

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 09.02.2017

JUDGMENT PRONOUNCED ON: .11.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.760 of 2001

Superintending Engineer,
TWAD Board, Gandhi Road,
Salem 636 007.

... Appellant/1st opp. party

Vs.

1. Vijayabalan

... 1st Respondent/Petitioner

2. Rathinam

3. K.Sekar Asari

...2nd & 3rd Respondents/
2nd & 3rd opp. party

Prayer:- Civil Miscellaneous Appeals have filed under Section 30 of the Workmen Compensation Act, against the order of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem Region, Salem made in W.C.No.244 of 1999 dated 16.04.2001 received by the Appellant on 29.05.2001.

For Appellant : Mr.M.Arokiyaraj

For R1 : Mr.P.Selvaraj

JUDGMENT

The TWAD Board has come forward with this appeal by its Superintending Engineer, challenging an order passed by the Commissioner under Workmen Compensation Act. The case of the petitioner before the Commissioner was that he was engaged in connection with the construction of the overhead tank and on 12.01.1993, while he was engaged in centering work some 20 feet above ground level, he fell down and sustained injuries. For the injuries he suffered in the course of his employment, the petitioner moved the Deputy Commissioner (Labour) seeking compensation and the former passed an order fixing the compensation amount at Rs.69,064/- and made the appellant liable for its due payment.

2. The learned counsel for the appellant contended that work of constructing the water tank was entrusted by the TWAD Board to its contractor Mr.Rathinam, who in turn has engaged the services of a sub-contractor and that the applicant/first respondent was engaged by the said sub-contractor and as such there is no

employer-employee relationship between the appellant and the first respondent herein, hence the Board is not liable. He emphasised that the Deputy Commissioner too in his impugned order has found that the petitioner was working only under the sub-contractor.

3. The submission of the appellant's counsel is not tenable in view of Sec.12 of the Workmen Compensation Act, 1923. Section 12 reads :

12. Contracting :- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be,

to execute the work or which are otherwise under his control or management."

This section provides that where any person, in the course of, or for the purpose of his trade or business contracts with another person who may be termed a contractor, the person who engages the contractor would be liable to pay compensation to such of the employee of the contractor for the injuries suffered by him in any accident arising out of and in the course of the employment as a Principal employer. Accordingly, the appellant is liable to pay compensation as determined by the Deputy Commissioner (Labour) as the Principal employer of the petitioner /claimant. However, as per Sec.12(2) of the Act, the appellant would be liable to be indemnified by the contractor who is primarily liable to compensate his employee. Accordingly, the appellant is entitled to be indemnified by the sub-contractor concerned.

4. In the result, there is no merit in the appeal and the same is dismissed and order of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem Region, Salem made in W.C.No.244 of 1999 dated 16.04.2001 is hereby confirmed. No costs.

Sd/-

Assistant Registrar(CS-viii)

//True Copy//

Sub Assistant Registrar

To:

1. The Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

2. The Section Officer,
V.R.Section, High Court, Madras.(2 copies)

+1cc to Mr.M.AROGIYARAJ, Advocate, S.R.No. 78375

Pre-delivery Order
in

C.M.A.No.760 of 2001

SJ(CO)
TR(05/01/2018)