

**PALM PRODUCTS AND SALES CO-OPERATIVE SOCIETY LTD.,  
KILINCHCHI  
v.  
VALLI KANDIAH**

COURT OF APPEAL.

SENEVIRATNE, J. AND ABEYWARDANE, J.

C.A. No. 4/80 & C.A. No. 01/1982 – W.C. 30/3442/77D.

NOVEMBER 2 AND 3, 1983.

*Workmen's Compensation Ordinance – Personal injury to member of Co-operative Society – Is compensation awarded by Committee of Society a bar to compensation under Workmen's Compensation Ordinance? – Can member of the Society be an 'employee' of the Society? – Delay.*

*The Palm Products and Sales Co-operative Society was formed under the Co-operative Societies Law for the promotion of the production, disposal and sale of palm products like toddy and jaggery. Membership of the Society was confined to those actively engaged in toddy tapping. The respondent, a member of the Society sustained personal injuries by a fall from a tree while engaged in tapping. He applied to the Committee of the Society for accident relief and was awarded Rs. 300. He then applied for compensation under the Workmen's Compensation Ordinance and was awarded a further sum. The Society appealed to the Court of Appeal against this order alleging that the respondent was only a member and not a workman employed by the Society. Further, compensation had already been awarded by the Committee and there was delay.*

**Held –**

- (1) The Co-operative Society being incorporated was a body corporate and was distinct from its members. The Society can employ its members.
- (2) The compensation awarded by the Committee of the Society is not a bar to a claim for accident compensation under the Workmen's Compensation Ordinance.
- (3) The Commissioner, Workmen's Compensation had held that delay could be excused under s. 16 (2) of the Workmen's Compensation Ordinance and the Court of Appeal will not interfere with that decision of fact.

**Cases referred to**

(1) *A. A. Gunawardene v. Mrs. R. K. D. Gunawardena*, (1972) 76 N.L.R. 57.

(2) *Adhikaram v. Atwis and others*, C.A. 243/79 – C.A. Minutes of 15.12.1981.

APPEAL from an order of the Commissioner of Workmen's Compensation.

A. Sivagurunathan for appellant.

Respondent absent and unrepresented.

March 23, 1984.

**SENEVIRATNE, J.**

The appellant is a Co-operative Society duly constituted and registered under the provisions of the Co-operative Societies Law, No. 5 of 1972, and governed by the by-laws and the Rules thereunder. The objectives of the said Co-operative Society were the promotion of the production, disposal and sales of palm products (toddy, jaggery). Under the by-laws of this society, the membership was restricted exclusively to those actively engaged in toddy tapping. The members of the society had to tap toddy from the palms and supply the same to the Society at a price determined by the Board of Directors. This society had about 600 members who were all toddy tappers.

The applicant-respondent Valli Kandiah was a member of this Co-operative Society, and as such tapped the palms for toddy and supplied the same to the society which bought at a fixed price. On 1.8.1977, the applicant-respondent had suffered personal injuries due to a fall from a tree while engaged in tapping. The applicant-respondent applied to the society for accident relief and has been paid a sum of Rs. 500 as determined by the Committee of the Society. Thereafter, on 4.5.1979, the applicant-respondent had made this application for compensation in a sum of Rs. 15,000 to the Commissioner, Workmen's Compensation in terms of section 3 of the Workmen's Compensation Ordinance—Cap. 139.

This application has come up for inquiry before the Commissioner, Workmen's Compensation, who held sittings in Jaffna on 30.9.1981, and the Commissioner has delivered judgment on 9.2.1982 awarding the applicant a sum of Rs.3,113/50 as compensation and costs Rs. 52/50. The Co-operative Society has appealed against this award of compensation.

The Commissioner states in his order that the only matter for determination before him was "whether the applicant can be regarded as a workman within the meaning of the Workmen's Compensation Ordinance". Evidence has been led that the respondent Kandiah as a member of the Society, was engaged in tapping palm trees and was paid cents 50 per bottle of toddy supplied. The applicant drew about Rs. 300 monthly for the toddy supplied to the Society.

In the petition of appeal the appellant-Co-operative Society has raised the following questions of law—

- (a) Whether there is an employer-employee relationship as between the Co-operative Society and a member of the society ;
- (b) Whether a member of the Co-operative Society is also a workman within the definition and meaning of the Workmen's Compensation Ordinance ;
- (c) Whether there exists a contract between the members of the society – inter se – as determined by the by-laws of the Society ; and the relief, if any, which has to be sought within the ambit of the Co-operative Societies Law, No. 5 of 1972, and the by-laws framed under it.

The appellant has also raised the question whether the application of Kandiah was belated. This matter has been raised in the first inquiry into Kandiah's application. But at the fresh inquiry held on the orders of the Court of Appeal which quashed the earlier proceedings, this matter has not been raised before the Commissioner. In any event, the Commissioner had at the first inquiry held that in the circumstances of Kandiah's case that the delay can be excused under section 16 (2) of the Workmen's Compensation Ordinance. This Court will not interfere with that decision of fact by the Commissioner.

The Commissioner has held that Kandiah's case came within the category of workmen who are entitled to compensation under Schedule II – Item 23 of the said Act – “ Employed in the tapping or coupling of palm trees . . . . ”. The ground on which the Commissioner awarded Kandiah compensation is stated as follows—

“ I am of the view that the by-laws of a Co-operative Society or even the Co-operative Societies Law, No. 5 of 1972, cannot rescind or abrogate the provisions of the Workmen's Compensation Ordinance ”

Learned counsel submitted that the Commissioner had overlooked the fact that Kandiah was a member of the Co-operative Society and not an employee. He stressed the fact that the society had no control over the tapping done by its members. This principle I suppose was introduced to show that one ingredient of the employer-employee relationship, control of work was not present. In a certain sense the control of work of its tapper members must be present. The society

will have to ensure that its tapper members do not supply toddy with impurities or adulterated toddy, say with water. In making this submission the learned counsel has fallen into the error of the old theory that to form an employer-employee relationship one essential ingredient was the control of the work of the workman. Learned counsel also relied on extracts from the decisions in a Court of Israel and other Indian and English decisions. These have no bearing on the matters urged in appeal in this Court. Any decision must be based on the Workman's Compensation Ordinance, and the Co-operative Societies Law only.

In deciding the matters of law raised, one vital aspect that has to be considered is the fact that the appellánt is a Co-operative Society Limited under the Co-operative Societies Law, No. 5 of 1972, and that section 20 of this Law is as follows—

" The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts . . . . . "

Thus, by this section the appellant society is " a body corporate " and distinct from its individual members, such as Kandiah who tapped toddy and supplied the toddy to the society at the then prevalent rate of cents 50 per bottle.

In the field of labour law a workman can have two different roles. This has been made clear in the decisions of this Court in respect of a co-owner of a land, who is also an employee. In the case of *A. A. Gunawardene v. Mrs. R. K. D. Gunawardena* (1) H: N. G. Fernando, C.J., held as follows—

" A co-owner of a land who is paid a salary by the other co-owners in order to look after the land falls under the category of an employee and is, therefore, entitled to claim compensation for wrongful termination of his services "

H. N. G. Fernando, C.J. further decided as follows—

" The President has misdirected himself in holding that a co-owner of a land cannot be an employee of that land in the capacity of its superintendent. It is open to some of the co-owners of a land to

engage the services of another co-owner in order to manage the land, and such an engagement can well be on the terms that a salary is to be paid in respect of these services "

The Court of Appeal has followed this judgment in the unreported case of *Adhikaram v. Alwis and others (2)* (Judgment of Seneviratne, J.).

The term " employer " is defined in the Industrial Disputes Act – section 48 – inter alia as follows :–

"means any person who employs".

The term "workman" is defined as follows :–

"means any person who has entered into or who works under a contract with an employer".

On the facts of this case it can be said that the "person", the Co-operative Society Limited has employed the workman, Kandiah for toddy tapping. The facts show that there was a contract of employment present between the appellant society and the respondent Kandiah – whether the employer Co-operative Society had control over the workman Kandiah is not the crucial issue, but the issue is whether there was an employer–employee relationship between these two parties. The main issue is whether, as stated earlier, there was a contract of employment between the two parties. The Co-operative Societies Law No. 5 of 1972, which has come into operation on 11.10.1972 has not excluded from its provisions the Workmen's Compensation Ordinance which was first introduced in 1934. Thus, the Commissioner was correct when he stated " that the Co-operative Societies Law, its by-laws and regulations cannot rescind or abrogate the provisions of the Workmen's Compensation Ordinance "

The order of the Commissioner, Workmen's Compensation is affirmed, and the appeal is dismissed. The appeal is dismissed without costs.

**ABEYWARDANE, J.**—I agree.

*Appeal dismissed.*