

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM

THE HON'BLE Mr. JUSTICE R.SUBRAMANIAN

C.M.A. No.1578 of 2017

and

C.M.P.NO.8304 of 2017

K. Thangaraj

... Appellant/R1

Vs.

1. P.Thangaraj

... R1/Claimant

2. Rajendran

... R1/R2

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, 1923, to set aside the award dated 11.07.2014 in W.C.No.739 of 2005 on the file of Deputy Commissioner of Labour, Salem.

For Appellant : Mr.K. Myilsamy
For Respondents : Mr. M.R.Jothimanian

JUDGEMENT

This appeal has been filed by the appellant/employer, challenging the award passed by the Commissioner for Workmen's Compensation in W.C.No.739 of 2005.

2.The case of the claimant/first respondent is that the appellant/employer is running a cable TV operating business and he was engaged by him for drawing cables for the appellant. While drawing cables, he climbed a tree which came into contact with a live electric wire. As a result he was electrocuted and thrown of the tree and suffered injuries. He had claimed a compensation of Rs. 20,00,000/-(Rupees twenty lakhs only) for the injuries suffered by him, which resulted in total permanent disability.

3.The appellant resisted the application and contended that the claimant was not engaged by him, but engaged by one Rajendran, who, in turn was engaged by the appellant for the purpose of drawing cables. Therefore, there is no employer-employee relationship to enable the claimant to invoke the jurisdiction of the Commissioner Workmen's Compensation Act.

4. The said Rajendran, who was impleaded as the second respondent, filed a separate counter contending that he himself along with the claimant was employed by the appellant for drawing cables and he is also an employee of the appellant. He had denied engaging the services of the claimant independent of the employer/appellant.

5. On the above pleadings, the Commissioner for Workmen's Compensation concluded that the injuries suffered by the claimant were caused by the accident, while he was working for the appellant/employer.

6. The Claimant had examined himself as PW1. The appellant/employer did not choose to let in any evidence. Based on the evidence of the claimant, the Commissioner for Workmen's Compensation came to the conclusion that the accident occurred during the course of the employment and as such, the claimant would be entitled to compensation under the Workmen's Compensation Act. The Commissioner assessed the quantum of compensation on the basis of the schedule to the Act and arrived at Rs.5,06,745/- [Rupees Five Lakhs Six Thousand Seven Hundred and Forty Five Only]. It is this award that is challenged by the employer/appellant in this appeal.

7. The learned counsel for the appellant would contend that employment itself has been denied by the appellant. Therefore, it is for the claimant to prove the employment in order to invoke the jurisdiction of the Commissioner for Workmen's Compensation Act to seek compensation.

8. As already pointed out, the claimant had examined himself as PW-1. The Co-worker-Rajendran in his counter has very clearly stated that both himself and the claimant were working for the appellant employer. In the First Information Report also it has been stated that the claimant was engaged in drawing cables for the appellant along with one Rajendran, Sakthivel, Sagayaraj and Chellamuthu. The appellant would claim that there was no contract of employment between him and claimant. As an employer, he is bound to let in some evidence atleast to disprove the claim of the claimant. In the absence of any contra evidence, the Commissioner for Workmen's Compensation was justified in believing the evidence of the claimant and holding that the accident occurred during the course of his employment with the appellant.

9. The learned counsel for the appellant would invite my attention to judgement of this Court in C.M.A.No.837 /2009, wherein, it was held that it is for the Workman to prove that the accident occurred during the course of his employment and there was an employer-employee relationship between the claimant and the appellant/employer. This abstract statement of

law cannot be applied to this case as the appellant has not chosen to let in any evidence to contradict the claim of the claimant relating to the factum of the employment, and the manner in which the accident occurred. I do not think that the said decision will be of any use to the appellant.

10. In view of the above reasonings, the appeal cannot be entertained by this Court, and there is no question of law involved in this appeal for consideration. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/--

Asst. Registrar (CO)

/true copy/

Sub Asst. Registrar

KP

To

1 The Deputy Commissioner of Labour,
Salem.

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

+ 1 cc to Mr. M.R. Jothimanian, Advocate, SR.59507

+ 1 cc to M/s. K. Myilsamy, Advocate, SR.59361

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