

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

CMA.No.114 of 2010

The Senior Manager,
Lawson Tea Division,
Tamil Nadu Tea Plantation
Corporation Ltd.,
Cincona Post, Valparai Taluk. ... Appellant

Versus

Mrs.Visalakshi,
W/o.N.Bhaskaran (Late), I.C.No.142,
C/o.Sri J.Lawrence,
General Secretary,
Tamil Nadu Anna Plantation Workers' Union,
J.J.Hotel Complex, Near Market,
Valparai-642 127. ... Respondent

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour) Coimbatore dated 19.11.2009 in W.C.No.17 of 2006.

For Appellant : Ms.G.Dhana Madhri
For Respondent : Mr.S.Saravanan

JUDGMENT

The present appeal is directed against the order passed in W.C.No.17 of 2006 on 19.11.2009 by the Deputy Commissioner of Labour, Coimbatore, fixing a sum of Rs.1,64,146/- with 12% interest per annum payable to Tmt.Visalakshi, wife of the deceased N.Bhaskaran, who died by the attack of wild Bison, when he was going to collect fallen dry wood sticks for firewood purpose from his quarters situated inside the plantation area. The deceased N.Bhaskaran, bearing I.C.No.142, was employed by the appellant as a permanent workman. He was also provided with free labour quarters for accommodation with his family as per the provision of Plantation Labour Act 1951 and the Rules framed thereunder. Since the entire area of tea cultivation and the

connected buildings are belonging to the forest department, the house provided to the deceased workman namely N.Bhaskaran, was also in the plantation area.

2. It is stated in the claim petition that it has been a regular requirement for the inmate workmen accommodated in the houses situated in reserve forest to walk through the said forest to reach roads and also to proceed for seeking medical treatments in Estate hospital and to go for day to day shopping and to collect fallen dry sticks for firewood purpose. While so, the deceased workman had gone out from his allotted quarters at 10.00 A.M. on 26.7.2004 for collecting fallen dry sticks for firewood purpose and for purchase of provisions from shops nearby main road. It was further averred in the claim petition that the house allotted to the deceased workman was nearby reserve forest. Therefore, it was inevitable for him to walk through the forest area and he had to walk through forest to meet his essential needs. Had the deceased workman and his family been in the house provided away from the reserve forest area, the workman would not have been constrained to walk through the forest. Since, the house was provided to the deceased workman in the reserve forest area and is being visited by the wild animals, when the deceased was going out to collect dry fallen sticks for firewood purpose, he was attacked by a Bison at about 12.00 Noon on 26.7.2004 and succumbed to the injuries.

3. The deceased was a bread winner and his wife, Tmt.Visalakshi and two minor children namely, Selvi, Nishandhini and Selvan Nishandan are dependents. The claimant approached the Additional Commissioner for Workmen's Compensation, Coimbatore and raised the claim for a sum of Rs.1,81,187.28/- on the basis of monthly wages received by the deceased workmen, citing that the deceased was aged about 45 years at the time of his death.

4. A detailed counter affidavit was filed. The appellant raised various objections and took the plea that the deceased N.Bhaskaran having died not during the course of employment, as he was living in his quarters located outside the plantation area, the death cannot be construed as a death occurred during the course of employment. It is also disputed by the appellant with regard to the wages received by the workman, by stating that the monthly wage of the deceased workman was at the rate of Rs.1908/- per month, whereas, in the claim petition, it has been wrongly mentioned that the deceased workman was receiving monthly wage of Rs.2138.66/- (daily wage @ Rs.74.62/- X 26 days + 8.33 percent bonus Rs.157.27 + gratuity accommodation per month Rs.93.27/-). Fairly it was also pleaded by the respondent before the authority under the Workmen's Compensation Act that the claimants were dependents of the deceased Bhaskaran and the claim arrived at has to be rejected.

5. Considering the case of both sides, the Commissioner under the Workmen's Compensation Act, accepting the case of the claimant in the light of the ratio laid down by this Court in the case of Valparai Estate, Valparai (Vs) Smt.Alamelu reported in 2009 (2) LLN 606, held that residing in the residential quarters provided to workers by employer is incidental to employment under the plantation Act and therefore, the accident had taken place out of employment and not by way of his imprudent act. It has further held that employer is liable to pay compensation to the widow of the employee. The learned authority under the Workmen's Compensation Act, has allowed the claim fixing a sum of Rs.1,64,146/- with interest at the rate of 12% per annum from the date of the accident, if the said amount was not paid within 30 days from the date of the receipt of a copy of the order.

6. In the impugned order, the monthly salary of the deceased was fixed at Rs.1908/-. In support of the conclusion, the authority under the workmen's compensation Act has also tried to lend support from one another judgement of the Hon'ble Supreme Court in Usha Breco Mazdoor Sangh (Vs) management of Usha Breco Ltd., and another reported in 2008 (3) LLN 84 holding that the provision of the statute must be construed having regard to the tenor of the terms used by the Parliament and the court must construe the statutory provision with a view to uphold the object and purport of the Parliament.

7. The contention of the appellant herein is that the authority under the Workmen's Compensation Act has wrongly proceeded against the employer placing reliance on the decision in Valparai Estate, Valparai (Vs) Smt.Alamelu reported in 2009 (2) LLN 606 and it is no longer considered as a good law in the light of various judgements of this Court as well as Hon'ble Apex Court, more particularly in the case of Hari Shankar Sharma and others vs. Artificial Limbs Manufacturing Corpn. and others reported in (2002) 1 SCC 337, wherein it has been held that it cannot be said as an absolute proposition of law that whenever in discharge of a statutory mandate, a canteen is set up or other facility is provided by an establishment, the employees of the canteen or such other facility become the employees of that establishment. It would depend on how the obligation is discharged by the establishment. It may be carried out wholly or substantially by the establishment itself or the burden may be delegated to an independent contractor. Where it is left to the discretion of the establishment concerned to discharge its obligation of setting up a canteen either by way of direct recruitment or by employment of a contractor, it cannot be postulated that in the later event, the persons working in the canteen would be the employees of the establishment. Applying the same analogy, the case of the claimant has to be considered.

8. Admittedly the deceased N.Bhaskaran was employed in plantation belonging to the appellant. However, he was given housing accommodation in the quarters belonging to the appellant plantation Corporation. While he was staying in his house, he had gone out to collect fallen dry wood for firewood purpose and while he was collecting the same, he was attacked by a wild bison. Since it has been the admitted case of the claimant that he was attacked during the course of staying in the quarters belonging to the appellant corporation, it has to be construed that the deceased was succumbed to injuries during the course of employment. Further bringing the present case out of the ratio aforementioned in the case Hari Shankar Sharma and others vs. Artificial Limbs Manufacturing Corpn. and others reported in (2002) 1 SCC 337, the learned counsel for the appellant submitted that where it is left to the discretion of the establishment concerned to discharge its obligation like staying in quarters for accommodation either by way of direct recruitment or by employment of a contractor, when the deceased was staying in the quarters belonging to the appellant corporation, the claim made by the respondent ought to have been rejected for the simple reason that the deceased never died during the course of employment.

9. Taking support from another judgement of High Court of Andhrapradesh in Regional Director, Employees' State Insurance Corporation, Hyderabad and others reported in 2003 (3) L.L.N. 176, he further submitted that there is no connection between the cause of death of the employee and his employment as he was a plantation daily wage employee. He also further submitted that in the aforementioned case, a mechanic in the factory died due to electrocution near the bore-well situated and near the residential quarters provided by the factory management and therefore, it was held that there is no connection between the cause of death of the employee and his employment as mechanic in the factory. Hence, he submitted that the aforesaid observation is squarely applicable to the present case which has been completely overlooked by the authority under the Workmen's Compensation Act and therefore, the award of compensation is without jurisdiction.

10. He would further submit that the deceased while staying in the quarters did not attend any duty in respect of his employment, because he was on leave on the crucial date. Therefore, the observation made by the High Court of of Andhrapradesh in Regional Director, Employees' State Insurance Corporation, Hyderabad and others reported in 2003 (3) L.L.N. 176 in paragraph 11, would squarely apply to the present case. Hence the claim petition deserves to be rejected. For the same proposition, he would also refer to yet another judgement in the case of Jyothi Ademma vs. Plant Engineer, Nellore and another reported in (2006) 5 SCC 513.

11. This Court finds it very difficult to accept the above contention for three reasons. Firstly, the deceased N.Baskaran bearing I.C.No.142, was employed by the appellant, secondly he was also allotted with free official quarters belonging to the appellant, which is situated in reserve forest area and thirdly the deceased was employed under the management of the appellant and it was not disputed that he was residing in residential quarters provided to workers by employer as required under the Plantation Act and the entire area of the tea cultivation and the connected buildings are belonging to the forest department.

12. It has been the regular requirement of the inmate workmen accommodated in the houses situated in that area to proceed for medical treatments in Estate hospital and they also used to go for day to day shopping and to collect fallen wood stick for firewood purpose. As such, when the deceased workman had gone out of his allotted quarters on 26.7.2004 for collecting fallen dry sticks for firewood, he was attacked by wild bison at 12.00 noon on 26.7.2004. Had workman been allotted house away from forest, he would not have confined to walk through forest area and he would not have been injured by wild bison at the time of accident and subsequently succumbed to injury. Therefore, when the claim was raised by the wife of the deceased stating that she has to take care of two minor children left out by the deceased bread winner of the family, the authority under the workmen's Act has rightly taken support from the ruling laid down by this Court in the case of Manager, Valparai Estate, Valparai and Smt. Alamelu reported in 2009 (2) L.L.N. 606 involving the question whether the accident that occurred in the course of employment entitling payment of compensation to his legal heirs while residing in residential quarters provided for workers by employer is incidental to employment under Plantation Act. This court answered that the said employer is liable to pay compensation to the widow of the deceased employee. It is relevant to extract paragraphs 7 and 8 of the judgement as under:

"7. As per Section 15 of Plantations Labour Act, 1951, it is incumbent upon every employer to provide and maintain necessary housing accommodation to every worker (including his family) residing in the plantation and outside the plantation who has put in six months of continuous service in such plantation.

8. Section 16A of the Plantation Labour Act, 1951 provides as follows:

" 16A. Liability of employer in respect of accidents resulting from collapse of houses provided by him. -- (1) If death or injury is caused to any worker or a member of his family as result of the

collapse of a house provided under S.15, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity, the employer shall be liable to pay compensation.

13. Mere reading of the above observation, clearly indicates that three things are required to be established by the claimant under the Workmen's Compensation Act. Firstly, there was an accident. Secondly, the accident happened to the employee and thirdly, the accident has been suffered by the deceased in the course of employment. In the present case, admittedly the deceased was staying in the official quarters allotted by the appellant corporation. He met with the accident, while he was staying along with his family. Therefore, it has casual connection of the employment, since the official quarters was given only to the employees of the appellant corporation. It has to be considered that when the deceased had suffered accident in the course of employment, there was a provision in the statute and it must be construed in the light of the conclusion arrived at on the basis of rulings reported in *Uzha Breco Mazdoor Sangh (Vs) Management of Usha Breco Ltd.*, and another reported in 2006 (3) LLN 84.

14. In view of that, this Court does not incline to interfere with the award passed in W.C.No.17 of 2006 on 19.11.2009 by the Deputy Commissioner of Labour, Coimbatore as it is a meager amount. Therefore, the appeal is dismissed. No costs. It is represented that the entire award amount has been deposited and the claimant also withdrew 50% of the award amount. Therefore, the balance deposited award amount is also permitted to be withdrawn by the claimant.

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Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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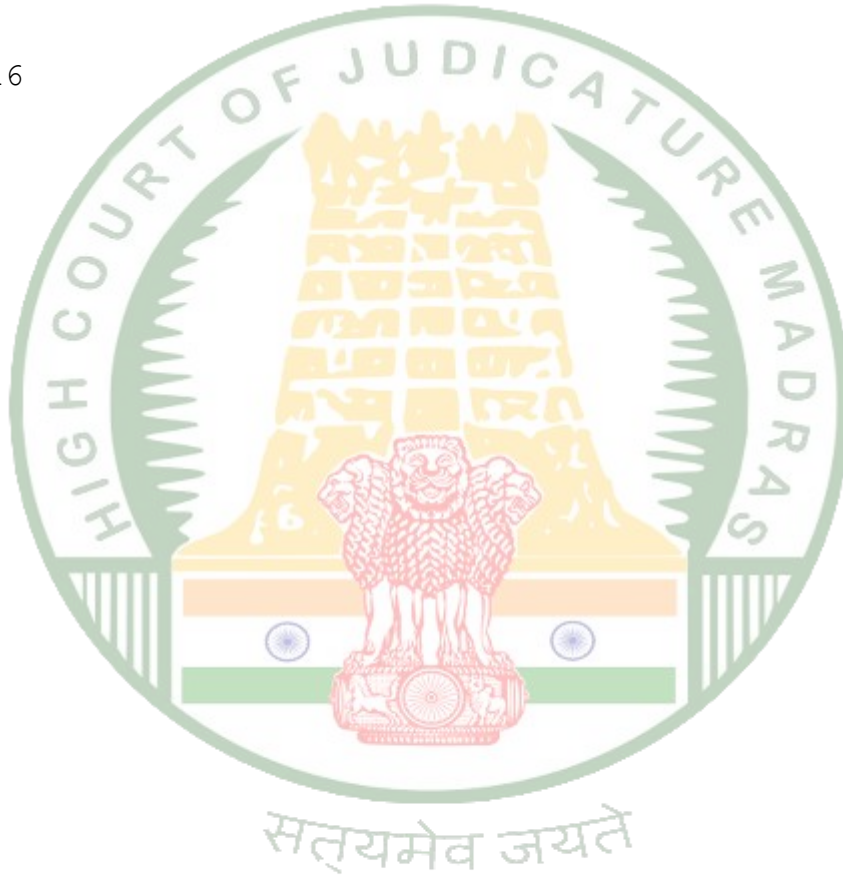
The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour) Coimbatore.18

+ 1 cc to Mr.S. Saravanan, Advocate Sr.63392

+ 1 cc to M/s. T.S. Gopalan & Co., Advocate SR.63301

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