



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.280 of 2014
and
M.P. (MD) .Nos.2 and 3 of 2014

A.Ilangovan ... Appellant/Respondent
Vs.

Muthuveeran ... Respondent/Claimant

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Employees' Compensation Act, 1923, to set aside the order dated 31.07.2013 made in W.C.No.165 of 2009 on the file of the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour), Trichy and allow this appeal.

For Appellant : Mr.M.E.Ilango

For Respondent : Mr.N.Sudhagar Nagaraj

JUDGMENT

Heard the learned counsel on either side.

2.The appellant herein suffered an award under the Employees' Compensation Act, 1923, at the instance of the respondent herein.

3.According to the respondent he used to be engaged by the appellant for doing some domestic house hold works. He further alleged that the appellant suspected that he was having illicit intimacy with the appellant's wife. Therefore in order to wreck vengeance on the respondent herein, the appellant asked the respondent to go to his house and remove some branches of the trees that stood over the property belonging to the appellant herein. When the respondent herein was on the tree, the appellant is said to have violently shaken the tree and made the appellant fall from the tree. In the process, the respondent herein suffered grievous injuries. He, therefore, filed W.C.No.165 of 2009, on the file of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour), Trichy.

4.The Authority constituted under the Employees' Compensation Act, dated 31.07.2013 passed an award for a sum of Rs.3,84,426/-. Questioning the same, this appeal has been filed and this Court admitted the same by the following substantial questions of law.



"a. Whether a person who is employing another not for the purpose of his business or trade could be termed as an employer as defined under Section 2(e) of the Employee's Compensation Act, 1923?

b. Whether a person employed for domestic help could be termed as an employee as defined under Section 2(dd) of the Employee's Compensation Act, 1923?

c. The case of the respondent is that due to personal motive, the appellant pulled his legs and made him to fall from the tree. Whether this alleged occurrence could be termed as an accident arising out of and in the course of employment, which enables the victim to claim compensation?"

5. The averments set out in the claim petition filed by the respondent herein is to the effect that the injury suffered by him is an out come of deliberate and willful conspiracy said to have been hatched by the appellant. It cannot be categorised as an injury that can be attributed as one that occurred during in the course of his employment. In any event, the respondent herein will not fall within the definition of the term "workman". The case on hand is covered by the definition set out in Section (2) (1) (n) of the Workmen's Compensation Act which was omitted with effect from 18.01.2010.

6. Section (2) (1) (n) of the Workmen's Compensation Act reads as follows:-

"Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

(i) a railway servant as defined in 2(Clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in schedule II, or

(ia) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,



(d) a person recruited for work abroad by a company and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or)

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(ii) employed 4(***) 5(***) in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of 1(the Armed forces of the Union) 2(***) and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

2.The exercise and performance of the powers and duties of a local authority or of any department (action on behalf of the Government) shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department."

7.The respondent herein will not come under any of the categories. View from any angle, the application filed by the respondent herein was not maintainable. I, therefore, answer all the substantial questions of law raised in this appeal in favour of the appellant.

8.The award dated 31.07.2013 made in W.C.No.165 of 2009 on the file of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour), Trichy is set aside.

9.This Civil Miscellaneous Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

1.The Commissioner for Employees' Compensation,
(Deputy Commissioner of Labour), Trichy,

2.The Record Keeper, (2 copies)

Vernacular Section,

Madurai Bench of Madras High Court, Madurai.

<https://hcc.mca.gov.in/MServe/MServeE>.Ilango, Advocate, SR.No.93963

+One cc to Mr.N.Sudhagar Nagaraj, Advocate, SR.No.94293

tsg

RL/6C/3P/SV/MMS/SAR1/14/2/2018

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