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CMA.(MD)No.404 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 404 of 2022

and

CMP (MD) NO. 3583 of 2022

- 1.The Assistant Engineer,
Operation and Maintenance,
Nilakottai Town section,
Nilakottai, Dindigul District.
- 2.The Superintendent Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Dindigul. : Appellants/Respondents

Vs.

- 1.S.Thangavel
- 2.Tmt.T.Thayammal : Respondents/Petitioner

PRAYER:-Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, 1923, against the order of the Deputy Commissioner of Labour, Dindigul in EC No.25 of 2021, dated 30/12/2021.

For Appellants : Mr.B.Ramanathan

For Respondents : Mr.K.C.Maniyarasu

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 30/12/2021 passed in EC No.25 of 2021 by the Deputy Commissioner of Labour, Dindigul.



2. The facts in brief:-

The deceased Prabakaran was working as temporary employee under the first respondent herein for about 2 years. On 08/06/2020 at about 04.00 pm, he was informed that there was power cut in Kamatchipuram area, Nilakottai. As per the instructions and order of the first appellant herein, he attended the work. At that time, he suffered electrocution and taken to the Government Hospital, Nilakottai. Thereafter to the Government Hospital, Dindigul and after that to the Rajaji Government Hospital, Madurai. But he died on 11/06/2020 without responding to the treatment.

3.A case in Crime No.386 of 2020 was registered by the Nilakottai Police for the offence under section 174 Cr.P.C. Seeking compensation of Rs.15,88,425/-, a claim petition was filed before the Deputy Commissioner of Labour, Dindigul.

4.That was resisted by the appellants herein stating that there was no relationship between the deceased and themselves as employee and employer; No work was assigned to him; He did not attend the work as per the direction of the first appellant herein; He voluntarily attended the work and sustained injuries.



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5.Before the Commissioner, on the side of the claimants, one witness was examined and 6 documents were marked. On the side of the appellants herein, one witness was examined and one document was marked.

6.At the conclusion of the enquiry process, the Commissioner recorded a finding that the deceased was working as temporary employee. Since it is a temporary employment and the fatal accident occurred during the course employment, the appellants were directed to pay the compensation.

7.Regarding the compensation, the age of the deceased was fixed at 28 and factor 211.79 was adopted and his the monthly income was taken as Rs.9,955/-. The calculation was made as under:-

Age	- 28
Factor	- 211.79
Monthly salary	- Rs.9,955/-
Compensation	- $50/100 \times \text{Rs.9,955} \times 211.79$ = Rs.10,54,185/-

and directed the appellants herein to pay the entire amount.



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8. Against which, this appeal is preferred by the appellants.

9. Heard both sides.

10. At the time of admission, the following questions of laws are framed:-

(1) Whether the findings of the learned Deputy Commissioner of Labour is sustainable as per Section 3 of the Employee's Compensation Act, 1923, by holding that there was an employer and employee relationship between the appellants and the deceased?

(2) whether the learned Commissioner has not committed an error in describing Ex.R1-Work Allotment Sheet, wherein, the deceased was not working as stated in the petition?

11. Since the accident and the consequential death is not disputed, we can straightaway go to the evidence on record as to see whether there was any relationship as employer and employee between the deceased and the appellants herein.



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12.As mentioned in the preamble portion, the appellants denied the relationship. So, it is the primary duty of the claimants to probabilize their case by bringing on record the sufficient materials.

13.It is a case of the claimants herein that Prabakaran was working as temporary employee and no appointment order can be expected from the claimants. It is the duty of the employer to produce the temporary employees register.

14.As mentioned by the Commissioner, only permanent employees register is produced and the allotment of the duty chart by the appellants. But no temporary employees register is produced. The reason for non-production of the temporary employees register is not explained by the appellants herein.

15.It is admitted by the appellants themselves that on the particular day, there was power cut in that village. So, adverse interference was drawn against the appellants by the Commissioner. The relevant finding can be extracted herein for better appreciation:-

எதிர்மனுதாரர்கள் தரப்பில் தாக்கல்
செய்யப்பட்டுள்ள எ.மா.சா.ஆ.1 பணி ஒதுக்கீடு
நகலினை பரிசீலனை செய்ததில்



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எதிர்மனுதாரர்களின் நிரந்தரப்பணியாளர்களின்
விவரம் மட்டும் தான் குறிப்பிடப்பட்டுள்ளது.
தற்காலிகப் பணியாளர்கள் பற்றியோ,
ஒப்பந்தப்பணியாளர்கள் பற்றிய விவரமோ
குறிப்பிடவில்லை. மேற்படி ஆவணத்தை மட்டும்
வைத்துக்கொண்டு இறந்து போன பிரபாகரன்
விபத்து சமயத்தில் எதிர்மனுதாரர்களின் கீழ்
பணிபுரியவில்லை எனக் கருத இயலாது.

16.The Commissioner relied on the contents of Ex.B1-FIR to arrive at a conclusion that the deceased was working as temporary employee under the appellants.

17.The informant is one Thangavel. In his complaint, he has stated that he is the father of the deceased Prabhakaran. Prabakaran was unmarried and for about two years, he was working in TNEB, Nilakottai Town branch as temporary employee. At about 04.00 pm, on 08/06/2020, he received an information that there was power cut in Kamatchipuram area. As per the order of the officials, he went to the place and attending the work. At that time, accidental electrocution. He suffered electrocution. He was not present in the place of occurrence. On the information of the neighbours only, he went to the hospital.



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18.As mentioned above, the occurrence said to have taken place on 08/06/2020 at about 04.00 pm. The complaint was lodged on 12/06/2020. It is the earliest statement available on record. There was no occasion or reason for the claimants to say that Prabakaran was working as temporary employee under the first appellant. In the absence of any concrete documentary evidence on the side of the claimants, the earliest statement can be and should be relied. So, the case of the claimants can be accepted in the absence of any documentary evidence. So, the conclusion reached by the Commissioner and on that drawing adverse inference against the appellants cannot be found fault. So, that portion of the finding requires no interference.

19.On the side of the appellants, RW1 was examined and there is total denial of the relationship between the deceased and the Department. He has stated in his evidence that one Ramesh was the Wire-man appointed for that particular area. But that person was not examined as a witness on the side of the appellants. Why he was not examined is not explained by the appellants herein. What was happening in the particular area only the Wireman knows. In the absence of any direct evidence on the side of the appellants over the repair work, naturally as



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observed by the Commissioner, adverse inference has to be drawn. It has been rightly drawn by the Commissioner.

20.Regarding the compensation, no argument was advanced, it was reasonably fixed by taking into account the age and monthly income. So, that portion of assessment of compensation also requires no interference.

21.So, I find no reason to interfere into the order passed by the Commissioner.

22.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

29/07/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Deputy Commissioner of Labour,
Dindigul.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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