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(1978) 08 KL CK 0004

In the High Court Of Kerala

Case No : M.F.A. No. 95 of 1976

United India Fire and General Insurance Co. Ltd. APPELLANT

Vs

P.M. Ishammal and Others RESPONDENT

Date of Decision : 08-08-1978

Acts Referred:
Workmens Compensation Act, 1923 — Section 14

Citation : (1979) ACJ 448

Hon'ble Judges : P. Narayana Pillai, J;George Abraham Vadakkel, J

Bench : Division Bench

Advocate : A. Hariharasubramanian, Thomas John and P. Sankarankutty Nair, for the Appellant; P.F. Thomas, C.T. Mary and V.T. Joy, for the Respondent

Final Decision : Dismissed

Judgement

George Vadakkel, J.—The third opposite party in W.C.C. No. 113 of 1973 before the Commissioner for Workmen''s Compensation, Trivandrum an insurance company, the Madras Motor and General Insurance Company Limited, merged, with the Appellant insurance company, the United India Fire and General Insurance Company Limited. The appeal is preferred against the judgment and award of the Commissioner directing the 3rd opposite party to deposit in the Commissioner''s Court the sum awarded as compensation to the Applicant within 30 days from the date of the said judgment and award. The Applicant in the Commissioner''s Court is the 1st Respondent in this appeal. The employer who was 1st opposite party before the Commissioner''s Court is the 2nd Respondent in this appeal. The 3rd Respondent herein is the 2nd opposite party in the Commissioner''s Court and is the State Insurance Officer, Trivandrum.

2. The Commissioner for Workmen''s Compensation found that the Applicant''s (1st Respondent herein) son died of an accident which arose out of and in the course of his employment under the 2nd Respondent herein as a driver of Jeep KLK 6149 belonging to the 2nd Respondent employer. Based on that finding the Commissioner further held that the mother of the deceased employee, the

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Applicant is entitled to a compensation of Rs. 10,000/- from the 2nd Respondent employer. The Commissioner further held that the 3rd opposite party before the Commissioner now represented before us by the Appellant-company, cannot escape the liability to pay the compensation since the 3rd Respondent company was the insurer who had insured the vehicle in question which met with the accident. It is this last mentioned finding that is impugned before us by the Appellant company.

3. u/s 14 of the Workmen''s Compensation Act, 1923, an insurer in respect of any liability under the said Act to any workman is liable as if the insurer was the employer in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors. Notice was issued to the 3rd Respondent before the Commissioner as is seen from the file, on 7/11/1975. This was on the motion in that behalf made by the employer, the 2nd Respondent herein, on 6/11/1975. The proceedings paper show that the 3rd opposite party accepted the notice but did not file any written statement by 26/11/1975 as directed in the notice issued to the company. The order sheet further shows that on that account the 3rd opposite party was declared ex-parte and the matter was proceeded with. Presumably the 3rd opposite party had no contest that party should not be made liable because the jurisdictional facts mentioned in Section 14 do not exist. It is a settled rule of law that where there is no lack of inherent jurisdiction in a court or tribunal and jurisdiction is conditional on the existence of certain facts, lack of jurisdiction on account of non-existence of jurisdictional facts ought in the first instance be raised before the Tribunal or the court as the case may be. This the 3rd party failed to do. Moreover, the learned Counsel for the Appellant insurance company is not able to assert before us that the jurisdictional facts mentioned in Section 14 of the Act do not exist. Therefore we should presume that the Commissioner for Workmen''s Compensation, Trivandrum, was competent to pass an award as contemplated by Section 14 of the Act making the 3rd opposite party also liable for the compensation amount as was done by the judgment under appeal.

4. There is no merit in this appeal. The same is dismissed with costs.

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