

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1756 of 2012
and M.P.No.1 of 2012

1. M/s. Cornerstone

2. M.Anto George

3. Jasmine George ... Appellants

Vs.

1. Commissioner for Employee's Compensation,
(Deputy Commissioner for Labour-I Office,
Chennai - 6.), D.M.S.Compound, II Floor,
Teynampet, Chennai - 600 006.

2.G.Yesudoss ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, against the order dated 12.01.2012 in W.C.Case No.04 of 2009 passed by the 1st respondent, Commissioner for Employee's Compensation, Chennai.

Appellants : Mr.A.R.Gokulnath

For Respondents : Mr.P.Subramaniyan
for R2

J U D G M E N T

The employer/appellant has filed this Civil Miscellaneous Appeal against the order dated 12.01.2012 in W.C.Case No.04 of 2009 passed by the 1st respondent, Commissioner for Employee's Compensation (Deputy Commissioner for Labour-I), Chennai.

2. The 2nd respondent/employee filed a claim petition before the Commissioner for Employee's Compensation, (Deputy Commissioner for Labour-I), Chennai, for the injuries suffered by him on 25.06.2005. The appellant/employer denied the employer-employee relationship. However, it appears that on 06.03.2012, the appellant has filed a petition before the

Commissioner for Employee's Compensation for reopening the case, after serving the same on the respondent also.

3. The Commissioner for Employee's Compensation by his communication dated 03.05.2012 stated that the order has already been passed on 12.01.2012 and therefore, the claim petition cannot be reopened. Aggrieved over the order passed by the Commissioner for Employee's Compensation, the appellant/employer has come up before this Court.

4. Even on merits, the Commissioner for Employee's Compensation has found that the 2nd respondent is an employee of the appellant, only because the appellant has not disproved the same through oral and documentary evidence.

5. The learned counsel appearing for the appellant has drawn the attention of this Court to the discharge summary, wherein, it is seen that the employee was brought to the Government Stanley Hospital by brother Soundar, whereas, relying on the evidence of the friend of employee by name Stephen, the authority has come to the conclusion that the claimant/ 2nd respondent was working under the appellant.

6. Insofar as the Employee's Compensation is concerned, there shall be a clear finding on the basis of oral and documentary evidence as to the employment status.

7. Secondly, the order of Commissioner for Employee's Compensation does not disclose any evidence both oral and documentary on the side of the employer and the application for reopening the case was also filed on 06.03.2012, much prior to the date of receipt of the order dated 12.01.2012, i.e. on 30.03.2012.

8. In such circumstances, this Court is of the considered view that the issue with regard to employer-employee relationship and the injuries sustained by the claimant was during the course of the employment or not has to be decided, after giving opportunity to the appellant/employer. Since the issue was decided by the Commissioner without affording opportunity to the employer, the order dated 12.01.2012 in W.C.No.04 of 2009 passed by 1st respondent, Commissioner for Employee's Compensation (Deputy Commissioner for Labour-I), Chennai, is set aside and the matter is remitted back to the authorities for fresh consideration on merits, after affording opportunities to both the parties.

9. The authority is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this order.

10. With the above observations and directions, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

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To

The Commissioner for Employee's Compensation,
(Deputy Commissioner for Labour-I, Chennai)
D.M.S.Compound, II Floor, Teynampet,
Chennai - 600 006.

+1cc to Mr.A.R.Gokulanath, Advocate SR.No.85015
+1cc to Mr.P.Subramanian, Advocate SR.No.85152

C.M.A.No.1756 of 2012
and M.P.No.1 of 2012

RK(CO)
GN(02/03/2018)



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