

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 09-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.910 OF 2008

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai.

2.The Superintending Engineer,
Lower Mettur Electro Power Project,
E.V.N.Road,
Erode.

3.Asssistant Divisional Engineer,
Barage No.III, Unit-II,
Kuthiraikalmedu,
Bhavani Taluk.

... Appellants/Opp. parties

-vs-

1.M.Karuppannan (Deceased)

2.K.Ayyammal (Deceased)

3.K.Gopi

4.Rathna

(Respondents 3 & 4 are impleaded)

... Respondents/Appellant

Appeal against the order, dated 09.07.2007, passed in
W.C.No.177 of 2005 on the file of Commissioner for Workmen's
Compensation -cum-Deputy Commissioner of Labour, Salem.

For appellants : Mr.V.Viswanathan

For respondents : Mr.T.Gowthaman

JUDGMENT

Aggrieved over the order passed by the Commissioner for
Workmen's Compensation in W.C.No.177 of 2005, dated 09.07.2007,
Tamil Nadu Electricity Board has filed this appeal.

2. The brief facts are that the legal representatives
of the deceased employee have preferred the claim petition
before the authority below, on the death of one Murugan. He was
employed as a Diver to clean the trash rack kept along with
water course of the Barrage Unit-3 of of the Erode Power
Generation Circle of the Tamil Nadu Electricity Board. On

25.11.1999, at around 08.00 a.m., when power generation at Barrage Unit-3 was disrupted on account of accumulation of trash in the trash rack, seven workmen were engaged to remove the trash. Out of seven, the said Murugan, who went into the waters to remove the trash, did not come out even after ten minutes. Therefore, a search was made under the water by deploying others and information was given to Bhavani Fire personnel. Finally, at 06.25 p.m., Murugan's dead body was retrieved from the barrage and a police complaint was lodged by the Assistant Executive Engineer of the appellant Board. Thereafter, a notice was issued by the respondents, claiming compensation for the death of Murugan on 20.10.2000, and, subsequently, a claim was also filed. The appellant objected to the employer-employee relationship, stating, that on the date of accident, the deceased was not under the direct employment of the appellant. Further, drowning by accident is not connected with the business of the establishment and, therefore, they are not liable to pay compensation. The said employee was engaged through the first applicant and father of the deceased on the date of accident, and, as such, it is the contractor, who is liable to pay compensation as an immediate employer and not the appellant. The authority has framed four issues and found that the appellant Board is liable to pay compensation, thereby awarding compensation of Rs.4,07,700/- and also a sum of Rs.2500/- towards funeral expenses, totalling to a sum of Rs.4,10,200/-.

3. Learned counsel for the appellants would submit that the deceased person was an employee of the first applicant, who is none other than his father; in cases of engagement by contractors, namely, the immediate employer, he only is liable to pay compensation and the principal employer is not liable to pay.

4. As per Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970, in short, "the Act", every principal employer of an establishment shall make an application to the registering officer for registration of the establishment. As per Section 12 of the Act, the contractors shall be licensed with the Government through a Licensing Officer. As per Section 21 sub-clause (4), in case a contractor fails to make payment of wages within the prescribed period or makes short of payment, then the principal employer shall be liable to make payment of wages in full, or the unpaid balance due. In the instant case, under the Act, the appellant is not registered as principal employer and also has not engaged any licenced contractor to do cleaning work in the barrages. In the absence of any evidence, the appellant shall be construed as the employer and the deceased shall be considered as engaged directly by him. The authority below, relying on Ex.P-1, First Information Report, Exs.P-2, Post-mortem Report, and Ex.P-3, Death Certificate, has come to the conclusion that the deceased died during the course

of engagement by the appellant Board. Further, the F.I.R. itself was lodged by the Assistant Executive Engineer of the appellant Board. Therefore, it is very clear that the accident has taken place within the premises under the control of the appellant Board and out of and during the course of employment under the appellant Board.

5. Learned counsel for the appellant would further contend that during the relevant period, as per the notification issued by the Tamil Nadu Public Works Department, Water Resources Organisation, issued for Coimbatre, The Nilgiris and Erode Districts, the rates of wages fixed for the year 1999-2000 would specify Rs.85/- for Class-I Well Diver. Accordingly, he would contend that the wage fixed by the authority below is exorbitant, more so, when a casual labourer, who is not engaged all 30 days, but engaged only during emergencies, where power generation is not disrupted. Therefore, calculation of wages, according to the appellant, is exorbitant and cannot be accepted.

6. The appellant has filed three documents for proof of age and engagement through a contractor. Ex.R-1 is the Hand Receipt, issued in favour of the first applicant, by the Assistant Executive Engineer, Mechanical, Barrage PH-III, towards removing of under water debris in the trash rack of Unit-2, by using skilled divers, after shutting down of the Unit on 25.11.1999. Based on this document, the appellant would contend that the total remuneration given for removal of trash for seven divers is only Rs.250/- and, therefore, the wage fixed by the authority is too high.

7. Even assuming that as per the rates of wages fixed by the Government, an individual employee will earn a minimum of Rs.85/- per day, for seven workers, it will be around Rs.595/-, whereas, the sum given was only Rs.250/-, which will lead to the conclusion that an individual worker was paid only around Rs.35/-. A pragmatic approach on this issue will go to show that an ordinary Coolie used to get a minimum of Rs.150/- per day, whereas, while the cleaning of trash and barrages in power generation units is a very risky and onerous job, naturally, the remuneration will be higher, corresponding to the risk taken by the divers, for removing trash. Therefore, the authority below has observed that the wages paid to the individual employees at a bare minimum shall be Rs.150/-. No evidence is adduced by the appellants in proof of payment of wages. As per the Act, the employer shall supervise the payment of wages and depute a person for the same purpose. As per Sections 72 and 73 of the Act, an authorised representative of the principal employer shall be present during disbursement of wages and shall certify the payment of wages. In that event, even assuming that the appellant Board is a principal employer, they shall produce the Wage Register, maintained by the contractor or even in the case

of direct engagement, vouchers and registers, maintained by them. In the absence of any evidence, both oral and documentary, the authority has fixed Rs.150/- per day, which, according to this Court, is very reasonable and not excessive. The deceased employee was aged 32 years at the time of accident, as per Exs.R-2 and R-3. The authority below has computed the compensation, applying the factor 203.85, corresponding to the age of 32 years, fixing the wage at Rs.150/- per day and restricting the same within the statutory limit of Rs.4000/- per month. Therefore, the computation of compensation is in strict adherence to the requirements of Section 4 (1) (a) of the Workmen's Compensation Act. Further, the authority has ordered Rs.2500/- towards funeral expenses and, on this aspect also, this Court does not find any excessive award of compensation.

8. In the result, it is found that the order passed by the Commissioner for Workmen's Compensation is in accordance with law and it is not exorbitant. This Court does not find any merit, warranting interference with the order passed by the authority below. Accordingly, this Civil Miscellaneous Appeal is dismissed. Learned counsel for the appellants submits that they have deposited the entire amount of compensation. But, as per Section 4-A of the Workmen's Compensation Act, the claimants are entitled to interest from 31st day of the accident at the rate of 12% per annum. Hence, the appellants are directed to deposit interest at the rate of 12% per annum from the day it falls due till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this order, and, on such deposit, the respondents/claimants are entitled to withdraw the same. No costs. Consequently, the connected M.P.No.1 of 2008 is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

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Sub Assistant Registrar

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To

1. Commissioner for Workmen's Compensation-cum-
Deputy Commissioner for Labour, Salem.

2. The Section Officer, V.R. Section, High Court, Madras.

C.M.A.No.910 OF 2008

NM(CO)
TR(10/01/2018)