

1961

Present : Tambiah, J.

MRS. BOBBY ARNOLDA (Bobby Arnolda Travel Service), Petitioner,
and N. R. GOPALAN, Respondent

S. C. 687, with Application 175—M. C. Colombo, 44223/A

Industrial dispute—Jurisdiction of Labour Tribunal and Magistrate's Court—Death of employer—Claim by workman for wages, etc.—Liability of employer's legal representative—Industrial Disputes Act (Cap. 131), as amended by Act No. 62 of 1957, ss. 31B (1) (2) (3) (4) (6), 33 (2) — Revisionary powers of Supreme Court.

In an application made by a workman after the death of his employer, a Labour Tribunal has no jurisdiction under the Industrial Disputes Act to order the widow or legal representative of the deceased employer to pay the workman any wages, compensation or gratuity due to the workman for the period he was employed under the deceased. Such an order cannot be enforced by a Magistrate's Court under section 33 (2) of the Act, even if it was made by the Labour Tribunal with the consent of parties.

The Supreme Court has wide revisionary powers over orders made by Magistrates without jurisdiction.

APPEAL, with application in revision, against an order of the Magistrate's Court, Colombo.

H. V. Perera, Q.C., with G. F. Sethukavaler, for the Petitioner.

C. S. Barr Kumarakulasinghe, with Bala Nadarajah, for the Respondent.

Cur. adv. vult.

December 12, 1961. TAMBIAH, J.—

The petitioner has made this application to revise the order of the learned Magistrate, dated 3rd April 1961, directing the petitioner to pay a sum of Rs. 2,073/50 cts. to the respondent.

The respondent was employed by the late Mr. Bobby Arnolda, the husband of the petitioner, as an employee in a transport business which was run under the name and style of Bobby Arnolda Travel Service. On the 31st of August 1958, Mr. Bobby Arnolda died and the petitioner, by letter dated 2nd September 1959, informed the respondent that the latter's services had ceased in view of the death of her husband.

The respondent, through the Ceylon Motor Workers Union, made an application to the Labour Tribunal in Colombo making the petitioner, the widow of the late Mr. Bobby Arnolda, a respondent. In that application the respondent claimed wages, compensation and gratuity from the petitioner for the period he was employed under Mr. Bobby Arnolda.

As a result of the settlement arrived at between the petitioner and the respondent, the petitioner agreed to pay the respondent the sum of Rupees 2,073/50 cts. on behalf of the estate of the late Mr. Bobby Arnolda. Thereupon, the President of the Labour Tribunal ordered the petitioner to pay the sum to the respondent on or before the 10th of November 1960.

The learned Magistrate of Colombo, purporting to act under section 33 (2) of the Industrial Disputes Act (Chapter 131 of the Legislative Enactments (1956 Ed.), as amended by Act No. 62 of 1957) ordered the petitioner to pay the agreed sum to the respondent. The petitioner prays that this order was made without jurisdiction and asks this Court to revise this order.

It was urged on behalf of the petitioner that the learned Magistrate did not have jurisdiction to make the order made on 3.4.1961, which directed the petitioner to pay the said sum to the respondent since the Labour Tribunal itself had no jurisdiction to make an order compelling the petitioner, who is the widow of the late Mr. Bobby Arnolda, to pay the claim of the respondent. The petitioner's counsel argued that the Industrial Disputes Act, as amended, empowered the Labour Tribunal to make an order against "*an employer or ex-employer who was living at the time the application was made*", and that there is no provision in the statute which enables an employee to make an application against the legal representative, executor de son tort, or the widow of the estate of an employer or an ex-employer who was dead at the time the application was made before the Tribunal.

An examination of the relevant provisions of the Industrial Disputes Act, as amended by Act No. 62 of 1957, bears out the contention of the counsel for the appellant. Section 31(b) of the Industrial Disputes Act, as amended by Act No. 62 of 1957, enacts as follows :

“(1) A workman or a trade union on behalf of a workman who is a member of that union may make an application in writing to a Labour Tribunal for relief or redress in respect of any of the following matters :—

(a) the termination of his services by his *employer* ;

(b) the question whether any gratuity or other benefits are due to him from his *employer* on termination of his services and the amount of such gratuity and the nature and extent of any such benefits ;

(c) such other matters pertaining to the relationship between an *employer* and a workman as may be prescribed.

(2) Where a Labour Tribunal is satisfied after such inquiries as it may deem necessary that the matter to which an application under sub-section (1) relates is under discussion with the *employer* of the workman to whom the application relates by a trade union of which that workman is a member, the Tribunal shall defer making an order on such application until such discussion is concluded or the Minister has made an order under section 4.

(3) Where an application under sub-section (1) relates—

(a) to any matter which in the opinion of the Tribunal is similar to or identical with a matter constituting or included in an industrial dispute to which the *employer* to whom that application relates is a party and into which an inquiry under this Act is held, or

(b) to any matter the facts affecting which are, in the opinion of the Tribunal, facts affecting any proceedings under any other law,

the Tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the Tribunal shall resume the proceedings upon that application and shall, in making an order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law.

(4) Any relief or redress may be granted by a Labour Tribunal to a workman upon an application made under sub-section (1) notwithstanding anything to the contrary in any contract of service between him and his *employer*. ”

Section 31B (6) of the amended Industrial Disputes Act enacts as follows :—“ Notwithstanding that *any person has ceased to be an employer*—

- (a) an application claiming relief or redress from such person may be made under sub-section (1) in respect of any period during which the workman to whom the application relates was employed by such person, and proceedings thereon may be taken by a Labour Tribunal,
- (b) if any such application was made while such person was such *employer*, proceedings thereon may be commenced or continued and concluded by a Labour Tribunal, and
- (c) a Labour Tribunal may on any such application order such person to pay that workman any sum as wages in respect of any period during which that workman was employed by such person, or as compensation as an alternative to the reinstatement of that workman or as any gratuity payable to that workman by such person, and such order may be enforced *against such person* in like manner *as if he were such employer*.”

The expression “such a person” must, in this context, necessarily mean an ex-employer, *who is alive at the time the proceedings are commenced*.

The term “employer” is defined by section 48 of the Industrial Disputes Act (as amended by Act No. 62 of 1957), as follows :

“ ‘employer’ means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such a body is a firm, company, corporation or trade union) and any person who on behalf of any other person employs any workman ; ”

The term “workman” is also defined in the same section as follows :

“ ‘workman’ means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time, and, for the purposes of any proceedings under this Act in relation to any industrial dispute, includes any person whose services have been terminated.”

The scope and ambit of the amended Industrial Disputes Act is to give relief or redress to a workman who is in a position to make an application before the Labour Tribunal *against* his employer or ex-employer who is alive at the time of the application. The Labour Tribunal derives its jurisdiction from the amended Industrial Disputes Act. Its powers, as

well as its jurisdiction, has to be looked for within the four corners of this statute and liability under this statute, therefore, cannot be extended to a widow of a deceased employer, who is brought before the Labour Tribunal and against whom relief is sought for a liability incurred by her late husband. The counsel for the respondent was unable to refer me to any provision in the amended Industrial Disputes Act which enables an employee to make an application of this nature against the widow of a deceased employer.

The counsel for the respondent urged that as the petitioner had appeared before the Labour Tribunal and had consented to pay the said sum, the Labour Tribunal had cognisance over this matter. The words of Maxwell, in this context, are apposite. He states (vide Maxwell on Interpretation of Statutes (9th Edition) page 392) : "Consent cannot give jurisdiction and therefore any statutory objection which goes to the jurisdiction does not admit of waiver". Therefore, the mere fact that the petitioner appeared before the Tribunal and had consented to pay the said sum, does not confer jurisdiction on the Labour Tribunal when it has, in fact, no jurisdiction conferred on it by the statute law. The counsel for the respondent also argued that the petitioner had registered the same transport business in her name in September 1959 and the sum which she had consented to pay included the wages due to the respondent for a few days in September when he was employed under the petitioner. The Labour Tribunal, however, has only adjudicated on a claim of the respondent for wages, gratuity etc., alleged to be due to him during the period he worked under the late Mr. Bobby Arnolda, and this contention, therefore, is untenable.

Section 33 (2) of the Industrial Disputes Act, as amended by Act No. 62 of 1957, gives the Magistrate the power to enforce any lawful order made by the Labour Tribunal and recover the sum ordered to be paid. The Supreme Court is given wide revisionary powers over the orders made by Magistrates without jurisdiction. In *De Silva v. Commissioner of Income Tax*¹, this Court revised an order made against the Managing Director of a Company, who was ordered to pay the tax due from a limited liability company, when the Income Tax Ordinance did not empower the Commissioner of Income Tax to impose such a tax against the Managing Director personally. When the Magistrate tried to enforce the order against the Managing Director, this Court interfered by way of revision and set aside the order.

There are other statutes which have imposed liability on the executor or the personal representative of a deceased person for debts or liabilities of the deceased (vide the Income Tax Ordinance (Cap.188) and the Workmen's Compensation Ordinance (Cap. 139)), but it is significant that the Industrial Disputes Act does not impose any liability on the executor, personal representative or the executor de son tort of a deceased person for his debts or liabilities.

¹ (1951) 53 N. L. R. 280.

For these reasons, I hold that the Magistrate had no jurisdiction or power to make an order calling upon the petitioner to pay the said sum. Acting in revision, I set aside the order of the learned Magistrate, dated 3 4.61, directing the appellant to pay the sum of Rs. 2,073/50 cts. on or before the 10th of November 1961. The appellant is entitled to Rs. 105 as costs of appeal.

Order set aside.
