

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-10-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

C.M.A. No. 2780 of 2006

R.S. Prakash

.. Appellant/2nd Respondent

-Versus-

1. P. Shanmugham

2. S. Kalyani

3. A. Mohamad Sathakathullah

Meena Advertisement
No.79, Vasanth Nagar
Jayanagar Extension
Karumandapam
Trichy - 1

.. Respondents 1 to 3/Petitioners/
1st Respondent

Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the Order dated 13.07.2006 passed in W.C. Case No. 130 of 2004 on the file of the Commissioner for Workmen's Compensation, Salem.

For Appellant : Mrs. D. Veda

For Respondents : Ms. Meenakumari for RR1 and 2
No appearance for R3

JUDGMENT

The claimants/respondents 1 and 2 herein are the parents of the deceased Saravanan. They have filed W.C. Case No. 130 of 2004 before the Commissioner for Workmen's Compensation, Salem contending that the first respondent, who is the third respondent in this appeal, is running advertisement agency in the name and style of Meena Advertisement (Audio and Video) and the second respondent in the claim petition, who is the appellant herein, is running a cloth business in the name and style of Balakrishna Store. According to the claimants/respondents 1 and 2, on 25.09.2003, as per the direction and supervision of the appellant herein, the deceased Saravanan was erecting an advertisement board in the premises of the third respondent herein. When he was engaged in welding work, he came into contact with live electric wire, sustained electrical shock and died on the spot. Thus, the deceased died during the course of employment with the

appellant herein. At the time of death, the deceased was aged 26 years and drawing a salary of Rs.5,000/- per month, apart from daily batta of Rs.25/-. According to the claimants/respondents 1 and 2, the third respondent herein is the employer and the appellant is the principle employer of the deceased, hence, both of them are liable to pay compensation to the appellants. On the death of the deceased, the claimants have lost their sole bread winner to support their family. Therefore, the claimants/respondents 1 and 2 herein have filed the claim petition claiming a sum of Rs.5,00,000/- as compensation for the death of the deceased.

2. The appellant, who is the second respondent in the claim petition, has filed a counter affidavit before the Commissioner contending that the deceased was not employed by him. There is no employer-employee relationship between the deceased and the second respondent/appellant herein. The work relating to erection of advertisement board did not take place under the supervision of the second respondent/appellant herein. The second respondent/appellant has requested the second respondent/third respondent herein, to erect an advertisement board in his premises. On 24.09.2003, the appellant was out of station and returned only on 26.09.2003. On his return, the appellant was informed that one of the employees of the third respondent herein, who was engaged in erecting an advertisement board for the appellant in Keezhaiyur, Thirukovilur, died due to electric shock. In such situation, the appellant, to comply with legal formalities, given a complaint to Thirukollur Police Station regarding the death. The appellant is therefore not legally liable or responsible to pay compensation for the death of the deceased. The appellant is not the principal employer, as claimed in the claim petition. Therefore, the appellant prayed for dismissal of the claim petition against him.

3. The claim petition was opposed by the third respondent herein, who is arrayed as first respondent in the claim petition, by filing a counter affidavit. According to the third respondent herein, the deceased was not a workman as defined in Section 2 (a) of the Workmen Compensation Act. The third respondent herein denied the allegation that as per his direction the deceased was setting advertisement board in the shop of the appellant herein and he does not know anything about it. The third respondent used to do business on commission basis and he never employ or employed any one for his business. In such circumstances, the third respondent herein prayed for dismissal of the claim petition against him.

4. The Commissioner for Workmen's Compensation, Salem upon consideration of the oral and documentary evidence concluded that the deceased was employed under the third respondent herein. When he was engaged in his work in setting up of advertisement board in the textile shop of the appellant, he sustained electrical shock and died on the spot.

Therefore, it was concluded that the deceased died during the course of his employment with the appellant and the third respondent herein. As far as compensation is concerned, the Commissioner has concluded that the deceased died at the age of 26 and arrived at a sum of Rs.40,000/- as his yearly salary. By applying multiplier 215.28, the Commissioner awarded a sum of Rs.4,30,560/- as compensation payable to the claimants/respondents 1 and 2 herein by the appellant and the third respondent herein. Aggrieved by the same, the appellant has come up with this appeal.

5. The learned counsel appearing for the appellant would vehemently contend that the alleged incident did not take place in the premises of the appellant. In fact, the deceased and four other employees employed by the third respondent were fixing advertisement board in a premises near "Saravana Textile Shop" which is situate 1 1/2 kilometers away from their place of business. The averment in the claim petition that the deceased and others were engaged in fixing advertisement board in the terrace of the premises of the appellant is factually incorrect. In this context, the learned counsel for the appellant placed reliance on the deposition of PW2 who has deposed that at the relevant time, the deceased and others were engaged in erecting an advertisement board near the premises of Saravana Textile shop (R.S. textile shop) at Keezhaiyur. This portion of the deposition of PW2 was totally ignored by the Commissioner for Workmen Compensation. The learned counsel for the appellant would further contend that the deceased sustained electrical shock while he was engaged in erecting the advertisement board, as per the direction of the third respondent in this appeal and during the course of employment with the third respondent herein. Merely because the appellant has given the complaint to the police regarding the incident, it cannot be construed that he is liable and responsible for the death of the deceased. When the accident did not take place in the premises of the appellant or there was any contract between the deceased and the appellant to erect an advertisement board, the appellant cannot be mulcted with any liability to pay compensation.

6. The learned counsel appearing for the claimants/respondents 1 and 2 would contend that the Commissioner for Workmen's Compensation has appreciated the oral and documentary evidence and held that both the appellant and the third respondent herein are jointly and severally liable to pay the compensation amount to the claimants. Such a conclusion arrived at by the Commissioner is on the basis of oral and documentary evidence and it does not call for any interference by this Court.

7. When this appeal was taken up for hearing on 07.10.2015, there was no representation for the third respondent. Therefore, this appeal was directed to be posted

today for hearing. Even today, there is no representation for the third respondent.

8. I heard the counsel for the appellant as well as the claimants/respondents 1 and 2. I had carefully examined the records made available, including the order passed by the Commissioner for Workmen's Compensation, Salem.

9. The question that arise for determination in this appeal is whether the accident, in which the deceased died due to electric shock, took place in the premises of the appellant. Whether there is any employer-employee relationship between the appellant and the deceased and consequently, whether the appellant can be mulcted with liability to pay compensation to the claimants/respondents 1 and 2.

10. Admittedly, there was an accident took place on 25.09.2003 in which Saravanan, son of the respondents 1 and 2 herein, died due to electric shock. In this connection, a complaint was given by the appellant herein based on the same a case in Crime No. 650 of 2003 was registered by the Thirukollur Police Station under Section 174 of Cr.P.C. In the first information report, the place of occurrence was indicated as Keezhaiyur, Thirukovilur. The address of the appellant was mentioned in the place of complainant as No.21, Bazaar Street, Thirukovilur. Thus, the contention of the appellant that the occurrence took place not in the place of business of the appellant and at Keezhaiyur, Thirukollur where the deceased and others were engaged in erecting an advertisement board near Saravana Textile Shop, as directed by the third respondent, has force.

11. Before the Commissioner for Workmen's compensation, the third respondent has filed a counter affidavit in which he has not specifically denied having employed the deceased or stated anything about the place of occurrence. Even before this Court, the third respondent is not represented by any counsel.

12. The learned counsel for the appellant vehemently relied on the deposition of PW2, Shanmugam, who was employed along with the deceased during the relevant time. It was deposed that PW2, along with the deceased went for erection of an advertisement board near Saravana Textile shop, Keezhaiyur and at that time, the deceased died on sustaining electrical shock. Thus, it is evident from the deposition of PW2 that he along with the deceased were working in a place near Saravana Textile Shop, Keezhaiyur, where the deceased sustained electric shock and died and not in the premises of the appellant at Thirukovilur.

13. The learned counsel for the appellant vehemently contended that even in the counter affidavit filed before the

Commissioner for Workmen's compensation, they have categorically brought out that they have placed an order for erecting an advertisement board with the third respondent and a sum of Rs.60,000/- was paid to the third respondent. However, the third respondent postponed the erection of the advertisement board on the ground that their men are employed in Keezhaiyur in connection with erection of an advertisement board for another company and only thereafter, they will be in a position to honour the work of the appellant. Thus, it is evident that as directed by the third respondent, the deceased and others were engaged in erecting an advertisement board at Keezhaiyur, Thirukollur where the deceased died on sustaining electric shock. This averment of the appellant is supported by the deposition of PW2, who has stated that they were engaged in erection of an advertisement board during the relevant period in a place near Saravana Textile shop. However, this portion of the deposition of PW2 has not been taken note of by the Commissioner for Workmen's compensation while awarding compensation for the death of the deceased. Therefore, it has to be held that the deceased and others were employed by the third respondent for erecting an advertisement board at Keezhaiyur, Thirukollur and the deceased was erecting the advertisement board at the instruction of the third respondent. The Commissioner for Workmen's Compensation has totally ignored the oral evidence of PW2 while passing the award in favour of the claimants/respondents 1 and 2 herein.

14. In view of the above, I hold that the deceased died due to shock injuries not at the place of business of the appellant. I also hold that the deceased was employed only by the third respondent to erect an advertisement Board during the relevant period at Keezhaiyur, Thirukollur where he sustained electric shock and died. There was no employer-employee relationship between the deceased and the appellant herein and therefore, the appellant cannot be mulcted with any liability to pay compensation amount, as awarded by the Commissioner for Workmen's Compensation, Salem. It is the third respondent, who is liable to pay the compensation amount determined by the Commissioner for Workmen's Compensation, Salem to the claimants/respondents 1 and 2. Accordingly, the questions raised for consideration in this appeal are answered in favour of the appellant.

15. In the result, the Order dated 13.07.2006 passed in W.C. Case No. 130 of 2004 on the file of the Commissioner for Workmen's Compensation, Salem in so far as it fastens liability on the appellant is set aside. No costs.

rsh

Sd/-

Asst.Registrar

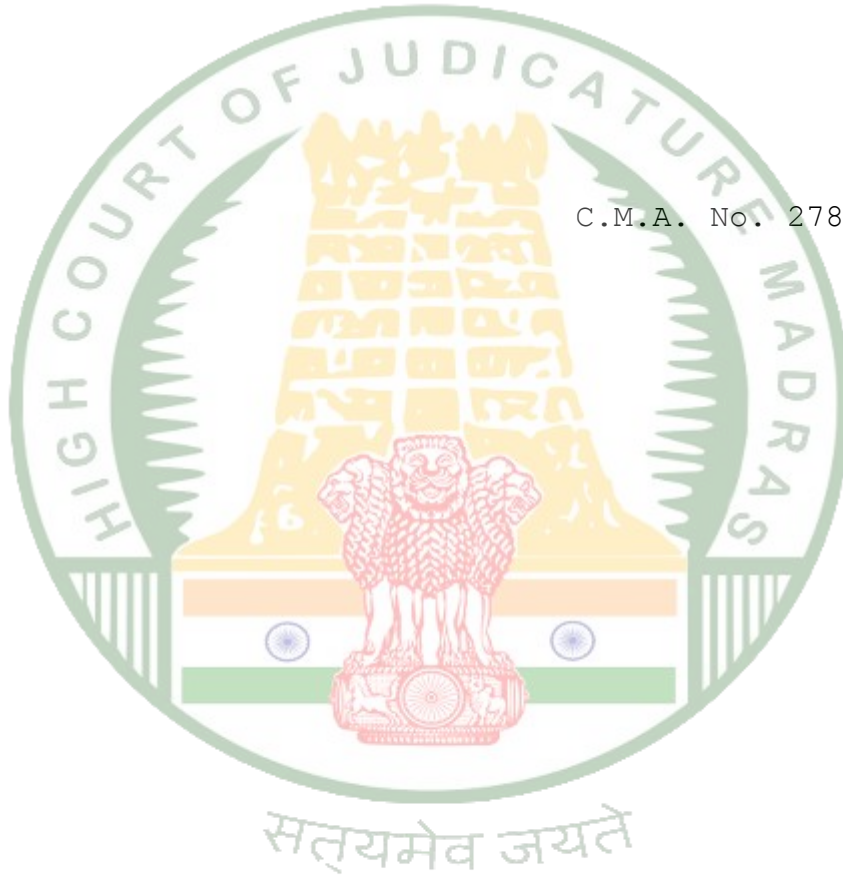
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To

1. The Commissioner for Workmen's Compensation
Salem.
 2. The Section Officer, V.R.Section, High Court, Mds.
- + 1 cc to M/s. Meenakshi Sundaram, Advocate Sr 56867.
- + 1 cc to Mr.D.Balachandran, Advocate Sr 56550.

PVR/CO
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