

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.2192 of 2014
and
MP.No.1 of 2014

The Management,
Mahendra Raja Ginning Factory,
Represented by its Manager
Kannan, Mallakka Nagar,
Amani Kondalampatti, Salem - 10.

...Appellant

vs.

Jaya

... Respondent

Civil Miscellaneous Appeal has been filed under Section 30 of Workmen's Compensation Act 1923 to set aside the order dated 17.03.2013 in W.C.No.8 of 2008 passed by the Commissioner for Workmen Compensation, Salem (Deputy Commissioner of Labour).

For Appellants : Mr.R.Nalliyappan

For Respondents : Mr.R.Md. Nasrulla

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JUDGMENT

The management is on appeal against the award of the Commissioner of Workmen Compensation made in WC.No.8 of 2008. According to the claimant, she was working in the Ginning Factory of the appellant/ Management. On 10.07.2006, while she was working as a Coolie, she was

directed by the supervisor to remove the rope that was struck in the Ginning machine. While she was attempting to remove the struck rope, her right hand got struck in the machine and she suffered 3 fractures because of the same. She had been admitted as an in-patient in Pranav Hospital, Salem from 10.07.2006 to 24.07.2006. According to her, because of the accident, she is unable to use her right hand for any work and hence, suffered 100% disability. She was drawing salary of Rs.2,925/- on the date of accident and therefore, she is entitled to compensation of Rs.2,00,000/-.

2. The said claim was resisted by the management contending that the petitioner was never employed in the management and the accident had not occurred as suggested by the petitioner. The petitioner examined herself as PW1 and 3 documents were marked as Exs.P1 to P3. Ex.P1 is the discharge summary, Ex.P2 is the notice demanding compensation and Ex.P3 is the acknowledgment.

3. On the side of the appellant/ Management one Kannan, the Manager of the Factory was examined as RW1 and Exs.R1 to R3 were marked. The case of the management is one of total denial of employment itself.

4. The Commissioner, considering the evidence on record, concluded that the factum of employment and factum of accident have been proved. Therefore, the claimant is entitled to compensation of Rs.96,966/- for the injuries suffered by her in the accident. Aggrieved over the same, the management is on appeal.

5. Mr.R.Nalliyappan, learned counsel appearing for the appellant/management would contend that the employment of the respondent has not been established. Therefore, the Commissioner for Workmen Compensation erroneously exercised jurisdiction to grant compensation. Mr.R.Md. Nasrulla, learned counsel appearing for the respondent would contend that the claimant is a coolie and that RW1 has admitted that the appellant management did not engage coolies directly. He would therefore seek dismissal of the appeal claiming that there is no substantial question of law.

6. In the evidence of RW1, he has admitted that the management does not engage workers directly and they are engaged through contractors. Cleverly, RW1 had deposed without even disclosing the name of the contractor. Though the attendance register is sought to be produced as Ex.R1 to establish that the claimant was not working on the factory on the

day, the same cannot be relied upon inasmuch as it is the categorical case of RW1 that the company does not employ any casual workers and they are engaged through contractors. If only RW1 has disclosed the name of the contractor, the Commissioner, Workmen Compensation would have been in a position to direct the appellant to pay the compensation and recover it from the contractor. The fact that RW1 has not even disclosed the name of the contractor belies the claim of respondent that the claimant was not at all employed.

7. Yet another factor which has been noticed by the Commissioner is that the claimant has issued a notice demanding compensation under Ex.P2 and the receipt of the same has been acknowledged by the appellant/ Management, however, no reply has been issued for the said letter claiming that the respondent was not employed with the appellant / Management.

8. Therefore, the learned Commissioner has come to a conclusion that the claimant suffered injuries when she was actually employed with the appellant / Management and the appellant/ Management is liable to pay the compensation. All the questions decided are factual aspects based on evidence on record. Therefore, I do not see any question of law much less substantial question of law arising in this appeal as required under Section 30 of the Workmen Compensation Act.

9. Hence, this appeal is dismissed, confirming the award of the Commissioner, Workmen Compensation. However, in these circumstances of the case, there shall be no order as to cost in this appeal. Consequently, connected Miscellaneous Petition is closed.

28.07.2017

dsa

Index : Yes/no

To

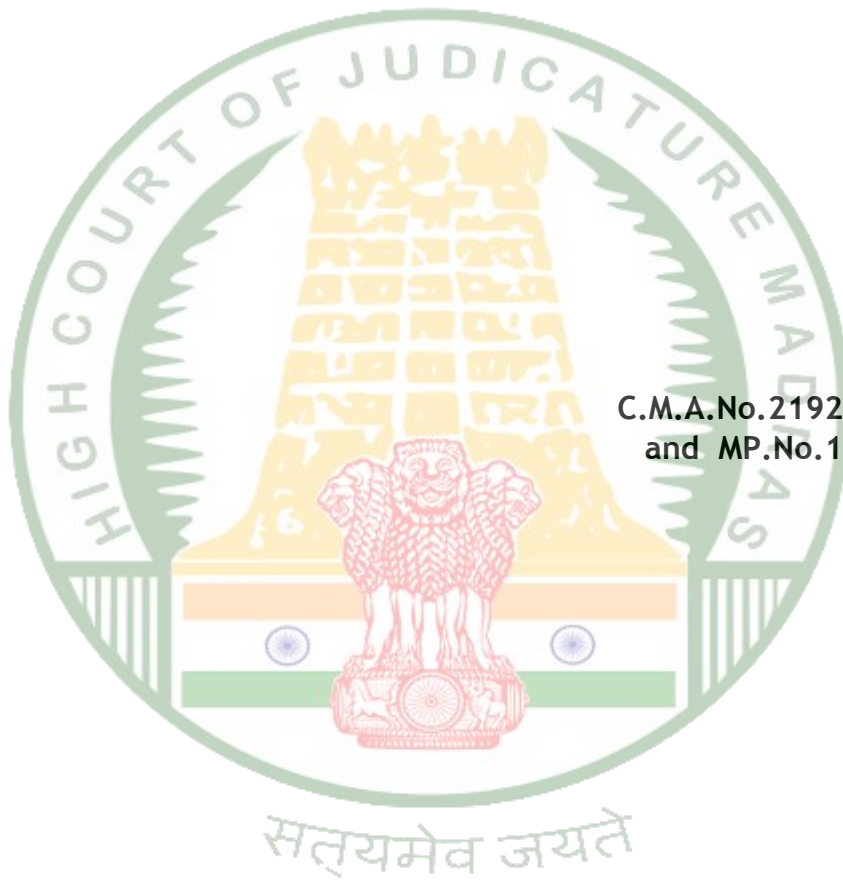
The Commissioner,
Workment Compensation, Salem.



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R.SUBRAMANIAN,J.

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