- as compensation, since the employer, in spite of his repeated requests, refused to grant his claim. He examined three witnesses, including himself in support of the claim. He had summoned the employer in his application dated 23-9-1981, to

produce the attendance register, minimum wages register, day book, ledger and vouchers for the period from 1978 to 31-12-1979. The opposite party filed an affidavit on 13-7-1982 stating that no such records as were mentioned by the applicant were maintained till January, 1981 and therefore those records could not be produced.

2. In his evidence as AW-1, the applicant asserted that he was a permanent printer under the first respondent, that he sustained the injury on-18-1-1979 during the course of his employment, that he was taken to the Hospital by the husband of the employer, that he had paid an amount of Rs. 260/-while he was undergoing treatment and that he was entitled to be compensated by the opposite party-employer. He stood a fairly detailed cross examination rather satisfactorily. He asserted, that the employer opposite-party was maintaining records like acquittance register, stamped receipts and vouchers for payment etc., the production of Which would show that he was a regular/permanent employee under the opposite party. He also examined a co-worker as AW-2 and a former-Manager of the press as AW3. They asserted that the appellant was employed as a Printer on a regular basis under the opposity-party, that he was involved in an accident in the Press on 18-1-1979 and that he was removed to the Hospital by the husband of the employer. The husband of the opposite-party admitted that AWs. 1 to 3 were working in the Press occasionally. He, however, asserted, that there Was only one permanent workman in the Press. He admitted, that there were no documents to show that even that permanent worker--Shri Jose--was employed by the opposite party. His case was that AWs. 2 and 3 were employed for some time in the Press, but they left the establishment long prior to the date of the accident--the former because he demanded additional wages and the latter because he obtained employment elsewhere. It was his case, that there was no scrap of paper evidencing employment of any person in the Press owned by the opposite party. An agricultural worker was examined as MW-2 to say, that the applicant was not involved in any accident in the Press as claimed by him. In his cross-examination, he admitted that he had seen the applicant working in the Press as a Printer. The Workmen's Compensation Commissioner dismissed the application in his order dated 8-6-1983. The applicant has come up in appeal.

3. The point of law which the appellant urges before us is as to whether the Workmen's Compensation Commissioner was justified in drawing inference in favour of the opposite party-employer, who refused to produce the statutory registers under the Minimum Wages Act and other Labour legislations, which she was obliged to maintain. The applicant had required the Commissioner to summon the opposite party to produce, among others, attendance register and the minimum wages register for the period from 1978 to 31-12-1979. That period would take in the date of accident. The assertion of the employer was that she has not maintaining any scrap of paper relating to the establishment. The husband of the opposite party as RW-1 asserted, that there were no accounts in the establishment and that an auditor was preparing the accounts on the basis of

slips of papers which were supplied by him.

4. It is not the case of the employer that she was not obliged to keep the register of workmen, register of wages etc., under the Minimum Wages Act. Painter is a category of workman whose wages were fixed under the notification. There are other categories of workmen in the printing industry, whose wages were also fixed by the notification. The evidence before the Commissioner indicated that there were not less than four machines which were working with electricity as motive power in the establishment of the employer. The Commissioner ought to have seen that the establishment was an industry covered by the Minimum Wages Act and the notification issued thereunder. It was obligatory on the part of any employer to maintain the requisite registers relating to the workmen, their attendance, their acquittance, including wages register etc, as prescribed by the Minimum Wages Act and the rules made thereunder. The Commissioner, who was entrusted with the administration of the beneficial legislation should not have easily accepted the statement of the opposite party that she was not maintaining any one of these registers in respect of her industry. Refusal to produce such documents as the opposite party was obliged to maintain should naturally have resulted in inferences adverse to her and necessarily in favour of the applicant.

5. We have scanned the evidence which was available before the Commissioner. The Commissioner refused to accept the evidence of AW-1 for the only reason that he had not summoned the hospital records which would have indicated as to what was the date of the accident, the name of the employer etc. The only reason mentioned for disbelieving the evidence of AW-2 was that he could not make out that he was employed by the opposite party and that he had left the employment under the opposite party since his demand for enhanced wages was not accepted. The reason for refusing to accept the evidence of AW-3 -was that there was a difference in his initials. Yet another circumstance to disbelieve the testimony was that RW-1, the husband of the opposite party, asserted that neither the opposite party nor he had a car, that he was not using any and that he did not take the applicant to the hospital on 18-1-1979 in any car, whereas AW-2 and 3 asserted that it was RW-1 who took the applicant to the hospital on 18-1-1979 soon after the accident. The observations which the Commissioner made, that the evidence of AWs 1 to 3 was not acceptable was based largely on the fact that there was no documentary evidence to show that any of them was employed by the opposite party at the relevant time. In other words, the deliberate refusal of the employer to produce the relevant documents which she was statutorily obliged to /maintain was used to discredit the evidence of AWs. 1 to 3. This exercise cannot but be called anything except as absolutely perverse and arbitrary. We are of the opinion, that the Commissioner committed a serious error of law in refusing to compel the employer to produce the relevant documents, in refusing to draw inferences from the non-production of such documents, and in discrediting the evidence of AWs. 1 to 3 for the only reason that such documentary evidence as the employer refused to produce was not forthcoming.

6. It is true that the applicant could have produced better evidence to sustain his case. He could as well have caused the production of the records of the hospital to prove positively that he was injured on 18-1-1979, that, such injury was occasioned while he was employed under the opposite party as also to prove the nature of the injury sustained by him. We have, however, to notice that it was not a trained lawyer who was conducting the case on the applicant's behalf but only a layman; whereas the opposite party was defended by a lawyer. A more discerning and legally trained mind would have awakened itself to the need to produce the necessary evidence to support the claim of an unfortunate victim of an accident during the course of employment. But, the only fact that the applicant did not get the assistance which he deserved should not have been used to refuse him any succour if he could have made out his claim for compensation had he been more competently advised and assisted.

7. We are astounded by the inference drawn by the Commissioner that there was no evidence that AWs. 1 to 3 were employed by the opposite party. The Commissioner came to this conclusion inspite of the fact that RW-1, in the course of his evidence, admitted, that they were employed by the opposite party, though not regularly. The Commissioner, true to the beneficial purposes of the welfare legislation which he was administering, should have been more sympathetic to the cause of the disadvantaged workman rather than the recalcitrant employer, whose main defence was defiance of all labour legislations. For all these reasons, we are satisfied that the order under appeal is liable to be set aside. We are also satisfied that the Commissioner has to reconsider the matter. He will give a further opportunity to the opposite party to produce the documents summoned by the applicant. If the opposite party persists in her refusal to produce relevant documents, the Commissioner will be bound to draw inferences against her. He has, thereafter, to pass appropriate orders on the claim of the applicant for compensation. It will be upto the applicant and the respondent to produce such additional evidence, oral and documentary, in support of their respective positions before the Commissioner.

The appeal is, therefore, allowed with costs. W.C.C. No. 19 of 1980 is remitted to the Workmen's Compensation Commissioner, Trichur for reconsideration. He will restore W.C.C. No. 19 of 1980 to his files, give the parties opportunity to produce additional evidence if they choose consider the application afresh in the light of such evidence and dispose of the application expeditiously.