

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1000 of 2009  
and M.P.No.1 of 2009

1. R.Chitra

2. R.Marakatham ... Appellants/Respondent

Vs.

R. Ramasamy ... Respondent/Appellant

Prayer : Civil Miscellaneous Appeal filed under Order 30 of the Workmen's Compensation Act, 1923, against the award dated 19.01.2009 made in W.C.No.72 of 2006 on the file of the Workmen's Compensation-cum-Deputy Commissioner of Labour, Coimbatore-1.

For Appellants : Mr.V.Sanjeevi

For Respondent : Mr.S.Dhanraj for  
M/s.M.Christopher

J U D G M E N T

Aggrieved over the award passed by the Workmen's Compensation-cum-Deputy Commissioner of Labour, Coimbatore, in W.C.No.72 of 2006 dated 19.01.2009, the appellants have filed the above Appeal.

2. According to the respondent/claimant, while he was removing a boulder as per the specific instruction given by the appellants herein, on 15.09.2004 at about 11.00 a.m, his left fore arm got injured and was crushed. He was immediately taken to J.M.Hospital, Coimbatore, where he received first aid, thereafter, to Coimbatore Medical College Hospital for initial treatment and then, to Balakrishnan Hospital, Coimbatore, for treatment between 21.09.2004 and 12.10.2004. In spite of the best treatment, he suffered permanent disability in his left fore arm. In view of the permanent disability, he made a claim for compensation for a sum of Rs.1,27,080/- with interest at 18% per annum from the date of accident till the date of realisation.

3. The appellants have denied the relationship of employer-employee, the manner of accident, which took place, and the quantum of compensation.

4. On the side of the respondent/claimant, three witnesses were examined and eight exhibits were marked to prove his case. On the side of the appellants/respondents, the first appellant was examined as a witness and two documents were marked.

5. On considering the oral and documentary evidences, the authority below came to a conclusion that the respondent is entitled for compensation and the appellants are liable to pay the same. Aggrieved over the same, the appellants/respondents have come before this Court with this Civil Miscellaneous Appeal.

6. The learned counsel for the appellant would submit that the factum of employer-employee relationship was not framed as an issue and the authority below erroneously came to the conclusion that the appellants were liable to pay the compensation.

7. A perusal of the evidence on the side of the claimant would go to show a lot of contradictions. The first contradiction is that the claimant has filed the claim application stating that he was doing the work under the specific direction of the appellants. But, on the other hand, during his cross-examination would clearly state that none of the appellants were present at the time of accident. Further, he was engaged by Mesthri in the quarry owned by the appellants. Also, in the medical certificate, the injury was shown in the right hand, but, in fact, he suffered injury in the left hand. The evidence of the co-worker, P.W.2 would speak about the accident that took place in the quarry and the injury suffered by the claimant during the employment.

8. But, curiously, in the chief examination, the claimant would depose that the accident had taken place at the quarry owned by the appellants and the same was reported in Daily Thanthi Newspaper dated 27.09.2004, which was marked as Ex.P.7. As per the newspaper report, there was a blast in the quarry in which boulders sprang up and fell in the residential area. At the time of removing the boulders in the residential area on the directions of the appellant he suffered the injuries. On the one hand he would state that he suffered injuries while he was working in the stone quarry and on the other at the residential area. This contradiction would go to show that the claimant has not come before this Court with clean hands and it is a fabricated story that the accident had taken place at the stone quarry contrary to Ex.A7. Further, the medical certificate issued by the doctor would show that the injury is in the right hand, whereas, the claim for injury is on the left hand. The

claim petition was filed after 22 months, which itself would probablise that the case is a fabricated one with ulterior motive to get compensation.

9. On the other hand, the learned counsel for the respondent would submit that the accident had taken place on 15.09.2004 and the appellants being the owners of the quarry are liable to pay the compensation.

10. Heard the rival contentions made by the learned counsel for both the parties.

11. From a perusal of the material available on record, it could be seen that the claimant has filed his claim petition on the basis of an accident, which allegedly had taken place on 15.09.2004, while he was removing the boulder as per the specific instruction given by the appellants/opposite parties. During the chief examination, the claimant would state that an accident had taken place on 26.09.2004 and it was reported in the newspaper viz., Daily Thanthi dated 27.09.2004, which was marked as Ex.A7. The very same chief examination would state that the accident had taken place while he was working in the quarry. Ex.R1 is the First Information Report (FIR) and Ex.R2 is the Final Report. The FIR filed by the police would go to show that the incident had taken place on 26.09.2004, whereas, it is the specific case of the claimant in the claim petition and in his evidence that the accident took place on 15.09.2004. The pleading made in the claim petition was not supported by the evidence of the claimant itself. That is a material contradiction in respect of the date and place of the accident. The suspicious ground raised by the appellants is further substantiated by the medical certificate issued by the doctor, P.W.3.

12. It is the case of the claimant that he fell unconscious and was given the first aid in J.M.Hospital, Coimbatore, and thereafter, Coimbatore Medical College Hospital. In support of admission in Coimbatore Medical College Hospital, Ex.A.2, marked on behalf of the claimant would go to show that O.P. chit was issued by a private doctor, and it does not appear to be a document issued by the Coimbatore Medical College Hospital.

13. Further, Ex.P.2 does not contain any date and there is no admission or discharge summary issued from the Coimbatore Medical College Hospital, but it only shows the reference for x-ray. The workman has not produced any x-ray sheets before the Court, which adds to the suspicion that he had not taken any treatment either on 15.09.2004 or on 26.09.2004. Ex.P3 and Ex.P5 are the discharge summary and disability certificate, respectively. However, the claimant has not produced any evidence as to the payment of medical expenses. Ex.P5,

disability certificate reveals the grade 4 compound fracture of both bones of the right fore arm at 50%. P.W.3, doctor, who was examined on the side of the claimant would state that both bones were fixed through surgery and after 15 days, plastic surgery was done for bone fracture. Further, there is no discussion as to whether the appellants had carried on quarry business and engaged the claimant to the work place. But, for the evidence of the claimant and the co-worker, no independent witness was examined to show employer-employee relationship and the appellants were running quarry business. It is stated that the workers were engaged through Mesthri, but, no independent witnesses was examined to prove the same. Even though one Krishnan, Mesthri, who carried the claimant to hospital, and one Veerasamy, who was also accompanied the claimant to the hospital, they were not examined. But, in the proof affidavit, the claimant would state that one Siva Kumar, who was a co-employee, was present during the accident. Further, there is clear and categorical admission by the claimant that the appellants were not present at the time of accident. This contradiction would go to show that there is no proof that the appellants were running the quarry and engaged the workman for cutting the stones.

14. Therefore, the issues that the appellants have engaged the claimant for work and that the accident had taken place under the direct supervision of the appellants were not proved. On the other hand, it appears to be a fabricated one. The Commissioner for Workmen Compensation has also failed to take notice that the mandatory notice should be given under Section 10(1) and (2) of the Act.

15. At this juncture, it is relevant to refer to a decision of the Gauhati High Court in the case of Oriental Insurance Co.Ltd. Vs. Sri Rama Kanta Roy and Another reported in 2017-III-LLJ-625 (Gau), which reads as follows:-

10. Considering the arguments advanced by the learned senior counsel for the appellant and on perusal of the materials available on record, it appears that the trial court does not contain the copy of the notice which is required to be issued in terms of Section 10 of the Employees' Compensation Act, 1923. The provisions of Section 10(1) of the said Act provides that no claim for compensation shall be entertained unless notice of the accident was given in the manner provided in the said act, subject to the proviso contained therein

that the Commissioner may entertain and decide any claim notwithstanding the notice has not been given, if he is satisfied that the failure to the notice was due to sufficient cause.

11. On perusal of the impugned judgment, it does not appear that the learned Commissioner, Workmen's Compensation, Nagaon had recorded its satisfaction as to existence of any sufficient cause, which prevented the respondent No.1 to prefer a claim before the learned Commissioner, Workmen's Compensation. Therefore, in view of the provisions of Section 10(1) of the Employee's Compensation Act, this Court is of the opinion that in the absence of the recording of satisfaction by the learned Commissioner, Workmen's Compensation about the existence of sufficient cause, which prevented the respondent No.1 to prefer a claim before the said authority, the claim itself was not maintainable.

16. Therefore, this Court is of the considered view that employer-employee relationship between the appellants and the respondent/claimant was not proved. The date and the place of the accident were also not proved clearly. Since there are contradictory statements in the claim petition and in the oral and documentary evidences, the claimant has failed to prove the case for compensation.

17. In such circumstances, the order passed by the authority below is without application of mind and also evidence. Hence, the order dated 19.01.2009 in W.C.No.72 of 2006 passed by the authority is set aside.

18. Further, the learned counsel for the appellants would submit that they have deposited the entire award amount, which was withdrawn by the respondent/claimant. In spite of the stay granted by this Court, the authority also having received the communication along with the order of this Court not to disburse the amount, if the amount is disbursed, it would amount to violation of the order passed by this Court. In such circumstances, it is open to the appellants to workout their remedy and recover the money in the manner known to law.

19. In the result, this Civil Miscellaneous Appeal is allowed.  
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS V)

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Sub Assistant Registrar

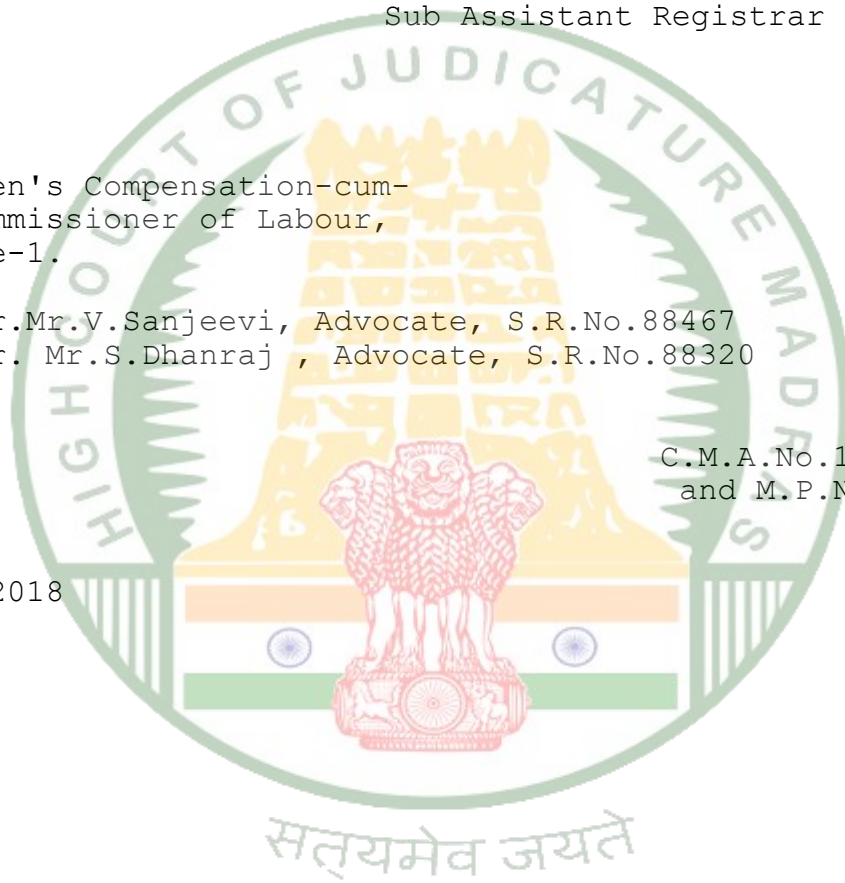
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To  
The Workmen's Compensation-cum-  
Deputy Commissioner of Labour,  
Coimbatore-1.

+1cc to Mr.Mr.V.Sanjeevi, Advocate, S.R.No.88467  
+1cc to Mr. Mr.S.Dhanraj , Advocate, S.R.No.88320

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