

(1973) 02 KL CK 0033
In the High Court Of Kerala
Case No : A.S. No. 546 of 1969

Parli Tile Works (P) Ltd.

APPELLANT

Vs

Employees Insurance Court Kozhikode and Others

RESPONDENT

Date of Decision : 07-02-1973

Acts Referred:

Employees State Insurance Act, 1948 — Section 66, 67, 75, 75(2)(c), 82
Workmens Compensation Act, 1923 — Section 12

Citation : (1973) KLJ 766

Hon'ble Judges : P. Govindan Nair, J;K. Sadasivan, J

Bench : Division Bench

Advocate : M. Ramachandran and U.K. Ramakrishnan, for the Appellant;

Judgement

2nd respondent Corporation, excepting the contention that there was no material before the Employees' Insurance Court for holding that the injury was sustained by the injured person by reason of the negligence of the employer to observe the safety rules laid down by or under the enactment applicable to a factory or establishment. This latter contention, we shall deal with in due course but for the time being we shall assume that there has been negligence such as contemplated by s. 66 of the Act on the part of the employer.

3. The contention raised before us by counsel for the petitioner was that the Employees' Insurance Court, the 1st respondent had no jurisdiction to deal with the application by the 2nd respondent which was on 9-10-1967. This contention is based on the repeal by Act 44 of 1966, the Employees' State Insurance (Amendment) Act, 1966 (hereinafter referred to as the Amending Act) of S. 66 (vide S. 29 of the Amending Act) and sub-S. 2(c) of S. 75 of the Act (vide S. 32 of the Amending Act). S. 29 came into operation by virtue of the notification issued under Sub-s. (2) of s. 1 of the Amending Act on 17-6-1967. We must take it therefore that after that date s. 66 was not in the statute book as far as the Act is concerned. S. 75(2)(c) of the Act however ceased to be in the statute book only when s. 32 of the Amending Act was brought into force by notification which was on 28-1-1968. We may at this stage read S. 66 and 75(2)(c) of the Act:

66. Corporation's right to recover damages from employer in certain cases:-

(1) Where any employment injury is sustained by an insured person as an employee under this Act by reason of the negligence of the employer to observe any of the safety rules laid down by or under any enactment applicable to a factory or establishment or by reason of any wrongful act of the employer or his agent, the Corporation shall notwithstanding the fact that the employer has paid the weekly contributions due under this Act in respect of such insured person be entitled to be reimbursed by the employer or the principal who is liable to pay compensation under s. 12 of the Workmen's Compensation Act, 1923 (VIII of 1923), the actuarial present value of the periodical payments which the Corporation is liable to make under this Act.

(2) For the purposes of this Act, the actuarial present value of the periodical payments shall be determined in such manner as may be specified in the regulations.

75 (2) The following claims shall be decided by the Employees' Insurance Court namely:

(a)

(b)

made by the 2nd respondent on 9-10-1967, S. 66 was not available and therefore the Insurance Court had no jurisdiction to deal with the application and pass the order appealed against. Counsel on behalf of C the respondents urged that the appeal was not maintainable because the order appealed against did not involve this question of the jurisdiction of the Tribunal, assuming without conceding that that question is a substantial question of law. To understand this contention of counsel for the respondents we must refer Sub-s. (1) and (2) of S. 82 which is the only relevant portion of s. 82 of the Act:

82. Appeal:-- (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law.

5. We shall first deal with the question whether the appeal is maintainable. The contention of counsel for the 2nd respondent was that in so far as the question of jurisdiction had not been raised before the 1st respondent, the Employees' Insurance Court, and since it was not therefore considered by the Insurance Court, and a fortiori no decision having been rendered by the Insurance Court, it cannot be said that the order appealed against involves a substantial question of law. We think that this contention is entitled to weight and we are inclined to accept it. In order that it may be said that the order involves a substantial question of law, we think that the order must comprise a decision regarding the question of law. If a question of law had been raised but had not been dealt with by the Insurance Court, the decision being rested on other grounds, it cannot be said that the order of the Insurance Court involves a question of law. It must be more so where the question itself had not been raised before the Insurance Court and had not been considered or determined by the Insurance Court, as in this case. We find support for this view from the observations of Subba Rao, J., in Para. 7 of the judgment in *State of Jammu and Kashmir and Others Vs. Thakur Ganga Singh for self and on behalf of other shareholders of Jammu and Kashmir Mechanics and Transport Workers Co-operative Society Limited and Another*, :

What does interpretation of a provision mean? Interpretation is the method by which the true sense or the meaning of the word is understood. The question of interpretation can arise only if two or more possible constructions are sought to be placed on a provision one party suggesting one construction and the other a different one. But where the parties agree on the true interpretation of a provision or do not raise any question in respect thereof, it is not possible to hold that the case involves any question of law as to the interpretation of the Constitution.

6. No question having been raised about the jurisdiction of the 1st respondent to deal with the application and the order being silent on this question we hold that the order did not involve any substantial question of law. The appeal was therefore not maintainable under s. 82 of the Act.

7. Counsel on behalf of the appellant however contended that the order involved another substantial question of law in that the finding entered by the 1st respondent was based on no material. We are not satisfied that the finding was based on no material. We are not concerned with the question as to whether the findings are proper findings or whether if the matter was open to us, we would have come to a different conclusion on the materials that were available before the Insurance Court, This contention must also therefore fail.

8. What we have held above is sufficient to dispose of this appeal but we shall deal with the arguments that have been advanced before us. For this we must also refer to s. 43 of the Amending Act and the contentions that have been raised that in view of s. 43 it cannot be said that the application that was made on 9-10-1967 was not maintainable. s. 43 of the Amending Act is in these terms:

No provision of this Act shall apply to and in relation to any payment which has been, or is being, or is required to be, made under the principal Act in respect of any employment injury sustained by an employee in any State or part thereof at any time before the date of the coming into operation of that provision and any such payment and any application, appeal or other proceeding for or relating to such payment pending before any authority immediately before such date shall continue to be governed by the provisions of the principal Act as they stood immediately before that date.

9. A Division Bench of this Court took the view in A.S. No. 270 of 1968 that by virtue of s. 43 of the Amending Act, the liability to make payments under s. 66 of the Act in respect of any injury that had taken place before the date on which the amending Act came into force will be unaffected by the Amending Act. This is the view that has been taken by the Madhya Pradesh High Court also in Misc. (First) Appeal No. 87 of 1968. An uncertified copy of the judgment of that Court was made available to us. There is however a contra view expressed by the Punjab and Haryana High Court in Employees' State Insurance Corporation, Chandigarh Vs. Dalmia Dadri Cement Ltd. and Another, . Muni Lal Verma, J., took the view in the latter decision that S. 43 of the Amending Act does not refer to "damages" that can be recovered under S. 66 of the Act and that S. 43 will apply to payments which may be termed to be payments for the benefit of an injured person which have to be made under the provisions in Chap. 5 of the Act. With great respect, we are unable to agree with this view. The words in S. 43 of the Amending Act which have to be construed leaving out those that are inapplicable for the purpose of this case may be stated thus:

No Provision of this Act shall apply to and in relation to any payment which has been, or is being, or is required to be, made under the principal Act in respect of any employment injury sustained by an employee in any State or part thereof at any time before the date of the coming into operation of that provision.

10. The employment injury sustained by the employee in this case, as we said

which repealed S. 66 and 75(2)(c) of the Act. These provisions will not apply in regard to this injury. The only question then is whether the reimbursement to be made under S. 66 of the Act is "any payment" required to be made under the Act. We feel no doubt that it is a payment which should be made by the employer to the State Insurance Corporation in respect of the injury and is a payment required to be made by the Act as envisaged by s. 66 of the Act. This liability to make the payment must therefore be considered to have remained unaffected by the Amending Act, the injury having occurred long before any of the provisions of the Amending Act came into operation, namely on 18-4-1966. Even the contention that the first respondent had no jurisdiction to deal with the question cannot therefore stand. We dismiss this appeal but direct the parties to bear their respective costs in view of the position not being clarified by any judgment of this Court and since it is a question of law on which conflicting views have been taken by the High Courts in other States.