



C.M.A.(MD)Nos.1367 to 1369 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.08.2023

Pronounced on : 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)Nos.1367, 1368 and 1369 of 2009

Chella @ Yesudhasan

... Appellant in
CMA(MD)No.
1367 of 2009

Nagendran @ Francis

... Appellant in
CMA(MD)No.
1368 of 2009

Kaetheeswaran

... Appellant in
CMA(MD)No.
1369 of 2009

Vs.

1. Uthirasamy

2. The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.54, Thalai Road,
R.V.K. Building First Floor,
Udumalpet Town,
Coimbatore District.

... Respondents in
both appeals



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COMMON PRAYER : These Civil Miscellaneous Appeals filed under Section 30 of W.C. Act, to allow these appeals and set aside the orders of the Deputy Commissioner of Labour, Dindigul in W.C.Nos.147, 150 and 148 of 2007 dated 28.05.2009.

(in all appeals)

For Appellant	: Mr.C.K.M.Appaji
For R1	: No appearance
For R2	: Mr.C.Jawahar Ravindran

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the orders passed in W.C.Nos.147 of 2007, 150 of 2007 and 148 of 2007 dated 28.05.2009 on the file of the Deputy Commissioner of Labour, Dindigul, dismissing the claim petitions.

2. The appellants have filed separate claim petitions seeking compensation for the injuries/disabilities suffered by them in a motor accident occurred on 18.10.2006.

3. The case of the appellants is that on 18.10.2006, when the appellants and others were loading the wooden logs in the first



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respondent's lorry bearing Registration No.TN-27-F-0095, which parked on the southern extremity of Kangeyam – Coimbatore main road and West of Kadaiyur, the accident had occurred and as a result of which, the appellants had sustained injuries and that they were admitted in a private hospital and after taking inpatient treatment got discharged.

4. It is their further case that they were working as load men in the lorry bearing Registration No.TN-27-F-0095 owned by the first respondent and were earning Rs.6,000/- per month.

5. The first respondent/owner of the lorry had remained *ex parte*.

6. The defence of the second respondent is that the appellants should prove that they were working as load men under the first respondent in the lorry bearing Registration No.TN-27-F-0095 and sustained injuries during the course and in the course of employment, that the first respondent colluding with the appellants had remained *ex parte* in the above said proceedings and that therefore, the appellants should prove the employment through the first respondent with proper documentary evidence.



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7. The second respondent, by filing additional statement of objection, has raised additional defence that 50 persons including the appellants were working under one Ruthrasamy for cutting trees and after cutting trees, they have loaded the wooden logs and while they were loading the wooden logs in the lorry on the road side, an auto bearing Registration No.TN-33-B-4258 dashed against the appellants and the lorry and as a result of which, the appellants had sustained injuries and that the appellants were not the employees of the first respondent's lorry and there is no employer-employees relationship between the first respondent and the appellants and as such, the second respondent is not liable for the claim.

8. It is their further defence that the first respondent has paid premium only for driver and conductor/cleaner, that the first respondent has not paid any premium for load man and as such, the risk of the appellants was not covered by the policy issued by the second respondent and that therefore, the appellants are not entitled to get any compensation from the second respondent.



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9. It is not in dispute that on the basis of the complaint lodged by the appellant in C.M.A.(MD)No.1368 of 2009 Nagendran @ Francis, FIR came to be registered in Crime No.983 of 2006 dated 19.10.2006 for the offences under Sections 279 and 337 IPC against the driver of the auto bearing Registration No.TN-33-B-4258.

10. During separate trials, the appellants have examined themselves as P.W.1 in their respective petitions and examined the medical officers, who have issued the disability certificate as P.W.2 and exhibited 10 documents as Ex.P.1 to Ex.P.10. On the side of the second respondent, their official Thiru.Muralidharan has been examined as R.W.1 and exhibited the copy of the insurance policy as Ex.R.1.

11. The Deputy Commissioner of Labour, considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed separate orders dated 28.05.2009 dismissing the claim petitions. Aggrieved by the order of dismissal, the claimants have preferred the present appeals.



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12. The learned counsel appearing for the appellants would submit that the Deputy Commissioner of Labour failed to consider that the appellants and co-workers are Srilankan refugees and due to the slang pronunciation of Tamil, the name of the first respondent Uthirasamy was wrongly indicated as Ruthrasamy in the FIR, that the second respondent has not disputed the identity of the first respondent in their counter statement, that the Deputy Commissioner of Labour has also failed to see the factum that the first respondent's lorry was the vehicle involved in the loading at the time of accident and the ownership of the first respondent remained undisputed all along and that the Deputy Commissioner of Labour erred in dismissing the claim petitions on the sole ground that the name Ruthrasamy shown in the FIR is not the first respondent and as such, there was no employer-employees relationship between them.

13. The following substantial question of law framed at the time of admission:

1. *Whether the reasoning of the Deputy Commissioner of Labour; dismissing the claim petition is contrary to the evidence on record?*



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14. On perusing of the records and on considering the submissions made on either side, the following additional substantial questions of law is framed;

1. Whether the Deputy Commissioner erred in dismissing the claim petitions on the ground that Ruthrasamy shown in the FIR and the first respondent are different persons and as such, there existed no relationship of employer-employees between the first respondent and the appellants, despite showing that one of the appellants while lodging the FIR has committed a mistake in giving the name of Ruthrasamy instead of Uthirasamy and that when the identity of the first respondent was not at all disputed by the second respondent all along?

15. As already pointed out, in the claim petitions, the appellants, while narrating the mode of accident have simply stated that while they were loading the wooden logs on the road side, the accident had occurred and they have not pleaded anything as to how the accident had occurred. But, as already pointed out, one of the appellants Nagendran @ Francis has preferred the police complaint and on that basis, FIR came to be registered. The said Nagendran @ Francis, in his evidence before the Deputy Commissioner of Labour, would specifically admit that he alone



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has preferred the complaint and on that basis, FIR was registered. In Ex.P.1-complaint, he has narrated the mode of accident and the same is extracted hereunder for better appreciation;

□நான் என் குடும்பத்துடன் புளியம்பட்டி அகதிகள் முகாமில் குடியிருக்கிறேன். நானும் எங்கள் ஊர்க்காரர்கள் 15 பேர்கள் கரூர், கோவையோடு, அகலப்படுத்தப்படுவதால் மரம் வெட்ட காண்டிராக்ட் எடுத்துள்ள ருத்ரசாமி அவர்களிடம் வேலை செய்து வருகிறோம். நேற்று 18.10.2006ம் தேதி இரவு சுமார் 8 □ மணிக்கு காங்கயம் to கோவை செல்லும் கிழக்கு மேற்கு ரோட்டில் காதையூர்க்கு ஹைவே கோண்களை வைத்து லோடு ஏற்றிக் கொண்டிருந்தோம். அப்போது கிழக்கில் இருந்து மேற்கே அதிகவேகமாகவும், கவனக்குறைவாகவும் வந்த ஆட்டோ TN 33 B 4258 என்மீதும் என்னுடன் வேலை செய்து கொண்டிருந்த கேதீவைரன், செல்லா ஆகிய மூவரின் மீதும் மோதி தள்ளிவிட்டு நாங்கள் லோடு ஏற்றிக் கொண்டிருந்த மேற்படி லாரி TN 27 F 0095ன் பின்புறம் வலது பக்க மூலையில் மோதி கவிழ்ந்து விட்டது. ஆட்டோ ஓட்டுனர் ஆட்டோவில் இருந்து வெளியே வந்து கிழக்கே ஓடிவிட்டார். ஆட்டோ மோதியதில் எனக்கு வலது தோள்பட்டையில் மொக்கை அடியும், வலது முழங்காலிலும், வலது முன்கையிலும் ரத்த காயம் ஆனது. செல்வாவுக்கு தலையில் ரத்த காயங்களும், வலது தோள்பட்டையில் மொக்கை அடியும் ஏற்பட்டது. கேதீஸ்வரனுக்கு இடது தொடையில் மொக்கைக் காயம் ஆனது. எங்களுடன் வேலை செய்த கோடிச்சந்திரன், மோகன் ஆகியோர் ஒருபோக்கு காரில் திவ்யா மருத்துவமனை காங்கேயம் கொண்டு வந்து எங்களை பெட்டில் சேர்த்தார்கள்.



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நாங்கள் சுவரும் உள்நோயாளியாக சிகிச்சை பெற்று வருகிறோம்.□

16. In cross-examination, the said Nagendran @ Francis would deny that the accident had happened by dashing of the auto and would reiterate that the accident was occurred only due to the dashing of the lorry. Even in the claim petitions, the appellants have alleged that they were loading the wooden logs in the parked lorry. As rightly contented by the learned counsel appearing for the second respondent, all the appellants have suppressed the real accident and pleaded the mode of accident to suit their case.

17. The main defence of the second respondent is that the appellants were working under one contractor Ruthrasamy, who had taken the road side tree cutting contract and that when the appellants, after cutting the trees, were loading the wooden logs in the lorry at the time of accident, the appellants were not the employees of the first respondent and that since there existed no relationship of employer and employees between the first respondent and the appellants, the second respondent cannot be made liable. As already pointed out, in the FIR, it has been specifically stated that the appellants were working under the contractor Ruthrasamy.



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18. The appellant Nagendran @ Francis in his cross-examination would say,

□சம்பவ சமயம் நானும் மற்றும் 15 நபர்களும் ருத்ரசாமி என்ற மரம் வெட்டும் காண்ட்ராக்டரிடம் வேலை பார்த்தோம் என்றால் சரியல்ல. 5 பேர் வேலை பார்த்தோம். போலீசில் புகார் கொடுத்ததில் நானும், 15 பேர்களும் வேலை பார்த்தோம் என்றுதான் கூறியுள்ளேன் என்றால் 5 பேர் தான் வேலை பார்த்தோம்.□

19. The appellant Kaetheeswaran in his cross-examination would specifically admit that he was working as a load man under the tree cutting contractor Ruthrasamy and the relevant portion is extracted hereunder;

□ருத்ரசாமி என்ற மரம் வெட்டும் காண்ட்ராக்டரிடம் லோடுமேனாக வேலை பார்த்தேன். முதல் தகவல் அறிக்கையின்படி நானும், 15 நபர்களும் ருத்ரசாமி என்ற மரம் வெட்டும் காண்ட்ராக்டரிடம் வேலை பார்த்ததாக குறிப்பிடப்பட்டுள்ளது என்றால் லோடுமேனாகத்தான் வேலை பார்த்தேன்.□

20. The other appellant in C.M.A.(MD)No.1367 of 2009 Chella @ Yesudhasan in his cross-examination would say,

□ருத்ரசாமி என்ற மரம் வெட்டும் காண்ட்ராக்டரிடம் வேலை



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பார்த்தீர்களா என்றால் இல்லை. லோடுமேனாகத்தான் வேலை பார்த்தேன். முதல் தகவல் அறிக்கையின்படி, நானும், 15 பேர்களும் ருத்ரசாமி என்ற மரம் வெட்டும் காண்டராக்டரிடம் வேலை பார்த்ததாக குறிப்பிடப்பட்டுள்ளது என்றால் சரியல்ல.□

21. All the appellants in their cross-examination would say that they were working under the first respondent at the time of accident and that they have not produced any records to show that they were working under the first respondent and were receiving salary from him. The appellants in C.M.A.(MD)Nos.1367 and 1368 of 2009 in their further cross-examination would specifically say that they have not produced any records to show that they were working under the first respondent at the time of accident.

22. No doubt, the appellants have produced the copies of the Registration Certificate, permit, insurance policy and M.V. Report. In the claim petitions, the first respondent has been shown as Uthirasamy, S/o.Chellappa Gounder. It is not in dispute that the first respondent is the owner of the lorry bearing Registration No.TN-27-F-0095 and the same was insured with the second respondent and that the insurance policy was in force on on the date of accident.



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23. As rightly contented by the learned counsel appearing for the second respondent, after the dismissal of the claim petitions, the appellants before this Court have canvassed a new version that since they were the Srilankan refugees, due to the slang pronunciation of Tamil, the name of the first respondent Uthirasamy has been wrongly indicated as Ruthrasamy in the FIR. To put it in other way, according to the appellants, Ruthrasamy shown in the FIR and Uthirasamy shown as first respondent in the claim petitions are one and same person. But admittedly, the appellants have not produced any iota of evidence. Though the appellants have specifically alleged that they were working under the first respondent, they have not produced any material or evidence to substantiate the same. As already pointed out, the appellants have specifically admitted that they have not produced any records to show that they were working under the first respondent. As already pointed out, the first respondent had remained *ex parte*. The appellants have not chosen to examine the first respondent nor summon the records from the first respondent to show that the appellants were engaged by the first respondent and salary was being paid by him.



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24. Considering the above, as rightly observed by the Deputy Commissioner of Labour, the appellants have miserably failed to prove that they were not working under Ruthrasamy for cutting the road side trees and that they were working as load men in the first respondent's lorry. Hence, the impugned orders dismissing the claim petitions cannot be found fault with and this Court concludes that the appeals are devoid of merits and the same are liable to be dismissed.

25. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

26. In the result, these Civil Miscellaneous Appeals are dismissed and the impugned orders dated 28.05.2009 passed in W.C.Nos.147, 150 and 148 of 2007 shall stand confirmed. Parties are directed to bear their own costs.

30.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
csm



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To:

1. The Deputy Commissioner of Labour,
Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

esm

Pre-Delivery Order made in
C.M.A.(MD)Nos.1367, 1368 and 1369 of 2009

Dated :30.11.2023