

(1945) 09 MAD CK 0030
In the Madras High Court

Mulla Madina Saheb

APPELLANT

Vs

The Province of Madras

RESPONDENT

Date of Decision : 20-09-1945

Acts Referred:

Citation : AIR 1946 Mad 113 : (1945) 58 LW 644 : (1945) 2 MLJ 522

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—The plaintiff is the appellant. He was a contractor under the Public Works Department and entered into a contract (Ex. D-18) on the 29th February, 1940, for doing some work on the Nidadavole-Chettipet Road. It is said that during the execution of this work a cooly named Subbadu slipped and fell into a canal and got drowned on the 9th April, 1940. This accident was reported to the Commissioner appointed under the Workmen's Compensation Act, u/s 10-B of the said Act. The Commissioner issued a notice on the 6th May, 1940, to the Chief Engineer to the Government to submit a statement of particulars and also make the necessary deposit as provided u/s 10-A (2) of the Act. The Chief Engineer replied disclaiming liability to pay any compensation on the ground that the cooly accidentally fell into the canal and died on account of epileptic fits that he was suffering from. Subsequently, however, on further correspondence between him and the Commissioner, the Chief Engineer admitted liability in his letter dated 4th September, 1940, whereupon a compensation of Rs. 500 as fixed by the Commissioner was remitted to be paid over to the dependants of the deceased workman.

2. Admittedly moneys were due to the plaintiff for the work done by him under the contract and in paying his dues the Government deducted a sum of Rs. 500 being the amount which was paid as compensation to the dependants of the deceased workman and the balance after deduction was paid to the plaintiff on 11th November, 1940. Immediately the plaintiff sent a notice through his lawyer to the Government reiterating the protest which he had made even at the time of

the receipt of the balance of the amount and categorically denying his liability to pay the sum of Rs. 500 as indemnity to the Government. No action appears to have been taken by the Government on this notice though in Ex. P-1 the proceedings of the Executive Engineer, Godavari West at Nidadayole, we find the following statement being made by the Executive Engineer--

It is also presumed that he will be getting a notice from the Commissioner to present his objection statement, if any, and that he can represent his case to the Commissioner, if necessary.

3. Evidently there was no proceeding before the Commissioner as was contemplated by Ex. P-1. The plaintiff then filed the present suit for recovering the sum of Rs. 500 still due to him in respect of the work done by him under the contract and for interest on that amount. The plea of the Government in the written statement was that the Civil Court had no jurisdiction since the Commissioner had decided under the powers given to him by" the statute the liability of the employer to pay compensation for the injury caused. In paragraph 5 it is stated--

The Commissioner of Workmen's Compensation Act of 1923 held the deceased to be a workman within the meaning of the Act and that compensation is therefore payable u/s 12(2) of the Act and that the defendant (Chief Engineer) is entitled to be indemnified by contractor (plaintiff).

4. In answer to a question from me the learned Government Pleader admitted that there was no order of the Commissioner holding that the Government is entitled to be indemnified by the contractor.

5. Both the lower Courts have dismissed the suit on the ground that Section 19(2) of the Workmen's Compensation Act (VIII of 1923) deprives the Civil Court of jurisdiction to entertain the suit. Section 19(2) is in these terms:

No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

6. To understand the contentions of the parties in this case it is necessary also to refer to Section 12 of the Act which is in these terms:

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be

calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

7. It is clear that the right of the Government to withhold the sum of Rs. 500 from the amount admittedly due to the plaintiff is based on the right given to them as principal under Sub-section (2) of Section 12. But that sub-section provides that all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner. In this case there was no agreement between the Government and the contractor in regard to the right to or the amount of indemnity. From the outset, the plaintiff was protesting against the action of the Government in withholding the amount of Rs. 500. In my opinion in such circumstances as mentioned above, when the right of the Government to be indemnified is being disputed by the plaintiff the question had to be decided by the Commissioner. I do not agree that it was incumbent on the plaintiff to have approached the Commissioner or to have applied to the Commissioner for adjudication. It was the Government that was claiming a right to be indemnified and if that right was not accepted by the contractor, then the question "as to the right" had to be settled by the Commissioner and, in my opinion, it is a reasonable construction to hold that it is for the party claiming a right to initiate proceedings for adjudication in respect of that right.

8. Admittedly there was no reference to the Commissioner and no decision by him of either the right to or the amount of the indemnity claimed by the Government.

9. The learned Government Pleader contended that the latter part of Sub-section (2) of Section 12 will only apply when a contractor admits that the Government was held rightly liable to pay compensation, but nevertheless he was not liable to indemnify the Government. He also contended that once the Commissioner had decided that the Government was liable to pay compensation, the Government obtained an absolute right to be indemnified by the contractor and it was not open to the contractor to deny such right of indemnity. There are two answers to his contention. The first is that there is nothing in the enactment itself which excludes any ease of disputed right to indemnity from the jurisdiction of the Commissioner to adjudicate under Sub-section (2) of Section 12. When the words of the statute are:

all questions as to the right to and the amount of any such indemnity shall be settled by the Commissioner.

10. I do not think the Court will be justified in reading words which are not to be found in the enactment so as to exclude certain questions as to this right to the indemnity. The second is more important as it concerns a fundamental principle of all civilised jurisprudence. In this case admittedly the plaintiff was not a party to the proceedings of the Commissioner in and by which it was decided that compensation was payable by the Government. No notice even went to the plaintiff. It is not necessary for me to decide whether notice had to go as was held in *Bisweswar Ray Chaudhury Vs. Khagendra Kaibarta and Others*, . But the fact remains that there was no notice and the plaintiff was not a party and there is nothing in the Workmen's Compensation Act which makes an order to which he was not a party binding on him for all purposes including his further liability to indemnify the principal held liable to pay compensation u/s 12(1) of the Act. The contention of the learned Government Pleader amounts to this. A principal may even wrongly be held liable to pay compensation by the Commissioner or it may be, as in this case, a principal may agree to pay compensation. Then in spite of the fact that the liability was wrongly incurred or was incurred without any adjudication, the contractor will be liable to indemnify the principal and will not have a right to place material before the Commissioner to show that the order to which he was not a party was not correct and cannot adversely affect his rights. To me the Act does not appear to contemplate this injustice. The learned Government Pleader says that the party, i.e., the contractor may approach the Commissioner to review the order granting compensation, but so long as he does not get that order set aside, the Government will have an absolute right to be indemnified in respect of the amount of compensation paid. There is nothing in the Act to support this contention. An order awarding compensation is entirely distinct and different from an order allowing or disallowing a claim for the amount of indemnity. There may be an order for compensation, but there may not be an order allowing indemnity. Section 30 of the Act providing for appeals to the High Court mentions separately an appeal against an order awarding compensation in Clause (a) and an appeal against an order allowing or disallowing any claim for the amount of indemnity under the provisions of Sub-section (2) of Section 12 under Clause (d).

11. It is true that Section 19(2) precludes the Civil Court from deciding any question which is to be decided by the Commissioner under the Act. But this provision far from disentitling the plaintiff from obtaining any relief really disentitles the defendant-Government from succeeding on any plea based upon their right to indemnity. In fact this provision leaves them without any defence whatever, because they claim to withhold an amount to which the right has not been declared by the Commissioner as it ought to be the case--and it was disputed by the contractor. The lower Courts were therefore wrong in holding that the suit was barred by Section 19(2) of the Workmen's Compensation Act.

12. As it does not appear that there is any other defence to the suit, the plaintiff will be entitled to get a decree as prayed for with costs throughout. Time for payment--3 months.

13. Leave refused.