

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A.No.2334 of 2004

Tata Communications Limited
No.5, Swami Sivananda Salai
Chennai-2. ... Appellant/3rd respondent
(amended vide order of this Court
dated 03.09.2015 made in CMP.No.454 of 2015
in CMA.No.2334 of 2004)

Vs.

1.Gowri
2.Saravanan ... Respondents 1 and 2/Applicants
3.K.Rajanbabu ... 3rd Respondent/1st Respondent
4.Veeramani ... 4th Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to call for records on the file of the Commissioner for Workmen's Compensation-I, Chennai-6 relating to W.C.No.187/99 and set aside the order dated 09.03.2004 made in W.C.No.187/99.

For Appellant : Mr.C.Mohan for
M/S.King and Partridge
For R3 : Mr.V.Krishnamoorthy
R1 and R2 : No appearance

JUDGMENT

For the sake of convenience, the parties are referred to as per their rank before the Commissioner for Workmen's Compensation.

2.The third respondent/appellant has filed this appeal against the award of total compensation of Rs.95,482/- and apportionment of 50% of the award amount on the third respondent-Principal employer of the victim of the fatal accident. The claimants are widow and son of one Srinivasan, who was one of the workers employed by the Supervisor of the first respondent-Contractor for doing interior decoration work in the premises belonging to the third respondent company. The said Srinivasan in the course of his employment died in the working spot and he left behind his wife and son as his legal heirs. In the claim petition filed by the claimants, the respondents 2 and 3, immediate employer and Principal employer denied the employer and employee

relationship with the deceased and further denied the factum of the accident in the course of the employment. However, the Commissioner for Workmen's Compensation rejected their denial on the basis of the oral and documentary evidence adduced before the same. The Commissioner for Workmen's Compensation further found the deceased was aged 47 years and was earning Rs.75/- per day and fixed his monthly income for the purpose of determining the compensation as Rs.1171.85 and adopted the factor 163.07 and determined the compensation as Rs.95,482/- and the same was apportioned between the second respondent/Immediate employer and third respondent/Principal employer. Aggrieved against the same is the present appeal by the third respondent/Principal employer. The second respondent/immediate employer did not challenge the award passed against him.

3. Heard the learned counsel for the appellant as well as the learned counsel for the third respondent herein and perused the records.

4. The main grievance raised herein by the learned standing counsel for the appellant is that by virtue of Section 12 of Workmen's Compensation Act, the Principal employer is entitled to recover the amount paid by him by way of compensation from the immediate employer-contractor, as such the failure of the learned Commissioner for Workmen's Compensation in not recognising such right of the Principal employer in his order renders the same legally unsustainable. The learned counsel for the appellant has in support of his contention drawn the attention of this Court under the relevant provisions of Sections 12(1) and (2) of the Employees Compensation Act, 1923, which is extracted hereunder:

"12. Contracting

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contract with any other person (hereinafter in this section referred to as the contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any (employee) employed in the execution of the work any compensation which he would have been liable to pay if that (employee) had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the (employee) under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the [employee] could have recovered

compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner. "

5.The plain reading of the above provisions of law would no doubt support the claim made by the appellant herein and it also fortifies the contention raised on their side that in the event of the Commissioner for Workmen's Compensation coming to a conclusion that the employee is entitled to get compensation for the death or injury caused in the course of his employment, the liability ought to have been fastened on the immediate employer or the liability fastened on the principal employer ought to have been made subject to their rights to recover the same from the immediate employer. That being the legal position, this Court is inclined to modify the impugned award to that extent. As there is no ground made out against the quantum of compensation awarded herein, the same is not interfered with.

6.In the result, the impugned award is confirmed and the third respondent/appellant is directed to pay 50% of the total compensation with right given to him to recover the same from the second respondent-immediate employer by taking appropriate proceedings in the manner known to law. The amount already deposited by the appellant is permitted to be withdrawn by the claimants in equal proportions by filing due application. The Civil Miscellaneous Appeal is accordingly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(J)
dt:29/09/2015

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner for Workmen's Compensation-I
Chennai-6.

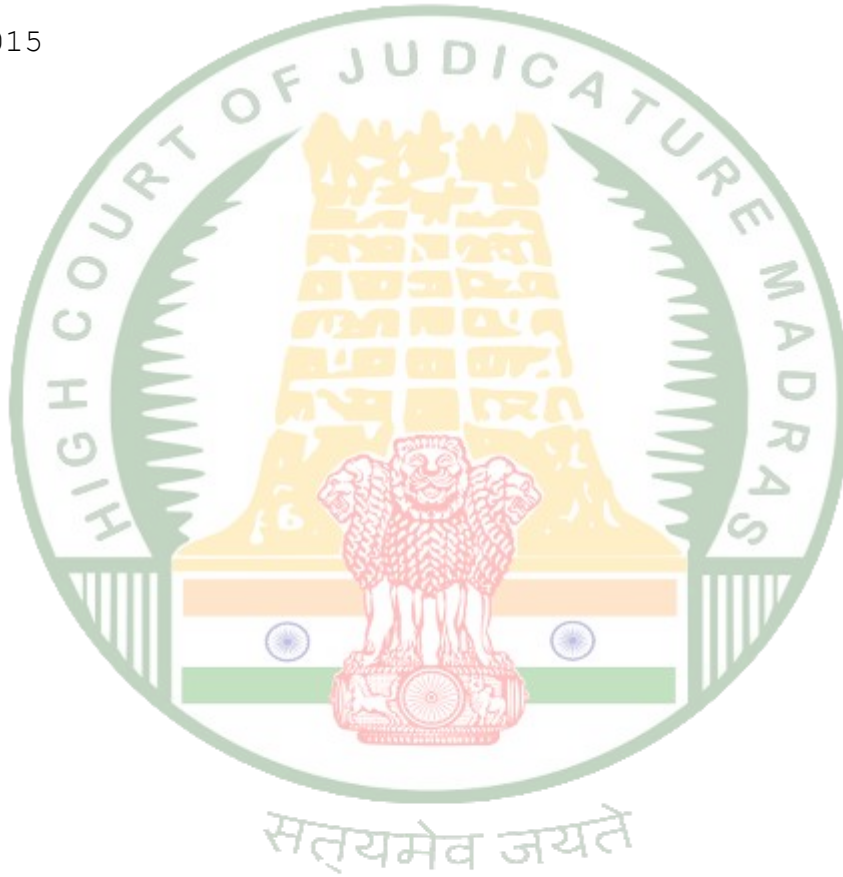
2.The Record Keeper, V.R.Section, High Court, Chennai.

+1 cc to Mr.V.Krishnamoorthy Advocate sr.48218

+1 cc to M/S.King & Partridge, Advocate sr.47540

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