

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2015

CORAM :

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

C.M.A. No. 5 of 2004

and

C.M.P. No.34 of 2004

K.T.Padmanaban
Ravi Murugan Constructions,
1-A, Ravimurugan Apartments,
229, 5th Street, K.K.Pudur,
Coimbatore-38 ... Appellant/Respondent

vs.

C.Palani ... Respondent/Appellant

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, 1923, against the order of the Deputy Commissioner of Labour, Coimbatore, Authority under W.C. Act, 1923, dated 30.04.2003 in W.C.No.57 of 2002 and the same is liable to be set aside.

For appellant : Mr. M. Rajendran
For respondents : Mr. MA. P. Thangavel

JUDGMENT

The respondent in the claim petition is the appellant herein.

2. The appeal is filed against the award of compensation of Rs.2,50,270/- to the injured claimant, who sustained injuries in the accident occurred in the course of his employment, under the appellant company. The Deputy Commissioner of Labour, on the basis of the oral and documentary evidence adduced on both sides, found that the opposite party is engaged in building construction work and the claimant was employed under the opposite party as Coolie on daily wages of Rs.100/- per day including shelter. On the fateful day, the employee met with the accident, while operating the cement mixture machine and his right hand got struck in the machine and all his 5 fingers got crushed and he lost his 5 fingers and as the accident

occurred only during the course of his employment, he is entitled to get compensation from the employer. The Authority below further found that the injured was getting a salary of Rs.3182.10 [at the rate of Rs.106.06 per day] and the injured was 24 years old on the date of accident and the permanent disability sustained by him is 60% and accordingly determined the compensation in the manner prescribed under law and awarded Rs.2,50,270/- as compensation. Aggrieved against the same is the present Civil Miscellaneous Appeal by the respondent/ employer. The Civil Miscellaneous Appeal is admitted on the following substantial question of law :

'Whether the award of compensation without any proof for proving the status of the claimant as 'workman', as defined under the Act, is legally sustainable ? '

At the time of argument, the additional substantial question of law arise for consideration in this Civil Miscellaneous Appeal is,

'Whether the Civil Miscellaneous Appeal is maintainable for want of compliance of III Proviso to Section 30(1) of the Act? '

3. Before going into the main issue on facts the first aspect to be considered in the issue, relating to maintainability of this appeal as raised by the claimant, for want of compliance of Third proviso to Section 30(1) of the Workmen's Compensation Act, 1923, by enclosing along with the Memorandum of Appeal, a certificate issued by the Commissioner for appeal, that the appellant has deposited with him the amount payable under the order, on appeal. The learned counsel for the respondent claimant has also drawn the attention of this Court to the relevant provision of law, which makes it clear that no appeal by an employer against the order awarding lump sum compensation shall lie unless the Memorandum of Appeal is accompanied by the certificate of the Commissioner that the appellant has deposited with him the amount ordered to be payable by him. In this case, admittedly, no such deposit was made and no such certificate was enclosed along with the Memorandum of Appeal. As a matter of fact, the value of the Civil Miscellaneous Appeal, in the Memorandum of Grounds, is mentioned as "incapable of valuation", which is totally incorrect. The value of the Civil Miscellaneous Appeal is the value of the impugned award and the same is mentioned as incapable of valuation, only to escape the liability of complying with the Third proviso to Section 30(1) of the Act. The learned counsel for the respondent has, at this juncture, cited the judgment of the learned Single Judge in Oriental Insurance Co. Ltd., vs. R. Mahalingam, reported in 2012 (2) TN MAC 750, wherein the learned Single Judge has, in paragraph 10 has referred to the non-compliance of the mandatory requirement

under Third Proviso to Section 30(1) of the Act and has, in paragraph 21, held the appeal filed by the Insurance Company, for such non-compliance to be not maintainable.

4. The same view is closely applicable to the facts of the present case. Though the learned counsel for the appellant would attempt to place an argument that the appellant had the benefit of interim stay, on condition to pay 50% of the award amount, such argument is not sustainable herein in view of the statutory requirement laid down under Third Proviso to Section 30(1) of the Act, and on the failure to comply with the mandatory requirement under the Act, the Appeal is to be necessarily held not maintainable.

5. On merits the main ground on which the Award impugned herein, by the appellant, is that the injured claimant was not a 'workman' as defined under Section 2(1)(n)(ii) of the Workmen Compensation Act and he is not covered under Clause (viii) of Schedule II of the same Act. For better understanding the relevant provision of law under Section 2(1)(n) (ii) and clause (viii) of Schedule II of the Workmen Compensation Act are reproduced herein:

'Section 2 (1) (n) "workman"
means any person who is—

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.'

Schedule II LIST OF PERSONS WHO,
SUBJECT TO THE PROVISIONS OF SECTION 2 (1) (n),
ARE INCLUDED IN THE DEFINITION OF WORKMEN --The
following persons are workmen within the meaning
of section 2 (1) (n) and subject to the
provisions of that section, that is to say, any
person who is —

clause (viii) employed in the construction,
maintenance, repair or demolition of —

(a) any building which is designed to be or
is or has been more than one storey in height
above the ground or twelve feet or more from the
ground level to the apex of the roof; or

6. It is contended before this Court by the learned counsel for the appellant that the injured was, at the time of accident, not engaged in the construction of any building, which has more than one storey in height above the ground or twelve feet or more from the ground level to the apex of the roof, as such he is not a workman as defined under the Act. The learned counsel for the appellant also cited the decision of the learned Single Judge of Madhya Pradesh High Court at Indore Bench, reported in 1993 III LLJ High Court, MP p. 1993, Mahendra Kumar and Anr. vs. Mool Chand in support of his contention. It is true that in the case decided by the Madhya Pradesh High Court, the impugned award of compensation was set aside, for want of proof of the essential ingredients bringing the applicant within the category of workman. The High Court arrived at a conclusion for want of any evidence to show, that house was being constructed beyond 12 feet in height and has more than one storey, as such the respondent/ applicant therein, is held to be not covered under the definition of "workman" under the Workmen's Compensation Act. This Court is not inclined to apply the same view expressed by the learned Brother Judge of Madhya Pradesh High Court to the facts of the present case.

7. Admittedly, the claimant was injured in the course of his employment under the opposite party, who was admittedly engaged in the business of building construction. The accident also happened while the claimant was operating the Cement Mixer Machine and such work is admittedly only in connection with the construction work. In so far as the nature of construction is concerned, the same is well within the knowledge of the builder who has the necessary documents such as building plan, approval etc. and the builder could have easily proved by producing the relevant documents, the nature of building under construction, whether it is above 12 feet height or has more than one storey etc. No such specific case is put forth in the counter filed by the opposite party. The claimant in paragraph 3 of the Claim Petition has stated that the opposite party has engaged in construction of Apartments in the Town. The opposite party, in the counter, except stating that the claimant has not been employed in any such capacity as stated in Schedule II has not raised any specific objection regarding the nature and height of the building. RW-1 examined on the side of the opposite party also has not deposed anything to that effect. Further, the opposite party has stated in Ex.A4 - reply notice dated 03.01.2002 that the claimant was engaged in cleaning work pertaining to a house building construction work held at Nanjappa Nagar (Near Boat House), Trichy Road, Coimbatore, which goes without saying that the same would be more than 12 ft. height. On his failure to do so, the opposite party cannot be permitted to raise any plea for the first time before this Court, denying the nature of the building under construction at the time of the accident. As such, the statement of the

appellant that the claimant was not engaged in any work for the construction of such building, covered under clause (viii) of Schedule II and Section 2 (1)(n) (ii) and he is not a workman as defined under the Act, deserves no merit and acceptance.

8. Both the substantial questions of law are accordingly answered against the appellant.

9. In the result, the Civil Miscellaneous Appeal stands dismissed. The appellant is directed to deposit the entire amount of compensation, with interest at 12% per annum, on completion of 30 days from the date of accident till the date of deposit, deducting the amount already deposited. On such deposit, the respondent claimant is permitted to withdraw the entire amount so deposited. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-

Assistant Registrar(CO)

dt:15/10/2015

True Copy

Sub-Assistant Registrar

avr

To

The Deputy Commissioner of Labour,
Coimbatore.

+1 cc to Mr.Ma.P.Thangavel, Advocate sr.43991

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and

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