



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 5<sup>TH</sup> DAY OF JUNE 2026 / 15TH JYAISHTA, 1948

MFA (ECC) NO. 95 OF 2017

AGAINST THE ORDER DATED 28.02.2017 IN ECC NO.137 OF  
2014 OF EMPLOYEES' COMPENSATION COMMISSIONER (INDUSTRIAL  
TRIBUNAL), KOZHIKODE

APPELLANT/OPPOSITE PARTY No.2:

THE SECRETARY,  
KANNUR DISTRICT POLICE  
CO-OPERATIVE SOCIETY LTD. NO.C.1384,  
A.R.POLICE CAMP, KANNUR.

BY ADVS.  
SR.P.U.SHAILAJAN  
SMT.D.N.NISHANI  
SHRI.M.SURESH KUMAR

RESPONDENTS/APPLICANTS & OPPOSITE PARTY No.1:

1 K.KANCHANA  
W/O. LATE ANILKUMAR C.V,  
CHORAYI VAYAKKARA HOUSE, CHIRAKKAKAVU ROAD,  
NETTUR P.O., THALASSERY,  
KANNUR DISTRICT, PIN - 670 105.



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

2

- 2      K.ATHIRA  
         D/O. LATE ANILKUMAR.C.V.,  
         CHOORAYI VAYAKKARA HOUSE, CHIRAKKAKAVU ROAD,  
         NETTUR P.O., THALASSERY,  
         KANNUR DISTRICT, PIN - 670 105.
  
- 3      AKSHAY KUMAR.K  
         S/O. LATE ANILKUMAR.C.V.,  
         CHOORAYI VAYAKKARA HOUSE, CHIRAKKAKAVU ROAD,  
         NETTUR P.O., THALASSERY,  
         KANNUR DISTRICT, PIN - 670 105.
  
- 4      THE DIRECTOR GENERAL OF POLICE  
         POLICE HEADQUARTERS,  
         THIRUVANANTHAPURAM - 695 001.

BY ADV SRI.C.P.PEETHAMBARAN

OTHER PRESENT :- ADV.NEERAJA VENUGOPAL

THIS MFA (ECC) HAVING BEEN FINALLY HEARD ON  
29.05.2026, THE COURT ON 05.06.2026 DELIVERED THE  
FOLLOWING:



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

3

[CR]

**S.MANU, J.**

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M.F.A.(ECC).No.95 of 2017  
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Dated this the 05<sup>th</sup> day of June, 2026

**JUDGMENT**

The second opposite party in ECC No.137/2014 of the court of the Industrial Tribunal and Employees Compensation Commissioner, Kozhikode is the appellant herein. Respondents 1 to 3 were the applicants before the Commissioner. Fourth respondent herein was the first opposite party.

2. The respondents 1 to 3 approached the Commissioner contending that the husband of the 1<sup>st</sup> respondent and father of respondents 2 and 3, Anilkumar died of electrocution while he was engaged in the construction of iron roof sheeting work in the office building of the appellant society on 16.7.2011 at about 2 pm. While he was doing welding work



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

4

an iron pipe came in contact with a high-tension line passing nearby and was thrown away by electric shock. Though he was immediately taken to hospital he succumbed to injuries. The claimants contended that the deceased was aged 45 years and his monthly wage was Rs.12,000/-. A total amount of Rs.10,36,640/- was claimed as compensation.

3. The appellant denied the claims of the respondents 1 to 3. Alleged employer-employee relationship was denied. It was contended that the deceased was an independent contractor for roofing work and the work was entrusted to him as he submitted the lowest quotation in response to the public notice inviting quotations for the roofing work. Further it was contended that Anilkumar had employed some other persons and was not doing any work directly. According to the appellant, the accident occurred due to his negligence. While he was giving instructions to the employees the iron rod came in contact with the electric line and he got electrocuted. On sympathetic



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

5

considerations, an amount of Rs.50,000/- was given to respondents 1 to 3 from the common benefit fund of the society. The appellant asserted that it had no liability to pay compensation as there was no employer-employee relationship.

4. The 1<sup>st</sup> respondent was examined as AW1 and the Honorary Secretary of the appellant was examined as RW1. Exts.A1 to A5 were marked on the side of the respondents 1 to 3. Ext.B1, file pertaining to the roof construction was marked on the side of the appellant. The learned Commissioner, on appreciation of evidence, concluded that there was employer-employee relationship. It was found that the deceased himself was working under the appellant as a welder. The learned Commissioner adopted Rs.8,000/- as the monthly wages of the deceased for the purpose of calculating compensation. The Commissioner fixed the compensation at Rs.6,77,760/-. Interest at the rate of 12% from the date of accident was also granted. In addition, an amount of Rs.5,000/- was granted



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

6

towards funeral expenses. Aggrieved by the order passed by the learned Commissioner this appeal was filed.

5. No question of law was formulated while admitting this appeal. In my view the following substantial question of law arises for consideration:

Whether the deceased can be considered as an employee for the purpose of Employees Compensation Act despite the fact that he was engaged through a tender process?

6. Heard the learned counsel for the appellant and the learned counsel for respondents 1 to 3.

7. The learned counsel for the appellant fervently pleaded that no employer-employee relationship was existing between the appellant and the deceased. The appellant issued public notice inviting quotations for construction of a sheet roof. The deceased submitted his quotation and the same being the lowest, the work was awarded to him. He was therefore a



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

7

contractor and not a workman. She further submitted that he had engaged labourers and the work was executed through them. When he visited the site to supervise the work on the fateful day, he unfortunately got electrocuted. The learned counsel referred to Ext.B1 file in support of the contention. Further, the learned counsel submitted that the work undertaken by the deceased was the construction of a roof, which cannot be considered as part of the trade or business of the appellant. Therefore, she submitted that in any view of the matter the appellant is not liable to pay compensation to the dependents of the deceased.

8. Per contra, the learned counsel for the respondents 1 to 3 submitted that the deceased was actually an employee. She argued that the deceased was also working along with other labourers. The accident occurred while executing the work. She also contended that the Employees Compensation Act, 1923 is a beneficial legislation and hence liberal interpretation is



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

8

justified. She submitted that the deceased was engaged in work essential for the maintenance of the building of the appellant and, therefore, the same can be considered only as part of the trade or business, as maintaining the business premises would come under the expression 'business'. She relied on a judgment of a Division Bench of this Court in **Chief Post Master General, Tvm. and another v. Lekha and another** [2017 (3) KLT 853]. She further submitted that the mere fact that a quotation was submitted to get the work allotted cannot be a reason to conclude that the deceased was not an employee within the scope of the Employees Compensation Act. She hence prayed that the appeal be dismissed by affirming the impugned order.

9. In view of the question of law framed above, the only aspect to be analysed is as to whether the deceased could be considered as an 'employee' for the purpose of the Employees Compensation Act. Ext.B1 proves that the appellant society had



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

9

issued public notice inviting quotations for the work. The deceased submitted the lowest quotation and therefore the work was awarded to him. After his demise the 1<sup>st</sup> respondent submitted a request to permit her to complete the work. The same was accepted. Thereafter the work was finished and the remaining payments were received by the 1<sup>st</sup> respondent.

10. Though the deceased submitted quotation and undertook to construct the roof, he was not executing the work entirely through other labourers. In this regard it is relevant to take note of Ext.A1 FIR. It was lodged on the date of accident. The FI Statement was given by one Rajeesh, a welder. It is discernible from the FI Statement that the deceased was also working as a welder along with the informant and another co-worker named Shijil. It was clearly mentioned by the informer that the GI pipe was picked up by the deceased for welding. In my view, the FIR is a very relevant piece of evidence that would show that the deceased along with some others was



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

10

actually involved in the welding activity. Under such circumstances, keeping in view of the objective of the Employees Compensation Act, 1923, the deceased cannot be considered as a contractor per se. He actively participated in carrying out the task. Mere fact that he submitted a quote in order to get the work awarded cannot be considered as a factor compelling to conclude that he cannot be brought within the scope of the expression 'employee' under the Act. Adopting such a pedantic approach will defeat the purpose of the Act.

11. The Madhya Pradesh High Court in **Champalal v. Daryavbai and others** [1991 SCC OnLine MP 30] held as under;

"6. Both the learned counsel have placed reliance on the case of Dharangadhra Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264, wherein the Supreme Court has held as under:

"The broad distinction between a workman and independent contractor lies in this that while the



former agrees himself to work the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is, therefore, a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status.”

7. In the light of the aforesaid judgment it is crystal clear that when a workman even though he may take a contract, i.e., payment in lump sum for the amount of work done, would not cease to be a workman only by virtue of the contract if he agrees to work himself. It is also manifest that if once a person agrees to work himself and works in accordance with the agreement, then merely because he gets other persons also to work with him and those persons are controlled and paid by him would not have the effect of treating such workman



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

12

as a contractor under the law. As such the crucial test is that if a person agrees to work personally then he is a workman, but if he does not work personally and gets the work done from others, then he is an independent contractor. Undisputedly in the instant case the respondent had agreed to work himself and the accident was also caused because he was also working himself. Therefore, the fact that he also agreed to get assistance of other workers in the contract would not change his position and he shall not cease to be a workman only by virtue of entering into a contract to seek the assistance of other workmen also along with his work.”

[Emphasis added]

I completely concur with the viewpoint articulated in the aforementioned judgment of the Madhya Pradesh High Court. If the other requirements are met, an individual who enters into a contract to carry out a task and physically participates in it may be deemed an ‘employee’, bearing in mind the purpose of the Employees Compensation Act. It would be harsh, unfair,



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

13

unrealistic, and unquestionably against the legislative intention to hold that such a person cannot be recognized as an employee for the purposes of the Act, for the mere reason that he hires some additional workers to assist him in carrying out the task undertaken by entering into the contract. However, if an individual entering into a contract gets the work executed solely through others and is not physically involved in the actual execution of the activity, the situation will be quite different. Therefore, in cases like this, Commissioners should diligently evaluate the materials to find out the real nature of engagement and decide whether the injured was only a contractor or was involved in actual execution of work so that he can be considered as an employee for the purpose of the Act.

12. As noted already, in the case on hand, there is adequate evidence to show that the deceased was actually involved in the welding work along with others. The co-worker who gave the FI Statement clearly spoke that the deceased was



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

14

working with him and the unfortunate accident occurred while he was physically involved in the welding work.

13. The learned counsel for the appellant raised a contention that the construction of roof cannot be considered as an activity within the scope of the expression 'trade or business' in Section 12(1) of the Employees Compensation Act. She therefore contended that the engagement of the deceased for the work of construction of the roof will not fall within the ambit of Section 12. The said contention cannot be accepted in view of the discussion in paragraph 5 of the judgment in **Chief Post Master General** (supra). The relevant paragraph is extracted hereunder:-

"5. A mere reading of Section 12 of the Act would show that the liability which can be fastened under that provision would come into play only when any person was employed for the purposes of "his trade or business". Before going into that question, it is material to consider what is the legislative impact of Section 12 of the Act. It is really intended not to restrict the



liability, but to extend the liability on the principal, by applying the principle that in so far as the incident which has resulted in injuries or death to victims, the principal employer is initially liable to compensate the victim, even though there is an intermediary by way of a contract or entrustment etc. and violation of covenants agreed upon. While interpreting Section 12 of the Act, a beneficial construction which would promote the legislative intention has to be adopted and the expression or wording used therein has to be interpreted so as to advance justice and to promote the legislative intention to give benefit to the victim and not to reject it. So, the expression "trade or business" has to be understood under this context and the duty of the Court is to find out is there any nexus in between the employment of the person concerned with the 'trade or business' of the principal. The "trade" of a Post Office would be something different from that of maintaining a building wherein it was functioning. But, if the building is owned by the second and third opposite parties, the maintenance of the business place in a good and healthy condition would form part of their "business" and, if the matter is viewed under that perspective, employment of some person, either on



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

16

contractual basis or otherwise, for maintaining the building/business place by conducting repairing work, painting work etc. would come under the expression "business" as incorporated under Section 12 of the Act.

No distinction has been drawn with respect to any employee under Section 12 of the Act, based on the nature of engagement, whether it is direct or through a Contractor. There is a clear nexus in between the alleged accident and the employment of the victim, which would come under the purview of the expression "business" engrafted under Section 12 of the Act. So, there cannot be any escape for the second and third opposite parties from the initial liability to compensate the applicant (first respondent in the appeals)."

[Emphasis supplied]

14. In the light of the above discussion, I am of the definite view that the question of law involved can be answered only in favour of the respondents 1 to 3. Mere fact that a person executed a contract for performing a work would not be sufficient to hold that he cannot be



2026:KER:39380

M.F.A.(ECC)No.95 of 2017

17

treated as an employee under the Employees Compensation Act.

In the result, I uphold the impugned order. M.F.A(ECC) is dismissed.

Sd/-

**S.MANU  
JUDGE**

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