(1979) 08 KL CK 0017

High Court Of Kerala

Case No: M.F.A. No. 113 of 1978

Regional Manager, Food Corporation of India		APPELLANT
	Vs	
U. Sabiya Beevees and Others		RESPONDENT

Date of Decision: Aug. 7, 1979

Acts Referred:

- Constitution of India, 1950 - Article 133(1), 134A
- Workmens Compensation Act, 1923 - Section 12(1), 12(2)

Citation: (1980) ACJ 235

Hon'ble Judges: P. Subramonian Poti, J; P. Janaki Amma, J

Bench: Division Bench

Advocate: C. Sankaran Nair, for the Appellant; M. Ramchandran, K.R.B. Kaimal and P.K. Shamsuddin, for the Respondent

Final Decision: Dismissed

Judgement

P. Subramonian Poti, J.

This appeal is by the Regional Manager of the Food Corporation of India against the judgment of the Workmen''s Compensation Commissioner awarding a compensation of Rs. 19,200/- against the Appellant, who was the first opposite party before the Commissioner for Workmen''s Compensation. Such compensation was awarded under the Workmen''s Compensation Act on account of the death of one Abdul Khader Ahammed Kunju while engaged in the work of stacking rice bags in the Food Corporation godown at Trivandrum. The accident occurred on 31-7-1976 by the stacked bags falling over the workman while he was working. The fact that the accident took place in the course of employment is not disputed. " There is no dispute also with regard to the wages of the workman. The only contention is that while the Regional Manager of the Food Corporation of India has been made liable as principal u/s 12(1) of the Workmen''s Compensation Act, the Commissioner has failed to order indemnity in favour of the first opposite party, the Appellant, as

required by Section 12(2) of the said Act. That is the only point with which we need concern ourselves.

2. The liability of the first opposite party was only as a principal u/s 12(1) of the Act. There is no case that the deceased workman was employed by the first opposite party directly or through the second opposite party, the contractor. The first opposite party had entered into a contract with the second opposite party with regard to the work that was carried out by the deceased workman and others. It was while he was carrying out such work that the accident took place. Even so, as the principal, the first opposite party is liable u/s 12(1). Section 12(2) gives a right to a principal to seek indemnity against the contractor. That section reads:

Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

It is not as if the Court below did not consider the question of indemnity. It did consider it, but it found that there was no reason to pass any order of indemnity in the case only because the circumstances disentitled the first opposite party to any such indemnity as against the second opposite party. It was contended by the latter that stacking of bags in the godown to a height of more than 16 bags was not only inconvenient but risky and dangerous and therefore he took the stand that the workmen need only stack upto 16 bags. But this was objected to by the first opposite party. In fact, for not performing the work by stacking the bags upto 22 bags, fine was imposed against the second opposite party. The second opposite party then wrote to the first opposite party pointing out the danger of insisting upon stacking bags to a height above that of 16 bags. But, evidently that had no effect. Therefore, the work was carried out as required by the Food Corporation. The Workmen''s Compensation Commissioner has considered the question whether this plea of the second opposite party, if found true, was an answer to the case for indemnity. That the contractor took the stand that only stacking of 16 bags should be done, that this was objected to by the Food Corporation which insisted upon stacking upto 22 bags and as a result of such stacking the accident was caused, have been found in the judgment of the Workmen''s Compensation Commissioner. Those are purely findings of fact, with which we may not interfere in appeal.

3. Section 12(2) seems to suggest at first sight that in every case of an order being passed against the principal he is entitled to indemnification by the contractor. But a closer reading of that section indicates that an adjudication as to whether any relief of such indemnity is to be granted by the Workmen''s Compensation Commissioner

or not is called for in every case. The section indicates that all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner. If a contractor is liable to indemnify the principal in all cases there would be no scope for adjudication on the question of right to indemnity. There would also be no scope for adjudication as to the amount of indemnity. Therefore, it appears that despite the principal being made liable there is scope for considering whether the principal has right to seek indemnity. That much is indicated in the section. It is fairly conceded by learned Counsel for the Appellant that passing an order of indemnity under any circumstance whatsoever and irrespective of whether the principal has been responsible for the situation resulting in the accident is not the purport of the section. In other words, the rule is not one which applies irrespective of all other considerations. If that be so, where the principal himself has been responsible for the situation leading to the accident, the indemnity may not operate. Whether, in the particular facts and circumstances of this case, the principal has been responsible for the situation is a matter for determination on the facts and evidence. That determination has been made in this case and that finding does not call for disturbance.

4. In the circumstances, we see no reason to interfere with the judgment of the Workmen''s Compensation Commissioner. Hence the appeal is dismissed, but in the circumstances we direct the parties to suffer their costs.

5. An oral application has been made by counsel for the Appellant for a certificate under Article 133(1)(a) and (b) read with 134-A of the Constitution. We do not think that any substantial question of law arises for decision in this case, less any question that needs to be decided by the Supreme Court. Hence the certificate is refused.