

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.3454 OF 2004

Dated 26th March, 2015

Between:

A.Subramanyam Chetty and another.

...Appellants .

And:

The Senior General Manager, (Project), KLEN Marshala
Manufacturer and Exports Ltd., M/s. Corporate Services, Bangalore
and others.

...Respondents.

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JUDGMENT:

This appeal is preferred against order dated 9-7-2004 in W.C.No.4 of 2002 on the file of Commissioner for Workmen's Compensation, Assistant Commissioner of Labour, Tirupati.

Brief facts leading to this appeal are as follows:

Appellants herein submitted an application to the Commissioner for Workmen's Compensation contending that their deceased son S.Sekhar was working as Junior Engineer in Corporate Services at Bangalore under first and second respondents and he died on 9-4-1999 during the course of his employment while supervising the work of installation of capacitor Banks in APSE Board, Sub-Station at G.D.Nellore, Chittoor District. They claimed a sum of Rs.10,00,000/-.

R.1 and R.2 i.e., employer of deceased remained exparte. R.3 to R.7 who entrusted contract to R.1 and R.2 contested the application and lower authority dismissed the application on the ground that deceased is not a workman as defined in the Workmen's Compensation Act.(hereinafter referred to as "the Act"). Aggrieved by the dismissal of the claim, present appeal is preferred.

Learned Advocate for appellants submitted that respondents 3 to 7 never raised this plea that deceased was not a workman but lower authority surprisingly dealt with that aspect without giving an opportunity even to appellants to answer that objection. He further submitted that definition of workman as given in Section 2 of the Act cannot be read in isolation and it has to be read with schedule II of the Act. He submitted if such an objection is raised in the counter, appellant would have produced some evidence to show that the deceased was a workman as defined in the Act but without giving any such opportunity, lower authority on its own framed a point without there being any plea from the opposite party and decided that point and held against claimants and thereby, injustice is caused to the appellants.

He submitted that an opportunity may be given by remitting back the matter to the lower authority, so that both parties can have an opportunity of answering this point whether deceased was a workman or not as per the provisions of the Act.

Other side has not submitted any argument.

Now the point that would arise for my consideration in this appeal is whether the order under challenge is proper, legal and correct?

POINT:

I have perused the entire papers including impugned order. R.1 and R.2 have not contested the claim of appellants and only R.3 to R.7 filed counter.

As per the counter of R.3 to R.7, claim is resisted mainly on two grounds firstly that as per Section 82 of the Electricity Supply Act, 1948, no suit, prosecution or legal proceedings shall lie against employees of the Board who discharged their duties in their official capacity and secondly, as per clause 19 of the agreement, Board is not liable for any damages or compensation payable in respect of consequence of any accident or any injury to any person or any workman in the employment of the contractor or any special contractor. As rightly pointed out by advocate for appellants, as the contesting respondents have only taken above two grounds for resisting claim, the claimants have not adduced any evidence to show that the deceased was a workman as per the provisions of the Act. Since the lower authority without giving any opportunity to the appellants to answer objection that was in the mind of it, decided the issue, I feel that it is a fit case to remit back the matter to the lower authority for fresh consideration, so that both parties will have opportunity of adducing evidence if necessary to prove whether the

deceased comes within the ambit of workman as defined in the Act. Since it is an old case, I feel that some time schedule has to be fixed for deciding the case.

For these reasons, this Civil Miscellaneous Appeal is allowed and impugned order dated 9-7-2004 in W.C.No.4 of 2002 on the file of Commissioner for Workmen's Compensation, Assistant Commissioner of Labour, Tirupati, is set aside and the matter is remitted back to the lower authority for fresh disposal in the light of the above observation. Lower authority shall dispose of the case within three months from the date of receipt of copy of order.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 26th March, 2015.

Dvs

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