

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.311 of 2014
& M.P.No.1 of 2014

Central Warehousing Corporation,
(A Government of India Undertaking),
represented by Regional Manager,
Mr.A.T.Sankar,
No.4, North Avenue, Srinagar Colony,
Saidapet, Chennai - 600 015. ... Appellant/1st Respondent

Vs.

1. Marry
2. Vigneshwari
(Rep. by her Guardian Mother Marry)
3. Maheswari
4. Pechimuthu
5. Ammasai
6. Sri Murugan Flour Mills Limited,
Ramanathapuram, Coimbatore ... Respondents/Claimants

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the (Employee's) Compensation Act, 1923, against the order dated 27.04.2012 on the file of the Workmen Compensation Commissioner Tribunal and Deputy Labour Commissioner, Coimbatore, allowing the claim petition in W.C.No.62 of 2009, is wrong and liable to be set aside.

For Appellant : Mr. K.Ashok Kumar
For RR1 to 4 : Mr. R.Jaikumar
For R5 : M/s.M.Christopher

सत्यमेव जयते
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J U D G M E N T

Aggrieved over the award passed by the Workmen Compensation Commissioner Tribunal and Deputy Labour Commissioner, Coimbatore in W.C.No.62 of 2009 under the Workmen's Compensation Act, the management of the Central Warehousing Corporation has preferred this appeal.

2. According to the claimants, the deceased Duraisamy was employed as loadman in the appellant Corporation. During such employment, on 16.08.2007, while the deceased carrying a gunny bag weighing around 100 k.g., it fell on him, due to which he suffered death. The claimants / respondents 1 to 5 are the legal heirs have filed a claim petition under the Workmen's Compensation Act, seeking compensation for the death of the deceased.

3. The appellant / 1st respondent had taken a plea that the deceased was engaged by one Sri Murugan Flour Mills Limited and the deceased was not engaged by them at all. Thereafter, the 6th respondent / Sri Murugan Flour Mills Limited was impleaded as second respondent in the claim petition. In turn, the 6th respondent had also denied the engagement of the deceased under him as an employee.

4. Heard the rival submissions and perused the materials on hand.

5. It is admitted fact that the deceased Duraisamy suffered death while carrying wheat bag weighing 100 k.g. within the premises of the 1st respondent. The appellant had admitted that the deceased had carried the bag from the lorry in which the goods of the 6th respondent were deposited in their warehouse. Even though the claimants filed Exs.A1 to A5 and let in evidence, there is no clear proof that the deceased Duraisamy was engaged by either of the respondents. On the side of the first respondent / appellant herein, Exs.D1 to D5 were marked, which shows that the 2nd respondent / 6th respondent herein had entered into an agreement with the appellant / Central Warehousing Corporation to deposit the goods. Ex.D1 shows that the wheat bags were deposited at the Central Warehousing Corporation. Conveniently, the 6th respondent herein has not let in any evidence, even though cross examination was made by them. But, on considering the procedure of engaging the Handling and Transport contractors, the Deputy Commissioner for Labour, Coimbatore has abruptly come to the conclusion that the deceased employee was engaged by the appellant / Central Warehousing Corporation through a contractor and he suffered death during the course of such employment. Liability was fixed on the appellant. But it is not the case of either of the respondents or of the appellant that the deceased was engaged through a contractor. More so, the so-called contractor is not a party before the authority. Without naming the contractor and without relying on any documentary evidence to show that the deceased was employed by the appellant through a contractor, the Deputy Commissioner for Labour, Coimbatore has decided the matter. However, no specific issue with regard to employee-employer relationship has been framed and to decide the issue it requires evidence. Therefore it is necessary to afford opportunity to all

the parties to adduce evidence on the specific issue. In the absence of a clear finding, as to who is the employer of the deceased, this Court considers that it is a fit case for remanding the matter to the Deputy Commissioner for Labour, Coimbatore to find out the status of the employment by framing a specific issue on this aspect. Therefore, the order passed by the Deputy Commissioner for Labour under the Workmen's Compensation Act in W.C.No.62 of 2009 dated 27.04.2012 is set aside and remitted back to him for fresh disposal.

6. Since the matter is pending for a long period of about 40 years, the authority is directed to conduct the proceedings on day to day basis and complete same within a period of four weeks. It is open to the parties to adduce evidence on this aspect enabling the Deputy Commissioner for Labour, Coimbatore to arrive at a clear finding with respect to liability and compensation.

7. With the above observation and direction, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Workmen Compensation Commissioner Tribunal
and Deputy Labour Commissioner,
Coimbatore
2. Central Warehousing Corporation,
(A Government of India Undertaking),
No.4, North Avenue, Srinagar Colony,
Saidapet, Chennai - 600 015.

Copy To

The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.T.Fenn Walter Associates, Advocate, S.R.No.79638

+1cc to Mr. K.Ashok Kumar, Advocate, S.R.No.79575

+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.79573

C.M.A.No.311 of 2014

rsk(co)

cs/08/12/17