

(2008) 09 KL CK 0062

High Court Of Kerala

Case No: M.F.A. No"s. 683 and 696 of 2003

Hindustan Latex Ltd.

APPELLANT

Vs

Baby and Others

RESPONDENT

Date of Decision: Sept. 24, 2008

Citation: (2010) ACJ 1699 : (2009) 120 FLR 550

Hon'ble Judges: Harun-Ul-Rashid, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: U.K. Ramakrishnan, for the Appellant; M.L. Sajeevan and George Cherian, for the Respondent

Judgement

C.N. Ramachandran Nair, J.

The common appellant in these two appeals is a Government of India undertaking which engaged the respondent No. 4 for construction of an effluent treatment plant. In the course of execution of the contract, two employees of respondent No. 4 died in the premises of the appellant. This led to separate claim petitions filed by legal heirs of the deceased wherein appellant as well as respondent No. 4 were the opposite parties along with the insurance company (respondent No. 3 in M.F.A. No. 683 of 2003). In the proceedings before the Workmen's Compensation Commissioner, appellant claimed that if compensation is awarded, insurance company was bound to indemnify the appellant by virtue of the policy taken which covers contract employees also. However, the insurance company has opposed appellant's claim by stating that employees of contractors are specifically excluded under the policy. The Workmen's Compensation Commissioner awarded compensation to the claimants with direction to the appellant to deposit the amount leaving freedom to them to proceed against the immediate employer of the deceased employees who is the respondent No. 4 herein. It is against first part of the award the appellant has filed these appeals for a declaration from the court that insurance company is bound to indemnify the appellant under the policy. We have heard senior counsel Mr. U.K. Ramakrishnan appearing for the appellant and Mr.

George Cherian appearing for the insurance company.

2. The accident is admitted and the entitlement of the legal heirs of the deceased to claim compensation is also not disputed. The only question to be considered is whether the insurance company is bound to indemnify the appellant for the payments made by them towards workmen's compensation awarded in favour of the claimants. Senior counsel appearing for the appellant referred to the policy which covers "factory, casual and contract labours". According to him, contract labours takes in employees of the contractor engaged by them for construction of the effluent treatment plant and so much so, the compensation paid by them should be reimbursed by the insurance company. In support of his contention, counsel has produced separate insurance policy taken by the appellant to cover their regular employees. According to him, if contractor's employees are not covered, then the purpose of the policy is defeated. On the other hand, the counsel for the insurance company has relied on Clause (b) of the Exception clause of the policy by which "the insured's liability to employees of contractors of the insured is specifically excluded". Learned Counsel appearing for the appellant, however, submitted that the first clause covering contract labourers and the exception clause are apparently at conflict and it is only an omission of the insurance company not to strike off the Exception clause while issuing the policy. We are unable to accept this contention because contract labourers may be regular factory employees engaged on contract basis which can happen for very many reasons. It is also common practice that to meet the requirement of unusual work, some companies engage contract workers either directly for specific duration or for specific work and in some cases such workers are engaged through contractors. However, this category of contract labourers covered by policy will not include employees engaged by contractors as in this case to execute specific projects for the company. In other words, contract labourers covered by policy are not contractor's labourers specifically excluded from coverage. In this view of the matter, we are unable to uphold the contention of the appellant that contract labourers covered by the insurance policy are contractor's labourers who are specifically excluded under the Exception clause. We, therefore, uphold the order of the Workmen's Compensation Commissioner exonerating the insurance company from liability. However, since the immediate employer is liable for paying compensation and since the Workmen's Compensation Commissioner has also held so, it is for the appellant to take steps for recovery from their contractor. In view of the pendency of the appeals for long before this Court, we are sure that Workmen's Compensation Commissioner will not reject application, if any, filed by the appellant for recovering the amount deposited by them from the respondent No. 4 on the ground of delay.