
(1994) 10 KL CK 0006
In the High Court Of Kerala
Case No : M.F.A. No. 328 of 1993

Radhamony and Others

APPELLANT

Vs

Secretary, Dept. of Home Affairs

RESPONDENT

Date of Decision : 20-10-1994

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (1995) ACJ 347 : (1995) 70 FLR 617 : (1995) 1 ILR (Ker) 280 :
(1995) 1 LLJ 376

Hon'ble Judges : V.V. Kamat, J;M.M. Pareed Pillay, J

Bench : Division Bench

Advocate : Mathew John, for the Appellant; Jose K. Kochupappu, Govt. Pleader,
for the Respondent

Final Decision : Allowed

Judgement

Pareed Pillay, J.—Appellants are the legal representatives of Bhaskaran Nair, a Driver in the Police Department of the State of Kerala. The jeep driven by him KLC 2209 met with an accident on October 24, 1989 and he sustained injuries. He succumbed to the injuries on October 26, 1989. Compensation is claimed by the appellants on the ground that the deceased met with his death while driving the jeep in the course of his employment under the respondent. The Commissioner, Workmen's Compensation, held that the deceased was not a workman coming within the definition u/s 2(1)(n) of the Workmen's Compensation Act and declined to award any compensation.

2. The deceased aged 45 years was getting Rs. 1,656/- as monthly salary. This is not a matter in dispute. Though the first appellant (wife of the deceased) had sent a registered notice to the respondent on February 13, 1990 claiming compensation, there was no favourable response. Respondent's contention is that Driver in the Police Department is not a workman coming within the purview of the Act and since he had performed only the sovereign functions of the State in the maintenance of law and order, it cannot be said that appellants are entitled

to any compensation under the Act.

3. The question that arises for consideration is whether the legal heirs of the deceased, a Driver in the Police Department, are entitled to compensation under the Act or not.

4. Workman is defined u/s 2(1)(n) of the Act. Section 2(1)(n) reads:

"(n) "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them."

5. Schedule II gives the list of persons who subject to Section 2(1)(n) are included in the definition of workman. A person employed as a driver finds a place in the Schedule. Section 2(1)(n) read with Schedule II (xxv) would make the position abundantly clear that the driver of a vehicle comes under the category of workman under the Act. This is irrespective of the position whether he is a driver of the Government vehicle or not. The Act has not made any distinction as to the category of a driver whether in non-Government employment or Government employment. As the Act does not make such distinction, merely because the deceased happened to be the driver of a Departmental vehicle of the State his status as a workman as defined under the Act does not undergo any metamorphosis. It is not possible to held that a driver of the vehicle belonging to the State on sustaining injury or succumbing to it would not be entitled to compensation under the Act.

6. Official Liquidator and Another Vs. K.S.E. Board and Another, attempted to show that deceased cannot be considered as a workman entitled to the compensation under the Act. In the said decision, John Mathew, J. held that the watchman working under the Official Liquidator does not come within the definition of "workman" under the Act. This decision has no application to the facts of the case in hand as the driver's profession is one included in Schedule II of the Act. The words "in any such capacity as is specified in Schedule II" and inclusion of driver under the Schedule would make the position crystal clear that the employment is one that comes under the category mentioned in Schedule II.

7. The Commissioner erred in holding that the function of the deceased was one

to be carried out by the Department itself which is purely sovereign and as the deceased was not a workman his legal representatives are not entitled to any compensation.

8. For the purpose of quantifying the compensation the maximum amount that can be taken into consideration is only Rs. 1,000/- in view of Explanation II to Section 4 even though the deceased was getting salary of Rs, 1,656/-per month. As he was aged 45 years, he would be entitled to Rs. $1000 \times 40/100 \times 169.44$. That would come to Rs. 67,776/-. The claim in the petition is only for Rs. 66,756/-. Though the claim is for lesser amount than the amount to which the appellants are entitled as per the statute, the Commissioner is not precluded from awarding the compensation as per the Schedule. Section 4 of the Act requires that the compensation has to be paid in accordance with the prescription or scale indicated in the Schedule to the Act. As requirement under the Act is mandatory and as the Act is a piece of social security legislation, a workman having found to be entitled to compensation as statutorily fixed cannot be denied of the same merely on account of miscalculation or wrong calculation of the compensation amount by him.

9. We hold that the appellants are entitled to Rs. 67,776/- as compensation with interest at 6% from the date of petition viz. April 25, 1990 till realisation.