

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.197 of 2010

S.Jothikumar

... Appellant

vs.

The Management,
Now Garswood Estate,
T.Maniyatti,
(via) Katta Bettu, Nilgiris,
Nilgiris District.

... Respondent

Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act against the Judgment and decree dated 27.11.2009 made in W.c.No.16 of 2007 on the file of the Workmen Compensation/Deputy Commissioner of Labour, Coonoor, Nilgiris District.

For petitioner: Mr. R.Sankarasubbu

For Respondent: No Appearance

JUDGMENT

The appellant is the claimant in W.C.No.16 of 2007 on the file of the Workmen Compensation/Deputy Commissioner of Labour, Coonoor Nilgiris District, claimed a sum of Rs.3,90,000/- as compensation against the respondent for the injuries sustained by the appellant.

2. According to the claimant, he was an employee of the respondent. On 02.11.1998, while he was removing the Thorn bush at 4.00 p.m. in the Tea Estate of the respondent, due to thorns tearing his eyes, he lost his eye sight in both eyes. In spite of the treatment, he lost 100% vision of his both eyes. At the time of incident, he was aged about 29 years and was earning a sum of Rs.1,950/- p.m. and therefore, he claimed a sum of Rs.3,90,000/- as compensation from the respondent.

3. The respondent filed counter statement and denied all the averments made in the claim petition and it is stated that the appellant was not employed by the respondent. According to the respondent, the claimant worked only as a temporary labourer during the period from 1992-1993 and subsequently, he was not working in Tea Estate of the respondent. Hence, the respondent is not liable to pay compensation to the appellant.

4. The appellant examined himself as P.W.1 and one Rangaraj co-worker was examined as P.W.2 and 3 documents were marked as Exs.P.1 to P3 on the side of the appellant. No witness was examined on the side of the respondent, but four documents were marked as Exs.R1 to R4.

5. Based on the evidence of Exs.R1 to R4, the Deputy Commissioner of Labour came to the conclusion that the claimant has not filed any document to prove that he was under the employment of the respondent as on 02.11.1998. Considering the documentary evidence, the Commissioner dismissed the petition in W.C.No.16 of 2007 holding that the appellant failed to prove that he is an employee of the respondent. Against the said order of dismissal, present appeal has been filed.

6. No substantial question of law was framed earlier. Hence, at the time of hearing, this Court framed the following substantial questions of law:

1)Whether the Commissioner for Workman Compensation is right in holding that the appellant is not a workman under the respondent in the absence of positive evidence?

3)Whether the conclusions reached by the Commissioner based on exhibits M1 to M4 xerox copies of the same without any evidence about the existence of originals?

7. The learned counsel for the respondent would submit that the Commissioner erred in allowing the respondent's side documents viz., Ex.R1 to R4, i.e., the xerox copy of the attendance register and salary register. No documents were let in to prove on the side of the respondent. The respondent did not cross examine the appellant and P.W.2, the co-worker with regard to the employment of the respondent.

8. Though notice was served on the respondent and his name is printed in the cause list, there is no representation for the respondent.

9. I have carefully considered all the materials on record and the arguments of learned counsel for the appellant.

10. The specific case of the appellant is that he was under the employment of the respondent and on 02.11.1998, when he was removing the thorny bush in Tea Estate of the respondent due to accident, he lost his eye sight in both eyes. The respondent had denied that the appellant was an employee of the respondent during the relevant time and the accident did not take place during the course of his employment. In view of the denial by the respondent, it is for the petitioner to prove that there was employer and employee relationship. Therefore, the appellant has to prove that the accident occurred during the course of his employment.

11. It is seen from the order of the Commissioner that he has given an opportunity to the appellant to prove his employment with the respondent. But the appellant failed to prove the same by producing any acceptable evidence. On the other hand, the respondent has produced copy of the attendance register and salary register which were marked as Ex.R1 to R4. There is nothing on record to show that the appellant was under the employment of the respondent and that the appellant has not questioned the genuineness of the disputed documents at the time of recording evidence. The appellant did not object to marking of xerox copies as Exs.R1 to R4. Having failed to object the marking of the documents at the earliest, it is not open to the appellant to challenge genuine of Exs.R1 to R4 in this appeal and seek for remand for fresh disposal.

12. In the result, both the substantial questions of law are answered against the appellant. Hence this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

The Deputy Commissioner of Labour,
Workmen's Compensation,
Coonoor, Niligiris District.

+lcc to M/S.R.SankaraSubbu, Advocate Sr.19706

CMA.No.197 of 2010

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srg 25/05/2017