

**(1989) 02 DEL CK 0026**

**In the Delhi High Court**

**Case No : F.A.O. No. 94/86**

Ramat Massy

APPELLANT

Vs

Arvind Construction Company (Pvt.) Ltd. and another

RESPONDENT

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**Date of Decision :** 01-02-1989

**Acts Referred:**

**Citation :** (1989) ACJ 724 : (1989) 58 FLR 626 : (1989) 2 LLJ 397

**Hon'ble Judges :** S.B. Wad, J

**Bench :** Single Bench

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## **Judgement**

1. By an agreement dated 30th April 1984 between Silvester Massey and M/s. Arvind Construction Company (Pvt.) Ltd. the appellant was appointed as a Mechanic-Helper for working in Iraq on the construction contract being performed by the respondents in Iraq. The respondents-company booked the air passage of the appellant to Iraq and the appellant joined the company's service in Iraq on 17th May 1984. He died on 21st August 1984 in Iraq. A claim petition is filed by his father under the Workmen's Compensation Act before the Commissioner under Workmen's Compensation Act, Delhi. At the time of admission this court directed the appellant to produce a copy of the provisions similar to Workmen's Compensation Act, prevalent in Iraq. They are filed by the appellant and are taken on record.

2. Through the impugned order the Commissioner has disposed of a preliminary issue raised by the respondents, namely :

"Whether this court has jurisdiction to entertain the claim in view of the preliminary objections ?".

The Commissioner on interpretation of Section 21 of Workmen's Compensation Act held that the cause of action had taken place outside the territory of India and, Therefore, he had no territorial jurisdiction to entertain the application. He has also referred to clause 10 of the agreement between the parties and held that it only gives guidelines and the parties cannot vest the jurisdiction in the

Tribunal which it inherently lacks. The Commissioner, Therefore, rejected the petition.

3. Reliance of Commissioner on Section 21 is erroneous. Section 21 only speaks of the territorial jurisdiction for the purpose of territorial division under Workmen's Compensation Act. This is further clear from the fact that a Commissioner can transfer the matter to another Commissioner u/s 21(2) of the Act on certain contingencies. This Section does not indicate as to whether the Commissioner under the Workmen's Compensation Act can at all entertain a petition when the alleged incident had taken place outside India under clause 10 of the agreement between the parties. However, the clause throws some light on the liability aspect of the matter for the purpose of claim of compensation. It says that if there are provisions for compensation similar to Workmen's Compensation Act in India, in Iraq, those provisions would be made applicable. But there is no such provisions in Indian Workmen's Act, 1923 to be made applicable.

4. The counsel for the appellant has produced a photo-stat copy of the law regarding the workmen's compensation prevalent in Iraq. This copy is obtained from Ministry of External Affairs (Consulary Section), Government of India. The same is certified to be true copy by the Advocate for the appellant. The provisions of law prevalent in Iraq in this regard are stated under the title "Covering the Workers with the Provisions of the Law of Pension and Social Security for Workers No. (112) of 1969 as deleted (60) "Selected Article Concerning the Covering Definitions". Article One (67) states : "The following terms for the purpose of this Law mean the meanings mentioned against them". The sub-heading provides for the "The Law Limits of Covering". Article Three Provides :

"1. The provisions of this Law shall be applied on all the working persons and the trainees Therefore, except the following groups :-

Clause 1(e) : The foreign citizens who work in the foreign institutions their headquarters outside Iraq who are covered by the systems of pension or social security in their countries".

Clause 10 of the agreement is, Therefore, to be read with the provision of Article 1(e) stated above. While clause 10 prefers the law prevalent in Iraq and failing which the Workmen's Compensation Act, the said provisions of Iraqi Law excludes the application of Iraqi Law where the foreign Law in regard to social security and pension is applicable. It will, Therefore, have to be decided on the common principles of law applicable to such cases, where, in a transaction two nationals of the same country are involved, but the cause of action has taken place outside the territorial limit. According to the well known principles of private international law, where the agreement between the parties does not directly and specifically provide remedy in courts of a particular country to have the exclusive jurisdiction, then it must be examined on the basis of all the

attendant circumstances in regard to the contract, as to which country is more closely connected with the said incident of contract. Admittedly, the respondents-Company are an Indian Company registered under the Indian Act and having their head office at Delhi. The deceased used to stay at Delhi. The contract was entered into between the parties at Delhi. The parties had not agreed that the Iraqi Courts will have the jurisdiction. The contract, namely, Clause 10 was made under the Indian Workmen's Compensation Act, 1923, though on condition. All these factors considered together would show that the Indian Courts will have the territorial jurisdiction to decide the question of compensation. Once it is held that the Indian Courts have the jurisdiction the next question is as to what is the appropriate forum. It is clear from the contract itself that the compensation was to be decided under the Indian Workmen's Compensation Act, 1923. If it is to be decided according to the Workmen's Compensation Act. Then it has to be sent to the appropriate Commissioner under the Workmen's Compensation Act. In this case the appropriate Commissioner is the Commissioner at Delhi. The Commissioner at Delhi, Therefore, has the jurisdiction to decide the matter.

5. For the reasons stated above, the impugned order is set aside. The matter is remanded to the Commissioner under the Workmen's Compensation Act at Delhi for decision on merit. There shall, however, be no order as to costs.