

(2013) 07 KL CK 0157
In the High Court Of Kerala
Case No : M.F.A. (WCC) No. 181 of 2011

K. Sasidharan

APPELLANT

Vs

M. Raveendran and The Commissioner For Workmen's
Compensation and Deputy Labour Commissioner

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 22, 30

Citation : (2013) 07 KL CK 0157

Hon'ble Judges : K.M. Joseph, J;A. Hariprasad, J

Bench : Division Bench

Advocate : T. Sethumadhavan, Sri. Pushparajan Kodoth and Sri. K. Jayesh Mohankumar, for the Appellant; M.K. Aboobacker, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Joseph, J.—Appellant is the applicant in a proceeding u/s 22 of the Workmen's Compensation Act, 1923 (for short, "the Act"). The application stands dismissed. According to the appellant, he was a workman employed by the 1st respondent/opposite party as helper for construction of his house. On 03.08.2005 at about 10.30 a.m. while the appellant was working on the lintel, the support given to lintel collapsed and he was thrown away and sustained grievous injuries. He was taken to hospital and admitted there and undergone operation. He was again admitted in hospital. The appellant claimed Rs. 3,00,000/- as compensation. The Commissioner for Workmen's Compensation raised three issues. They are as follows:

- (1) Whether applicant was a workman under the Act and whether there was any employer employee relationship between Applicant & Opposite Party?
- (2) Whether Applicant sustained personal injury in an accident arising out of and during the course of employment under Opposite Party?
- (3) If so what is the compensation payable to the applicant?

2. The applicant examined himself as AW1 and an alleged co-worker as AW2. There was evidence of 1st respondent employer as RW1. Documentary evidence consisted of Exts. A1 and A2 discharge summary, Ext. A3 lawyer notice, Ext. A4 postal acknowledgment, Ext. A5 medical bills and Ext. X1 medical certificate. The documents on the side of the opposite party consisted of Ext. R1 copy of the gift deed, Ext. R2 copy of building permit, Ext. R3 copy of plan, Ext. R4 passport of the 1st respondent and Ext. R5 office copy of the reply to the lawyer notice.

3. The Commissioner after appreciation of the evidence came to the conclusion that the appellant was not a workman under the opposite party and that he has not sustained any personal injury. It is also found that the building from which the alleged fall was from is a single storied building and the fall was from the lintel. The height of a single storied building which is only constructed upto lintel level would be never more than 12 feet from the ground level and hence the applicant would not come under the definition of "workman" in the Act in the absence of evidence. It is also found that in the medical records produced by the appellant there is nothing to show that the appellant sustained injury due to fall from the building. In Ext. A1 discharge summary, name of the patient was shown as Sasidharan, aged 36 years and in Ext. A2 discharge note from another hospital, name of the patient was shown as Shashindran, aged 47 years. The Commissioner noted that there was no explanation for the differences. The Commissioner further notes that Ext. R1 shows that the opposite party was in MFA (WCC) No. 181/2011 3 possession of the landed property where the house is constructed on 07.01.2008 only. Ext. R2 is the building permit issued only on 20.02.2008.

4. We heard the learned counsel for the appellant and also the learned Senior Government Pleader. Though served, there is no appearance for the 1st respondent/opposite party. It may be true that the finding in regard to whether the appellant would be treated as a workman, in view of Clause (viii)(a) of Schedule II of the Act may not be justified. Clause (viii)(a) of Schedule II of the Act reads as follows:

(viii) employed in the construction, maintenance, repair or demolition of -

(a) any building which is designed to be or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof; or"

The reasoning appears to be that it is a single storied building and since the construction is only upto the lintel level it would never be more than 12 feet from the ground level. What Clause (viii) says apparently is that any building which is designed to be or has been more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof. The question to be posed should have been what would be the height from the ground level to the apex of the roof. According to the appellant, the accident took place when he fall from the lintel which is certainly not having height of 12 feet from the

ground. The question should have been what would have been the height from the ground to the apex of the roof when the construction is over. But we do not have any evidence as such as to what would have been the height from the ground level to the apex of the roof. Therefore, even if the contention of the appellant is true, in the absence of evidence we cannot accept the same. We also notice that the finding of the Commissioner that the appellant was not a workman of the 1st respondent is a finding of fact. It is done on the basis of appreciation of the evidence.

In view of the limitation u/s 30 of the Act which requires the establishment of substantial question of law, the appeal is dismissed as meritless.