



C.M.A.No.1845 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1845 of 2020

and

CMP.No.13630 of 2020

Indian Trading Corporation,
Represented by Tmt. Vasuki,
Old Door No.28, New Door No.2,
Appaswamy Garden,
4th Street, Old washermenpet,
Chennai – 21.

... Appellant

vs.

Tmt.S.Sathya

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order dated 16.10.2019 of the Commissioner Workmen Compensation-I cum Joint Commissioner of Labour-I, Chennai – 6 and made in W.C.No.96 of 2014.

For Appellant : Mr.R.Chandrasudan

For Respondent : Mr.K.Varadhakamaraj for
Mr.T.R.Ravi

* * * * *



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J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed to set aside the order dated 16.10.2019 of the Commissioner Workmen Compensation-I cum Joint Commissioner of Labour-I, Chennai – 6 and made in W.C.No.96 of 2014.

2. Notice of motion was ordered in the appeal on 05.03.2021. On consent of both the learned counsels, the appeal is taken up for final hearing. Consequently the question of law is framed as follows:

1. Whether the impugned order passed by the Commissioner of Workmen Compensation under the provisions of Workmen Compensation Act fixing the liability on the appellant establishment, in the absence of bare minimum evidence to prove that jural relationship of “employer” and “employee”?

3. The respondent herein filed the Workmen Compensation proceedings against the appellant seeking Rs.3,00,000/- as compensation for the injuries sustained by the respondent during the course of employment



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under the appellant.

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4. According to the respondent, on 21.01.2014, while the respondent was working as a Machine Operator and while cleaning the machinery, the machine was suddenly switched on and the respondent's hands were crushed in the said machine and due to the said accident, the respondent sustained injuries in the right hand, middle finger, left hand thumb finger and the index finger was fully chopped off. The respondent was initially admitted in the Government Stanley Hospital an operation was conducted and she was later discharged. The respondent took further treatment in a private hospital.

5. According to the respondent, due to the injuries sustained by her in the accident during the course of employment with the appellant, she was not able to do her normal work and so the appellant was liable to pay compensation of Rs.3,00,000/- with interest and costs.

6. The appellant filed the counter statement stating that the respondent



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had let-out a portion of the Indian Trading Corporation consisting of teasing (Cotton Cleaning) machinery to one Mr.Elangovan, under a rental agreement dated 15.09.2011. According to the appellant, the appellant was not the immediate employer, but Mr.Elangovan, who was running the cotton waste teasing unit was the immediate employer of the respondent and he was only liable to compensate the respondent. The appellant denied the relationship of employer and employee and further stated that the said Elangovan was liable to pay the compensation awarded.

7.Before the learned Workmen Compensation Commission, the respondent examined herself as PW1 and marked Ex.P1 to Ex.P8 and on the side of the appellant one Vaniyarajan, who was the Power agent of the appellant was examined as RW1 and marked Ex.R1, the rental agreement. The Commissioner, Workmen Compensation based on the pleadings and the evidence on record allowed the claim petition, by fixing the compensation as Rs.2,91,726/- and mulcted the liability on the appellant. Aggrieved by the order of the Commissioner, Workmen Compensation, the appellant has filed the above appeal.



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8.The learned counsel for the appellant submitted that the Workmen Compensation Commissioner failed to note that the premises was leased out vide Ex.R1 to Mr.Elangovan and he was the immediate employer of the respondent. The same was admitted by the respondent in the FIR filed by her on 21.01.2014. It was only at the time of issuance of Advocate notice on 18.06.2014 that the respondent for the first time referred to the appellant as the employer. In spite of the reply of the appellant that the waste teasing unit was let out to one Elangovan, the respondent did not choose to implead the said Elangovan as a party to the case. The learned counsel therefore submitted that the liability was only that of the leasee. The learned counsel further submitted that in the absence of the employer the relationship of employer/employee could not be determined and so also that the accident occurred in the course of employment. The learned counsel therefore referring to the Judgment of the Hon'ble Division Bench in the case of *Madhanagopal (alias) Madhan Vs. Rasika Ranjani Sabha rep. by its Secretary, Sundareswarar Street, Mylapore, Chennai and another* reported in *2004 1 MLJ 277* submitted that it was a fit case for remand for



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impleading the immediate employer.

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9.The learned counsel for the respondent on the other hand submitted that there was absolutely no illegality in the order of the Workmen Compensation Commissioner and therefore the appeal deserved to be dismissed.

10.I have heard both the learned counsel and have perused the materials on record.

11.It is seen from the FIR that the claimant herself admitted that Mr.Elangovan, was the leasee of the appellant and was the immediate employer of the respondent. The relevant portion of the FIR is as follows:

"நான் தண்டையார்பேட்டை அப்பாசாமி
டோட்டம் 4வது தெருவில் உள்ள இந்தியன்
டிரேடிங் கார்பரேசன் என்ற கம்பெனியில் சுமார்
20 ஆண்டுகாலமாக மிசின் ஓட்டும் வேலை
செய்து வருகிறேன். அந்த கம்பெனியின்



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முாலானியாக இளங்கோ என்பவர் உள்ளா,"

"...உடனே ஓனர் மற்றும் எனது மகனும்

அரசு ஸ்டான்லி மருத்துவமனையில்

சேர்த்தனர்."

12.In the light of the claimant's own admission it is clear that the leasee Elangovan was the immediate employer of the claimant. It is pertinent to note here that the Tribunal has not even referred to Ex.R1, to find out who was the immediate employer. At this stage, it is pertinent to refer to the Judgment of this Hon'ble Division Bench in the case of *Madhanagopal (alias) Madhan Vs. Rasika Ranjani Sabha rep. by its Secretary, Sundareswarar Street, Mylapore, Chennai and another* reported in **2004 1 MLJ 277**. The Hon'ble Division Bench in the said case was pleased to remand the matter to the Labour Court to implead he immediate employer in the case. The Hon'ble Division Bench in the said Judgment held that the Workmen is entitled to recover the compensation from the principle employer under Section 12 of the Act and the principle employer has statutory right to recover the same from the immediate



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employer. The Hon'ble Division Bench therefore remanded the matter for impleading the immediate employer.

13.I am of the view that the Division Bench Judgment squarely applies to the facts of the case and therefore the order of the Commissioner Workmen Compensation - I - Cum - Joint Commissioner, Labour Court I is set aside giving an opportunity to the claimant to implead the immediate employer Mr.Elangovan, leasee of the appellant before the Labour Court I. On such petition being filed the Labour Court I is directed to consider the same preferably within a period of four months from the date of receipt of a copy of this order.

14.In the result, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no

Internet : yes/no

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1.The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

N.MALA, J.

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