

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.Nos.206 and 1317 of 2016

C.M.A.No.206 of 2016

M/s.R.J.R.Air Flow Equipments

and System,

Rep. by its Proprietor Mrs.R.Jayanthi

Having Office at No.3/2, East Cost Road,

Uthandi, Chennai - 119.

... Appellant/Respondent

versus

1. Deputy Commissioner of Labour No.II

Commissioner of Workmen Compensation

Teynampet,

Chennai - 6.

...1st respondent/Court

2. J.Kumaraguru

... 2nd respondent/Petitioner

Prayer in CMA No.206 of 2016: This Appeal filed under Section 30 (i) of the Workmen Compensation Act, against the award dated 05.08.2015 passed in W.C.No.275 of 2011 on the file of the Deputy Commissioner of Labour Court No.2, Chennai.

For Appellant

: Mr.B.Rajkumar Ashok Singh

For R2

: Mr.R.Thanjan

C.M.A.No.1317 of 2016

J.Kumaraguru

... Appellant/Petitioner

versus

M/s.R.J.R.Air Flow Equipments

and System,

Rep. by its Proprietor Mrs.R.Jayanthi

Having Office at No.3/2, East Cost Road,

Uthandi, Chennai - 119.

...Respondent/Respondent

Prayer : This Appeal filed under Section 30 of the Workmen Compensation Act, against the award dated 05.08.2015 made in W.C.No.275 of 2011 on the file of Deputy Commissioner of Labour-II, Chennai - 600 006.

For Appellant

: Mr.R.Thanjan

For Respondent

: Mr.B.Rajkumar Ashok Singh

COMMON JUDGMENT

The Claimant/Employee has filed an appeal in C.M.A.No.1317 of 2016, seeking enhancement of the compensation, but, the Employer has filed an appeal in C.M.A.No.206 of 2016, challenging the award of compensation itself.

2. The appeal in C.M.A.No.1317 of 2016 filed by the claimant has been dismissed as withdrawn on 03.01.2017, i.e. the date on which judgment was rendered in the appeal in C.M.A.No.206 of 2016 filed by the employer.

3. The second respondent was working as a Drilling Operator under the appellant Company. On 29.08.2010 at about 12.00 noon, while he was working in the Drilling Machine, his left hand was struck in the Drilling Machine and it was amputated below the elbow. Thereafter, he was admitted in Balaji Hospital, Guindy, from 29.08.2010 to 08.09.2010. Hence, he filed a claim petition before the Deputy Commissioner of Labour, Court No.2, Chennai, in W.C.No.275 of 2011.

4. It is stated in the claim petition that in respect of that accident, an First Information Report has been registered in Crime No.1491 of 2011 before J-8 Neelankarai Police Station, under Section 337 IPC. Since the Employer knew the accident, the Claimant/Employee has not sent any legal notice with regard to the same. Hence, he claimed compensation against the Employer.

5. The Employer denied the averments made in the claim petition. It is the case of the Employer that the petitioner was working as a Daily Wage Labourer and he was not working as a Drilling Machine Operator and he was paid a sum of Rs.200/- per day; the employee, on the date of accident, was operating the machine negligently and he could have avoided the accident by operating the machine carefully. It is the further case of the Employer that they paid the medical expenses of Rs.1,50,000/- and they had also taken Insurance Policy in the name of the employee in order to safeguard his life. It is the further case of the Employer that the First Information Report has been registered only after the expiry of one year from the date of accident and hence, no importance should be attached to the First Information Report.

6. The Deputy Commissioner of Labour, on consideration of oral and documentary evidence, awarded a sum of Rs.3,94,003/- as compensation and directed the employer to pay the said compensation within thirty days from the date of receipt of a copy of that order and in default in paying the same, to pay 12% interest from the date of expiry of 30 days from the date of accident.

6.1. The said order is under challenge by the Employer in this appeal.

7. It is the contention of the learned counsel appearing for the Appellant/ Employer that the Tribunal has erred in taking the monthly income of the employee at Rs.4,944/- without any legally acceptable evidence. Even though the appellant has produced evidence for spending the medical expenses, the Tribunal ought not to have come to the conclusion that the appellant herein has not produced any documents to show that the medical expenses are met out by them.

8. The learned counsel appearing for the second respondent would only contend that the award passed by the Deputy Commissioner, Chennai is justifiable and it does not require any interference.

9. In order to appreciate the rival contentions, it is necessary to look into the order passed by the Deputy Commissioner of Labour, Chennai.

10. Before the Deputy Commissioner of Labour, the claimant/second respondent herein and the Doctor were examined as P.W.1 and P.W.2 on the side of the second respondent / Employee. One Ramachandran was examined as R.W.1 on the side of the Employer. In the evidence of P.W.1, he reiterated the averments in the claim petition.

11. In the evidence of R.W.1, he has admitted the employment of the employee / second respondent and the accident, but, the status of the employment is under dispute. He has stated that the employee was paid Rs.200/- per day, as a daily wage, and they spent Rs.1,50,000/- towards medical expenses.

12. In the grounds of appeal, the employer has stated that the Deputy Commissioner should have taken the Dearness Allowance, based on basic salary and should not have taken the salary based on Minimum Wages Act.

12.1. If the payment of wages is not based on basic pay, this contention could not have been taken.

13. Admission is the best piece of evidence. Employer is in possession of the best evidence, by maintaining records. If really, the claimant/employee is the daily wage earner, he could have produced the records showing the status of the claimant as the daily wage earner. No records have been produced on the side of the Employer.

14. The two contentions raised by the Employer that: a) he spent a sum of Rs.1,50,000/- towards medical expenses; b) that he has taken Insurance Policy to the employee herein would show that, in all probability, he could not have been a daily wage earner, but the regular Employee of the establishment.

15. The evidence indicates that the injury suffered is an employment injury and that the injury has been sustained during the course of employment.

16. The Deputy Commissioner for Workmen Compensation has rightly calculated the amount of compensation based on settled legal principles and legally acceptable evidence and the finding does not require any interference.

17. Accordingly, CMA No.206 of 2016 is dismissed and CMA No.1317 of 2016 is dismissed as withdrawn. The award dated 05.08.2015 passed in W.C.No.275 of 2011 on the file of the Deputy Commissioner of Labour Court No.2, Chennai, is confirmed. No costs.

s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Commissioner of Labour Court No.2, Chennai.

Copy to

The Section Officer, V.R. Section,
Madras High Court, Chennai - 104

+1 CC to Mr. Thanjan, Advocate sr 552

SP(01/08/2017)

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