

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

CMA.NO.2302 of 2016
& C.M.P.No.16248 of 2016

- 1.The General Manager,
M/s.SBQ Steels Limited,
(RKKR Group)
6/13, North Avenue, KP Puram,
Chennai-600 028.
- 2.M/s.SBQ Steel Limited (Factory),
Ankulapaturu Village & Post,
Chillakur, Nellore,
Andhrapradesh. ..Appellants/Respondents 1&2
- ..Vs.

- 1.Mrs.Sankareswari
2.P.Velmurugan (Minor)
3.P.Vazhavandhan (Minor)
(Respondents 2&3 Minors
rep. by their mother 1st Respondent)
4.Mrs.Maruthi
5.Mr.V.Swaminathan
Proprietor,
M/s.Century Industries,
28/1, Velu Street,
West Mambalam,
Chennai-600 033. ..Respondents/Petitioners 1to4/ and
3rd Respondent

PRAYER:- Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 20.01.2016, passed by the Commissioner for Workmen's Compensation-I, Deputy Commissioner of Labour-I, Chennai, in E.C.No.94 of 2013.

For Appellants : Mr.Sai Prasad
for M/s.Sai Raaj Associates

For Respondents: No Appearance

JUDGEMENT

The appellants are the respondents 1 and 2 in Workmen's Compensation case in E.C.No.94/2013.

2.The claim was filed by the legal representative of one Packiaraj, who died due to electric shock while he was working under the contractor, the fifth respondent herein in the premises of the appellant. The Commissioner for Workmen's Compensation concluded that the accident occurred during the course of the employment on 17.03.2009. There is no dispute regarding the quantum of compensation or the fact that the Commissioner for Workmen's Compensation will have jurisdiction to award compensation for the death of the said Packiaraj.

3.The actual ground raised by the learned counsel for the appellants is that under Section 12(2) of the Workmen's Compensation Act, if the principal employer is made liable to pay the compensation, he shall be entitled to be indemnified by the contractor. The Commissioner for Workmen's Compensation has over looked the said provision and directed the appellants to pay the compensation without giving any opportunity to recover the same from the contractor namely, the 5th respondent in the appeal. The fact that the deceased employee was working under the contractor is not in dispute. Section 12(2) of the Workmen's Compensation Act reads as follows:

"12(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner".

4.This Court in The Management, ISRO, Mahendragiri, Thirunelveli District -Vs- V.Arasi & Others reported in [2016 (3) LW 761] had held that the principal employer need not file a suit for recovery of compensation. It can issue a notice to the contractor and if the contractor fails to pay the amount then seek for execution of the award as if it is a decree in their favour against the contractor/the 5th respondent herein.

5.The judgement of the Ho'ble Supreme Court in National Insurance Company Limited .Vs. Chella Bhai and others reported in [2004 8 SCC 517] was in fact followed by this Court in the judgements reported in [2016 (3) LW 761].

6.In view of the said legal possession, the appeal is partly allowed, the award of the Commissioner for Workmen's Compensation will stand modified and the appellants will be entitled to recover the compensation paid by them to the respondents 1 to 4 from the 5th respondent without invoking the common law remedy of filing a suit as laid down by the Hon'ble Supreme Court in National Insurance Company Limited .Vs. Chellabai and others reported in [2004 8 SCC 517]. In other aspects, the award of the Commissioner shall stand confirmed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Commissioner for Workmen's
Compensation-I, Chennai &
The Deputy Commissioner of Labour-I,
DMS Compound,
Chennai-600 006.

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to M/s. Sai Raaj Associates, Sr.53816

WEB COPY

CMA.NO.2302 of 2016

SKV(CO)
Eu 5.09.17