

(2008) 12 KL CK 0055

In the High Court Of Kerala

Case No : M.F.A. (W.C.C.) No. 18 of 2007 (B)

New India Assurance Co. Ltd

APPELLANT

Vs

Bhaskaran and another

RESPONDENT

Date of Decision : 09-12-2008

Acts Referred:

Citation : (2009) 121 FLR 117

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Advocate : K.K.M. Sherif, for the Appellant; Pirappancode V.S. Sudhir, for the Respondent

Final Decision : Allowed

Judgement

M.N. Krishnan, J.—This appeal is preferred against the order of the Workmen's Compensation Commissioner, Thiruvananthapuram in W.C.C. No. 60/2001. The workmen claims to be a worker under the 1st opposite party before the said Court and the Compensation Commissioner fixed compensation at Rs. 32,734/- and passed an award. It is against that decision the Insurance Company has come up in appeal.

2. The learned Counsel for the Insurance Company has made available before me the relevant records for the determination of this case. Heard the learned Counsel for all. It has to be borne in mind that the contention of the 1st Respondent as per para 5 of the written statement is to the effect that "No such person was employed by the opposite party directly." In a reply also it is specifically contended that the claimant was working as an employee under its Civil contractor Mr. Vijayan. So until and unless it is proved that Vijayan is an employee under the 1st opposite party, there cannot be a further employee-employer relationship between the 1st opposite party and the present claimant. When the 1st opposite party contends that they have entrusted the work contract to Mr. Vijayan and that Vijayan had employed the present applicant, we cannot call the present applicant as an employee of the 1st opposite party. It is

very specifically stated in a letter dated 23.9.2000 that "we would like to inform you that Mr. Bhaskaran, casual labourer working under one Civil Contractor Mr. A. Vijayan had an accident at Kings Hospital Construction site on 24.8.2000". So 1st opposite party has got a specific contention that Vijayan was only a Civil Contractor under the said party and therefore employment made by Vijayan of the applicant can be only a employee under the contractor. The Insurance policy specifically contains the exclusion clause to the effect that the workers of a contractor are specifically excluded from the purview of the coverage. Therefore the Insurance company cannot be saddled with the liability in the light of the policy conditions. But that does not mean that the claimant is not entitled to any relief. The claimant can proceed against the 1st opposite party for the realization of the amount.

Therefore the M.F.A. is allowed and the Insurance company is exonerated from the liability and the claimant before the Compensation Commissioner is permitted to realise the amount awarded from first opposite party by Compensation Commissioner. The amount deposited by the Insurance Company shall be reimbursed when a proper application is made. If the first opposite party has any claim against the immediate employer he may resort to such proceedings as permitted by law.