

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

CMA.NO.3273/2013

The Management of Karumalai Estate,
Karumalai Estate,
Karumalai Bazaar Post,
Valparai 642 130. ...Appellant/2nd Respondent

..Vs.

1.Muthulakshmi ... 1st Respondent/Petitioner
2.S.S.Sivanandam ... 2nd Respondent/1st Respondent
3.National Insurance Co. Ltd
Divisional Office 2
16 State Bank Road,
Coimbatore 18. 3rd Respondent/3rd Respondent
4.Thangavel
5.Pakiyaraaj
..Respondents 4 & 5
(Respondents 4 & 5 were
impleaded as parties vide order
dated 02.08.2016 in C.M.P.No.12352/2016
in CMA 3273/2013)

PRAYER:- Appeal filed under section 30 of the Workmen's Compensation Act, to set aside the order of the Commissioner for Workmen's Compensation/Deputy Commissioner of Labour, Coimbatore dated 12.06.2013 passed in EC.Case No.115/2011, by allowing the appeal.

For Appellant : Mr.S.Haroon AL Rasheed for
M/S.T.S.Gopalan & co

For Respondents: Mr.S.Govindan for R1.
Mr.B.Shanmuga nandhini for
M/s.S.Vadivel for R3

JUDGEMENT

The Management of Karumalai Estate, aggrieved by the award of the Commissioner of Workmen Compensation/Deputy Commissioner of Labour, Coimbatore dated 12.06.2013 in E.C.No.115/2011 granting a sum of Rs.8,54,280, is on Appeal.

The facts of the case are as follows:

[a] On 19.07.2011, the husband of the petitioner viz., Muthukumar was engaged by the contractor S.S.Sivanandam, who in turn was engaged by appellant/Estate Management for cutting the trees in Tea estates belonging to the appellant. While the deceased was engaged in cutting tree, the tree which was cut down by co-employee Rooban, fell on the deceased and he died on the spot. It is also stated that the Sivanandam/ the contractor has paid a sum of Rs.2,05,000/- to the claimant as compensation. The claimant has sought for a compensation of Rs.9,89,775/-, claiming that the said Muthukumar was earning Rs.300/- per day and he was aged above 23 years.

[b] The 1st respondent/ Contractor resisted the said claim. He admitted that he was engaged for cutting the trees. But it was claimed that 1st respondent had in turn engaged one Rooban and the said Rooban who was the sub-contractor engaged the services of the deceased Muthukumar. Therefore, there is no relationship of employer and employee between the said Muthukumar and the appellant or the said Sivanandam. It is claimed that the compensation of Rs.2,00,000/- paid by Sivanandam is only on humanitarian ground and on compulsion by the appellant. The averment that the said Muthukumar was earning Rs.300/- per day was also denied.

[c] The 2nd respondent/appellant contended that there is no employer employee relationship between the deceased and the 1st respondent/Contractor. It was claimed that the 1st respondent/Contractor had engaged one Rooban as Sub-Contractor who in turn had engaged the deceased. It is also claim that the deceased Muthukumar was earning a sum of Rs.9000/- per month was highly exaggerated. His salary should be fixed at Rs.8000/- per month.

[d] The 3rd respondent/Insurance Company filed a counter and contended that there was no insurance in respect of the casual labourers. Therefore, the insurance company cannot be made liable. The Commissioner of Workmen Compensation who tried the application, concluded that the deceased was a Contract labourer working under Sivanandam and the claim made by Sivanandam that he had engaged Rooban who in turn had engaged deceased, was not accepted. The Tribunal has referred to the evidence of the 1st respondent/Contractor that the Rooban would engage people and

carry out the work of cutting the trees and he would collect the wages from him. PW.2(Rooban) has stated that Sivanandam was paying Rs.300/- per day as wages to him and Muthukumar. In view of the said evidence, the learned Commissioner of Workmen Compensation concluded that the deceased has worked as a Contract Labourer engaged by Sivanandam. Therefore, in view of Section 12(1) of the Workmen Compensation Act, the 2nd respondent/Management is liable to pay the compensation and recover the same from the Contractor.

2. Mr.Haroon Al Rasheed, the learned counsel appearing for the appellant would contend that the evidence has been misread by the Commissioner. He has invited attention of this Court to the evidence of PW.1/wife of the deceased who had state that it was Rooban, who took her husband for work and that Sivanandam did not pay salary to her husband directly. This evidence of the wife of the deceased cannot be given any weightage inasmuch as she appears to be an illiterate person and the admissions of RW.1/the Contractor would show that he had engaged the services of the deceased. The Co-worker Rooban had deposed that the said Muthukumar and himself were engaged by Sivanandam . Therefore, the Tribunal had concluded that the deceased was working under the said Sivanandam and the claim that Rooban was Sub-Contractor, was not accepted. I do not see any reason to interfere with the said findings of the Commissioner.

3. The learned counsel appearing for the appellant would contend that quantum of compensation is on the higher side and fixing of Rs.8,000/- per month as minimum wage of the deceased cannot be said to be reasonable. The said fixation is in terms of notification issued by the Government under Section 4(1) (B) of the Workmen Compensation Act in S.O.1258(D) dated 31.05.2010. Even in the counter filed by the 1st respondent it is specifically stated that as per the Workmen's Compensation Act, the monthly income should be taken only at Rs.8000/- and not Rs.9000/- as claimed. The 2nd respondent has also taken the same stand as that of the 1st respondent before the Commissioner. It is not in dispute that S.O.1258 [c] dated 31.05.2000 directs the fixation of the wages at Rs.8000/-per month. The accident occurred in the year 2011, therefore, I do not find any irregularity or any question of law that arises in this appeal. Under Section 30 of the Workmen Compensation Act, there should be a substantial question of law to enable this Court to interfere with the Award of the Commissioner. I do not find any question of law leave alone substantial question of law that arises for consideration in this appeal and hence, the appeal is dismissed confirming the Award of the Commissioner of Workmen Compensation Act made in E.C.No.115/2011 dated 12.06.2013.

4. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sk/dsa

To

1. The Commissioner,
Workmen Compensation/Deputy Commissioner of Labour,
Coimbatore-18.

+ 1 cc to M/s.K.Govindan, Advocate,SR.51745

+ 1 cc to M/s.T.S.Gopalan & Co, Advocate,SR.51808

+ 1 cc to M/s.S.Vadivel, Advocate,SR.52226

CMA.NO.3273/2013

RSI (CO)
NR 09/08/2017



WEB COPY