1972 KHC 35
Kerala High Court
V. R. Krishna Iyer, J.
N. L. LALAN v. V. A. JOHN
A. S. No. 233 of 1971
19 August, 1971

Workmens Compensation Act, 1923, S.30 - Scope and ambit -- Saving the worker from long and expansive litigation -- Substantial question of law -- Meaning and amplitude -- Must possess the attribute of substantiality -- Is of great public importance or arises so frequently as to affect a large class of people or is so basic to the operation of the Act itself -- The dynamics of legal interpretation based on social changes which have taken place in the nations life and goals demand that the proviso to S.30 should be construed so as to inhibit appeals at the instance of employers even if there be some question of law or gross errors of fact, unless very substantial legal issues arise. (Para 2)

A. S. Krishna Iyer; A. K. Ramaseshadrinathan; For Appellant
M. M. Cheriyan; O. O. Mathew; For Respondent

JUDGMENT

1 The appellant challenges the order of the Commissioner for Workmen's Compensation in W.C. No. 79/1969 directing payment of Rs. 2, 940/- as compensation under S.3 of Workmen's Compensation Act, 1923, read with S.4 of the Act and Schedule.4 thereunder. It would appear that the respondent was a carpenter working on the premises of the appellant's workshop. He came by an accident and lost the use of his thumb. He was removed to the hospital, was treated and cured to some little extent, his ability to work having been substantially lost. Compensation, worked out on the basis of 30% loss of the earning capacity and assuming a monthly earning of Rs. 130/-, was awarded by the Commissioner. The major question argued with considerable persistence by counsel for the appellant was that there was no evidence justifying a finding that the respondent was the workman of the appellant. I shall proceed to consider the substance, if any, in this contention.

2 There is an initial obstacle in the way of the appellant because the first proviso to S.20, which confers the appellate power on the High Court, restricts appeals to cases where a substantial question of law is involved. I cannot exercise powers under S.30 unless I am satisfied on this jurisdictional point of a substantial question of law. It must be noticed that a question of fact however substantial, cannot masquerade as a question of law, and further that any question of law cannot automatically be treated as a substantial one even if the amount involved is substantial or the argument pressed is vehement. The expression 'substantial question of law' is not new to the Workmen's Compensation Act, 1923, but finds a place in S.110 of the Civil Procedure Code and Art.133 of the Indian Constitution. May be, that the meaning of words may change depending on the context in which they occur and the statute which uses them. Even so, there must be something substantial about a substantial question of law. Out of deference to the words of the statute 1 must remind myself that what is contemplated is not a question of law alone; it must also possess the attribute of substantiality. If it is of great public importance or if it arises so frequently as to affect a large class of people or is so basic to the operation of the Act itself, one may designate the question of law as substantial. But, where it

is Covered already by precedents or the law on that aspect is well settled, the mere difficulty of applying the facts to that law cannot make it a substantial question of law.

3 The Act with which I am concerned relates to workers, and the entire purpose of the statute is to see that the weaker section of the community, namely, the working class is not caught in the meshes of litigation which involves a protracted course of appeal. That is why the statute creates a special tribunal and provides only for a restricted appeal. The benignant object of saving the worker from long and expensive litigation would be defeated if a loose interpretation were to be given to the proviso under S.30 and all kinds of appeals, merely because there is some point which has the look of law, are admitted. A highly restrictive meaning has to be imported because of the very legislative purpose and the class of litigation covered, even apart from the drastic expression used in the proviso. In this context, Part IV of the Indian Constitution serves as a perspective while construing the Workmen's Compensation Act. May be that pre-constitution statutes were interpreted in a particular way by courts on certain assumptions of the State's functions at that time. Today it is absolutely plain that the Directive Principles of State Policy, though not enforceable by a court, are nevertheless fundamental in the governance of the country, and must inform the judicial mind when interpreting statutes calculated to promote the welfare of the working class. In fact, Art.42 enjoins upon the State to make provision for securing just and humane conditions of work and Art.43 compels the State to endeavour to secure, by suitable legislation, to all workers conditions of work ensuring a decent standard of life. Indeed, the spirit of Part IV of the Constitution must colour the semantic exercises of the judiciary when applying the provisions of the Workmen's Compensation Act. If that be the approach to be made, I am clear in my mind that the argument that the proviso to S.30 has been interpreted liberally in the preconstitution days is of no significance. The same words, with socio economic developments in society, acquire a new emphasis in tune with the changed conditions. It is clear therefore, that the dynamics of legal interpretation based on social changes which have taken place in the nation's life and goals demand that I should construe the proviso to S.30 so as to inhibit appeals at the instance of employers even if there be some questions of law or gross errors of fact, unless very substantial legal issues arise. Therefore, I find it difficult to agree with counsel for the appellant that misappreciations or absence of evidence vitiating the order under appeal, even if true, can be brought within the scope of the proviso to S.30 or can be exaggerated into a substantial question of law. At the Commissioner's level most such employer employee questions, legal or factual, must end, appeals being open in a very limited category. The proviso to S.30 vis a vis the employer and his right of appeal reminds me of the biblical allusion to the camel and the eye of a needle. The appeal has thus to be disallowed.

4 Even going into the merits of the matter and having heard at length the appellant's counsel on the evidence in the case, I am satisfied that the direction of the Commissioner that a sum of Rs. 2,940/- should be paid by way of compensation to the respondent does not call for interference. The quantum does not err on the high side. I am prepared, for argument's sake, to agree that the appellant is not the employer in the sense that the respondent is his direct employee or worker. Even so, S.12 makes it clear that the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him. Thus, accepting the case of the appellant that one Mr. George, who is the intermediary between the appellant and the respondent, is not a foreman but only a contractor, the liability of the appellant as principal cannot be shaken off, in the light of S.12. It is true that the evidence strongly suggests the role of George to be that of a contractor and not a foreman of the appellant. And equally clearly S.12(2) entitles the appellant to indemnify himself from the contractor, if George in this case

is shown to be a contractor. To the extent there is a finding by the Commissioner that Sri. George is but a foreman of the appellant's workshop and not a contractor I vacate it. I leave the jural relationship between George and the appellant to be adjudicated upon in other appropriate proceedings. However, as earlier pointed out, this does not affect the worker's claim, although it does help the appellant to make his claim to be indemnified by the contractor separately.

5 With this direction, I dismiss the appeal; but, in the circumstances, there will be no order as to costs.