

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 22.06.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.2038 of 2017
(C.M.A.SR No.20813 of 2005)
and
CMP No.10956 of 2017

The Managing Director,
The South Arcot District
Co-operative Agro Service
Society Limited.
S.N.Chavady,
Cuddalore.

... Appellant / employer

versus

K.Venkatachalam

... Respondent/employee

Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order passed by Deputy Commissioner of Labour (Hon'ble Commission for Workmen Compensation) in W.C.No.209 of 2000, dated 30.11.2004 and received by the appellant by Registered Post on 17.12.2005.

For appellant : Mr.R.Muralidharan

JUDGMENT

Challenging the award passed by the Deputy Commissioner of Labour in W.C.No.209 of 2000, dated 30.11.2004, this appeal has been filed by the employer / opposite party.

2. The respondent / employee filed the W.C.No.209 of 2000 before the Deputy Commissioner of Labour, Chennai camp at Cuddalore, claiming a compensation of Rs.2,03,328/- along with interest.

3. The applicant contended that he was aged 45 years and he was earning monthly a sum of Rs.2,500/- and that in the course of employment under the appellant, he suffered employment injury.

4. According to the claimant, his right hand thumb was pulled by machine. As a result of the accident, the right hand thumb of the applicant was crushed and thereby he sustained grievous injuries. He took treatment at Government Hospital, Cuddalore and thereafter, he was shifted to Government Hospital, Chennai and he was taking treatment as inpatient from 11.03.1999 to 22.04.1999.

5. The respondent was incapable of performing his duties as Turner, as he had been performing prior to the accident. The appellant refused to give further employment after his disablement and claiming a compensation of Rs.2,03,328/-, the respondent filed the petition, before the Deputy Commissioner of Labour.

6. The claim was opposed by the appellant on the ground that he was not a worker under the Workmen's Compensation Act and that he was not a permanent employee. In any event, at the best he could be considered only as a Coolie (casual wage-earner) The accident took place only due to negligence on the part of the employee and therefore, the employer is not liable to pay for compensation.

7. The Deputy Commissioner for Workmen Compensation, after considering

<http://www.judis.nic.in> the materials placed before him has directed the appellant herein to pay

compensation of Rs.53,933/- along with interest at the rate of 12% and this order is under challenge in this Civil Miscellaneous Appeal filed by the employer.

8. The learned counsel appearing for the appellant would submit that it is an invited accident and it is only the employee who was negligent and careless and for the deliberate act on the part of the employee, the appellant employer cannot be made responsible. It is also submitted that the respondent cannot be treated as a workman and therefore the finding that the respondent is an employee, has also to be set aside.

9. The following substantial questions of law are raised at the time of admission of this appeal and this Court has to answer the same :-

(a) Whether the Applicant / Respondent is a "Workman" within the meaning of the Workmen's Compensation Act entitling him to claim compensation?

(b) Whether the application filed by him is maintainable, in view of the amount received by him under a Receipt dated 25.03.2001 in full quit of the claim?

(c) Whether the amount arrived at by the Deputy Commissioner is according to the schedule and legally sustainable?

10. The first issue to be considered is as to whether the applicant / respondent is a workman within the meaning of the Workmen Compensation Act (Employee Compensation Act).

11. A detailed discussion would not be necessary, in view of the admission made by the witness Ravichandran who was examined on behalf of the appellant

in his evidence, the witness has stated that on 10.03.1999, the respondent had

been working in the lathe of the appellant institution and that he sustained employment injury. This is also taken note of, by the Deputy Commissioner of Labour and he gave a specific finding in the order itself.

12. The Deputy Commissioner has also relied on the evidence of Azhagan that the injured was working as a foreman and that the employer paid a sum of Rs.2,500/-

13. There is also a finding that the appellant did not prove that the respondent was the daily wage earner. Fixing the monthly income at Rs.1,800/-, considering the age as "53", adopting the factor 14288 fixing the loss of earning capacity at 35%, the total amount has been quantified, 53933. Proper factors have been applied and the amount of compensation has been properly quantified.

14. Factually and legally, all issues have been properly answered by the Deputy Commissioner of Labour and award passed is reasonable and justifiable which is the fair award which does not require any interference by this Court on legal grounds. The questions of law raised are answered in favour of the respondent employee.

15. In view of the above, this Civil Miscellaneous Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.06.2017

Speaking / Non speaking
vsi2/kv

To

1. Hon'ble Commission for Workmen Compensation
Deputy Commissioner of Labour
D.M.S. Campus,
Chennai – 6.
2. The Section Officer, VR Section,
High Court, Madras.



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Dr.S.VIMALA,J.

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