

[MALACHTOS, J.]

1972  
Febr. 23

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

PANAYIOTIS  
ANTONIOU

PANAYIOTIS ANTONIOU,

v.

THE REPUBLIC  
(MINISTER  
OF LABOUR  
AND SOCIAL  
INSURANCE)

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF LABOUR AND SOCIAL INSURANCE,

*Respondent.*

(Case No. 8/71).

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*Social Insurance—Accident—Claim for injury benefit—  
Section 26 of the Social Insurance Laws 1964 to 1970—  
Determined by virtue section 11 of the Law and  
rejected on the ground that the applicant was not  
an employed person at the time of the accident—  
Reasonably open to the respondents from the statements  
before them, to decide as they did—Recourse dismissed  
with no order as to costs.*

*'Employed person'—Sections 11 and 26 of the Social  
Insurance Laws 1964 to 1970—See supra.*

The facts sufficiently appear in the judgment of the  
learned Judge, dismissing this recourse with no order as  
to costs.

**Recourse.**

Recourse against the decision of the respondent to  
the effect that the applicant was not entitled to an insurance  
benefit.

*P. Sivitanides* with *A. Spyrou*, for the applicant.

*L. Loucaides*, Senior Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.*

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The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse is an inhabitant of Timi village and on the 3rd of August, 1970, while he was engaged in irrigating a field at locality "Mosphilia" the belt of the water engine broke and injured him in the left eye. On the same day he was transported to the Paphos hospital where it was ascertained that his left eye was a total loss.

On 29.8.70 the applicant applied to the respondent under section 26 of the Social Insurance Laws 1964 to 1970, for a benefit alleging that at the time of the accident he was an employed person in the service of a certain Kemal Mentesh of Timi.

On the 4th September, 1970, the Assistant Labour Officer of Paphos proceeded to the village of Timi in order to investigate into this accident. On the same day he contacted Kemal Mentesh and obtained a written statement from him, to the effect that the applicant was working for him at the time of the accident. However, from the Chairman of the Village Commission of Timi the Assistant Labour Officer obtained information that the applicant on the day of the accident was injured while operating his own water engine, irrigating land for his own benefit as a self employed person.

On the 11.9.70 the Chairman of the Village Commission of Timi made a written statement confirming the above information. Another statement was obtained from the Rural Constable of Timi to the effect that on the day of the accident the applicant was not in the service of Kemal Mentesh. In the light of the above statements, photostat copies of which have been produced in Court, the respondent decided that the applicant was not entitled to an insurance benefit as at the time of the accident he was a self employed person. This decision was communicated to the applicant on the 29.10.70. Against this decision the applicant filed the present recourse claiming a declaration of this Court that the said decision has no legal effect as at the material time of the accident on 3.8.70, the applicant was an employed person. and, consequently, he is entitled to insurance benefit.

The only question in issue in this case is the alleged mistake of fact on the part of the respondent.

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On the application of counsel for the applicant and under the powers vested in this Court\*, as an administrative court by virtue of rule 11 of the Supreme Constitutional Court Rules, 1962, to summon any person to give evidence for the purposes of enabling the Court to come to a just decision in the case, the applicant and the Rural Constable of Timi, namely, Costas Kattides, were summoned and gave evidence at the hearing of this case.

The applicant in giving evidence stated that he is a farmer and is the owner of about 30 to 40 donums of land. His net income from his said property is about £150.— per year. He is married with three minor children and so he has to work for other people to make his living. On the day of the accident he was working for Kemal Mentesh watering his field at locality "Mosphilia" and the accident occurred while he was operating the water engine of the said Kemal. He had entered into an agreement with Kemal to work for him for about 2 months daily as from the 27/7/70 at the agreed wages of £2 per day. The field of the said Kemal was to be cultivated with beans. The applicant further stated that he is the owner of a field which is situated next to the field of Kemal. In his said field a water engine is also installed. At that time he cultivated it with beans as well but the person who was looking after it was his wife as he himself was fully employed by Kemal. He denied that he was collaborating with Kemal in mixing their water due to the shortage of water at the time.

On the other hand, the Rural Constable Costas Kattides, stated that the applicant and his wife own immovable property, which they cultivate themselves. Furthermore, the applicant is the owner and driver of a tractor and works for other people cultivating their fields as an independent contractor. He never works as a labourer for other people. Kemal Mentesh never employed any

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\* Vide (1971) 3 C.L.R. 417.

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labourers to cultivate his properties. Although he is a shepherd he usually looks after his flock in winter time and in summer time he is cultivating his own property in the village. In summer time usually his children look after his flock. He further stated that the applicant is the owner of a field of about 12 donums, which is situate next to the field of Kemal. In view of the shortage of water Kemal and applicant were collaborating mixing the water of their water engines for watering purposes. He never saw the applicant working for other people except with his tractor.

As I have already said the only question in this case is whether at the time of the accident the applicant was an employed person as defined by section 2 subsection (1) of the Social Insurance Laws, 1964 to 1970. The respondent in determining this question by virtue of section 11 of the Law, decided that at the time of the accident the applicant was not an employed person. In so doing they accepted the statement of the Rural Constable and the Chairman of the Village Commission and rejected the applicant's statement and that of Kemal Mentesh. It was reasonably open, from the statements before them, to decide in the way they did.

In fact, after careful consideration of the evidence adduced before me, I came to the conclusion that the allegation of the applicant that at the time of the accident he was in the employment of Kemal Mentesh is not true. This is clear from the evidence of the Rural Constable of Timi namely, Costas Kattides, whom I consider as a truthful and reliable witness. Although neither he nor the Chairman of the Village Commission were present at the time of the accident, yet, he stated with emphasis and categorically that the applicant never worked for any other person as a labourer but only with his tractor as an independent contractor and that Kemal Mentesh never engaged any labourers for the cultivation of his properties. The fact that the applicant is the owner and driver of a tractor was not disputed but on the contrary, it was intentionally concealed by the applicant in giving evidence for obvious reasons.

For the reasons stated above, this application is dismissed.

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Taking into consideration all the circumstances of this case I make no order as to costs.

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v.

*Application dismissed;  
no order as to costs.*

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