



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13.12.2017

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .No.326 of 2015

Principal,
CMS College,
Coimbatore.

... Appellant

Vs.

1.Felominal
2.Senthil Kumar

... Respondents

Prayer:- This Civil Miscellaneous Appeal filed under Section 30 of the Employees' Compensation Act, 1923, to set aside the order of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour) Trichirappalli in W.C.No.83 of 2006, dated 19.05.2014 and allow the appeal and direct the Authority to refund the deposited amount of Rs.4,36,320/- with interest to the appellant.

For Appellant : Mr.M.E.Ilango
For M/s.Ravindran

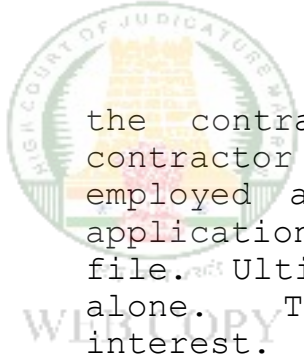
For Respondents : No Appearance for R1 and R2

JUDGMENT

Heard the learned counsel on either side.

2.The appellant is an educational institution. They had engaged one M/S.SRA and Company, Koman Kattupudur, Somanur Via, Coimbatore-641 668, as their contractors to carry out certain construction activities. One Anand, died of electrocution, on 29.08.2004, at about 11.30 A.M, in the construction site. It is the case of the appellant that the said Anand was not employed as a workman and that it was only one Santhanam, who was employed by the contractor and that the deceased was a chance visitor to the site, when the second respondent was requested to switch on the motor, the accident had occurred. The mother of the deceased alone filed W.C.No.83 of 2006, on the file of the Commissioner for Employees' Compensation (Deputy Commissioner of Labour), Trichirappalli.

3.The appellant institution and the Supervisor were made us parties originally. The appellant institution and the supervisor of



the contractor were shown as respondents. Subsequently, the contractor namely, M/S.SRA and Company was also sought to be employed as a party respondent. Even though, such impleading application was filed, it appears that the same was not taken on file. Ultimately, the award came to be passed against the appellant alone. The award amount was for a sum of Rs.4,38,320/- with interest.

4.The learned counsel appearing for the appellant would contend that the deceased Anand was not a workman and that in any case, it is only the contractor who should be made liable and not the appellant. The Deputy Commissioner of Labour, Trichy, has given a finding that the said Anand was a workman. This is being a pure question of fact, I do not wish to interfere with the same. I am not in a position to accept the stand of the appellant that it is only the contractor who can be made liable.

5.Section 12 of the Employees' Compensation Act, 1923, fastens the ultimate liability on the principal. In this case, it is the appellant who is the principal. It was the appellant who engaged the said SRA and Company. In order to enable the affected workman or the concerned legal representatives to speedily enforce their claims the principal as well as the contractor are made liable as per Section 12 of the Act. Therefore, the order fastening liability on the appellant also cannot be faulted. But that is not the end of the matter. Section 12 of the Employees' Compensation Act, 1923, specifically provides that when the principal is liable to pay the compensation, he shall be entitled to be indemnified by the contractor. It is further set out in the said provision that all questions as to the right and the amount of any such indemnity shall in default of agreement be settled by the Commissioner.

6.Therefore, the contention of the learned counsel for the appellant is that when the claimant herself took out an application for impleading the contractor, the same should have been allowed and the inter se rights of the appellant, principal and the contractor must have been settled in these very proceedings itself. I find force in the said submission.

7.Therefore, this appeal is disposed of in the following terms

1.The appellant is liable to satisfy the award passed by the Deputy Commissioner of Labour, Trichy in W.C.No.83 of 2006.

2.Since it is a statutory requirement, the award amount has already been deposited by the appellant and the same is permitted to be withdrawn by the claimant.

3.The matter is remitted to the file of the Deputy Commissioner of Labour, Trichy for the only purpose of impleading the contractor namely, M/S.SRA and Company, Coimbatore, so as to decide the issue of entitlement of the appellant to be indemnified by the said



contractor. The remand is made only for this purpose.

8. This Civil Miscellaneous Appeal is disposed of in the above terms. No costs.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Employees' Compensation
(Deputy Commissioner of Labour),
Trichirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
3. Felominal,
W/o. Asir,
Door No. 64, New Street,
Trichy-620 017
4. Senthil Kumar,
Supervisor,
CMS College,
Coimbatore.

+ 1 CC TO Mr. M. E. ILANGO, ADVOCATE IN SR No. 92557

TSG

TE/JC/SAR-2 : 20/06/2018 : 3P/7C

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