

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 2.8.2016

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

C.M.A. NO. 2517 of 2003

- 1. The Residence Medical Officer
Govt. Royapettah Hospital,
Royapettah, Chennai 14
- 2. The Superintendent,
Government Royapettah Hospital,
Chennai 14

.... Appellants/
Respondents 2&3

Vs.

T. Murugan, S/o. Tharmalingam,
No. 63/63, A.A. Makkam,
Dr. Natesan Road,
Chennai 600 005.

.... 1st Respondent/
Applicant
(Petitioner)

- Kuppusamy, S/o. Thiru Gopal,
PWD Contractor,
R.1, Muthulakshmi St.,
Triplicane, Chennai 600 005.
- The Assistant Engineer, PWD,
O/o. Assistant Engineer,
PWD, South Residency Division,
Govt. Royapettah Hospital, Chennai 600 014

... Respondents 2 & 3/
Respondents 1 & 4

Prayer: This appeal is filed under section 30 of Workman's Compensation Act to set aside the award dated 6.1.2003 and made in W.C. No. 17/2001 on the file of the Learned Deputy Commissioner of Labour I, Teynampet, Chennai

For Appellants: Ms. M. Jayashree

For Respondent 1: Mr. A. N. Viswanatha Rao

Respondent 2 & 3: No Appearance

ORDER

1. This Civil miscellaneous appeal has been directed against the award dt. 6.1.2003 and made in the Claim Petition in W.C. No. 17/2001 on the file of the Learned Deputy

Commissioner of Labour I, Teynampet, Chennai.

2. Heard Miss N. Jayasree, Learned Government Advocate for the Appellants and Mr. A.N. Vishwanatha Rao for R1. Respondents 2 & 3 not appeared.

3. It is revealed from the records that the 1st Respondent / Applicant had moved the Deputy Commissioner of Labour I with a Claim Petition in W.C. No. 17/2001 claiming a sum of Rs. 1 lakh for the injuries sustained by him while he was on employment under the Appellants and other Respondents.

4. The 1st and 4th Respondents remained ex-parte while the Respondents 2 & 3 had contested the claim. The Learned Deputy Commissioner of Labour on appreciation of evidences both oral and documentary had proceeded to pass an award of Rs. 49,915/- directing the 1st and 2nd Appellants viz. 2nd and 3rd respondents to pay this amount proportionately i.e. at the ratio of 50:50 each to the Claimant within a period of 30 days from the date of receipt of a copy of this order, failing which they shall add interest at the rate of 12% p.a. from the date of petition i.e. 9.1.2001 till date of realization of the amount.

5. Impugning the award dt. 6.1.2003 the Respondents 2 & 3 stand before this Court with this Memorandum of Civil Miscellaneous Appeal.

6. This Appeal came to be admitted on the following substantial questions of law:-

- a) Whether the Deputy Commissioner of Labour is justified in fixing the liability on the Respondents 2&3 especially when there is no privity of contract between the Claimant and these Respondents?
- b) Whether the Deputy Commissioner of Labour had not erred in holding the appellants are liable to compensate the Claimant especially on the face of admission that the Claimant was not employed either by the appellant or by the contractor viz. the 1st opposite party before the Commissioner.
- c) Whether the Deputy Commissioner of Labour had erred in rendering a finding that the Claimant had been under the employment of the 1st Respondent contractor eventhough the Claimant had himself admitted in first cross examination that he was not in the employment of 1st Respondent.

7. This court has carefully perused the grounds of appeal along with the impugned award. This court has also examined the evidences available on record. Having taken into consideration of relevant facts and circumstances this court does passes the following judgment :-

8. It is manifested from the records that the 1st Respondent herein was working as a Mason under the 1st Respondent Mr. T. Kuppan at Government Royapettah Hospital, Chennai. While he was in employment he was receiving a sum of Rs. 175/- towards his daily wage. That on 16.8.2000 while he was engaged in his work at third floor of the above said hospital, at about 9.40 a.m. the old building had slid down and as a result of which he had sustained fracture over his left wrist and an injury over his jaw on account of piercing of an iron rod over his jaw. He was treated as inpatient from 16.8.2000 to 2.9.2000 in the very same hospital. The 1st Respondent is the Contractor. The 2nd and 3rd Respondents are the Supervisors and Principal Employer respectively. Whereas the 4th Respondent had been impleaded in the petition for the better adjudication.

9. At the time of incident the Claimant was aged about 30 years and therefore, claiming a sum of Rs. 1 Lakh towards the compensation for the loss of his earning capacity he had filed above said claim petition before the Deputy Commissioner of Labour-I.

10. The 1st Respondent and 4th Respondent remained ex-parte. The 2nd Respondent had contested the claim by filing his counter statement which was adopted by the 3rd Respondent.

11. While denying the averments of claim petition the Respondents 2 & 3 who are the appellants herein had contended that they had nothing to do with the allegations made in the claim petition and that the 4th Respondent being the Assistant Engineer, PWD, Government Royapettah Hospital alone was responsible as he had been managing and maintaining the buildings of Government Royapettah Hospital, Chennai.

12. The maintenance work was entrusted with the contractors and accordingly the contractor alone had brought the Claimant and put him in employment. They would further contend that they were neither responsible nor liable to answer the claim of the Claimant.

13. The Claimant Mr. Murugan had examined himself as PW1. One Dr. J.R.R. Thiagrajan was examined as PW2. During the course of their examination, Ex. P1 to P5 were marked. Ex. P1 is the accident report, Ex. P2 is the Royapettah Government Hospital Discharge Summary, Ex. P3 is the out-patient chit, Ex. P4 is the letter from an advocate and Ex. P5 is the disability certificate. On the other hand one Baskar was examined on behalf of 3rd Respondent. However no documentary evidence was adduced on their side.

14. Based on the evidences on record, the Deputy Commissioner of Labour had determined the age of the Claimant

as 30 years. PW2 Dr. Thiagrajan had examined the Claimant clinically and assessed his disability at 20%. Since no documentary evidence was produced by the Claimant to support his contention with regard to his daily wages, based on the Government Order in G.O. No. (2d) 29 Labours and Employment Department dt. 24.4.2000 under the Minimum Wages Act his monthly income was determined at Rs. 2000/-.

15. Since the Claimant was aged about 30 years the factors was determined at 207.98. The Deputy Commissioner of Labour had lasso assessed the loss of earning capacity at 20% to the extent of Rs. 49,915/- ($60/100 * 2000 * 207.98 * 20/100$). Accordingly the Deputy Commissioner of Labour had awarded a sum of Rs. 49,915/- directing the appellants to pay this amount proportionately to the Claimant within a period of 30 days from the date of receipt of copy of this order failing which the award amount shall carry 12% interest per annum from the date of petition i.e 9.1.2001 till date of realization. As observed in the opening paragraph this court had perused the grounds of appeal along with the impugned award. This court has also analyzed the evidences available on record.

16. Having regard to the entire case of the appellants as well as the 1st Respondent/ Claimant, this court is of considered view that the award passed by the Deputy Commissioner of Labour does not require any interference of this court. In the result the appeal is dismissed. CMP 15189/2003 is closed.

Dated at Chennai this 2nd day of August 2016.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

The Deputy Commissioner of Labour I
Teynampet
Chennai.

copy to

The Section Officer
V.R. Section
High Court, Madras.

+1 Cc to The Spl. Govt. Pleader sr 46846

+1 Cc to Mr.A.N. Viswanatha Rao, sr 44019.

C.M.A. NO. 2517 of 2003

GJII(CO)

sp(04/09/2017)

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