



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.508 OF 2015

and

M.P. (MD) No.1 of 2015

Special Officer,
0.522, Kovilpatti Agricultural Producers
Marketing Society,
962, Sattur Road,
Kovilpatti.

... Appellant/Respondent

Vs.

Devi

... Respondent/Claimant

Prayer: Appeal filed under Section 30(1) of Workmen's Compensation Act, 1923 read with Amended Act 2000, to set aside the order of the Deputy Commissioner of Labour, Tirunelveli (Commissioner for Workmen's Compensation) in W.C.No.33 of 2010 dated 31.12.2014.

For Appellant : Mr.V.O.S.Kalaiselvam
For Respondents : Mr.B.Rajesh Saravanan

JUDGMENT

Aggrieved by the award passed by the Commissioner for Workmen's Compensation in W.C.No.33 of 2010 on the file of the Deputy Commissioner of Labour, Tirunelveli, this appeal has been filed by the Special Officer, 0.522, Kovilpatti Agricultural Producers Marketing Society.

2.The respondent herein filed the said claim petition for compensation for the injury suffered by her in an accident that took place on 03.02.2009 in the course of employment. Four fingers and palm in the left hand of the claimant had suffered great damage. It is evident from the record that she sustained 40% permanent partial disability. The Deputy Commissioner of Labour, Tirunelveli/Commissioner for Workmen's Compensation awarded a sum of Rs.1,09,323/- as compensation for the disability suffered by her. Questioning the same, this appeal has been filed.

3.This Court admitted the appeal on the following substantial questions of law:

<https://hcservices.ecourts.gov.in/hcservices/>

1. Whether appellant is covered as per the provisions of ESI Act and if so whether the Commissioner has



jurisdiction to entertain a petition under Employees Compensation Act?

2. Whether the appellant is entitled to raise the plea that it is covered under provisions of ESI Act when such a stand was not taken before the Commissioner?

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4. The learned counsel for the appellant contended that the appellant is covered by ESI Act and that therefore, the Commissioner for Workmen's compensation would not have the jurisdiction to entertain a petition under Employees Compensation Act, 1923. In support of the said contention, the learned counsel placed reliance on the decision reported in **2003-I-LLJ 558 - Bharaqqath Engineering and V. R. Ranganayaki**. The Hon'ble Supreme Court held that if coverage under the Employees' State Insurance Act, 1948 is available, then, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. But, in the present case, the appellant herein did not take such a plea before the Commissioner for Workmen's Compensation.

5. Admittedly, the respondent herein suffered injury during the course of her employment in an accident. She filed a claim petition before the authority constituted under the Workman Compensation Act, 1923. On the face of it, the said petition is maintainable. If the appellant herein wanted the dismissal of the said petition on the ground that it is not maintainable, then, a plea ought to have been taken before the said authority. Otherwise neither the authority nor the injured workmen would know that the remedy would lie elsewhere. Even before this Court, the appellant has not convincingly established that the appellant is enjoying ESI coverage. Except giving code number, there is no other material before this Court. The appellant has not filed any application for impleading the Employees' State Insurance Corporation. If the Employees' State Insurance Corporation had been impleaded as a respondent at least at the appellate stage, this Court could have ascertained the factual correctness of the assertion made by the appellant. Since no material has been placed before this Court, this Court is left with no other option but to answer both the substantial questions of law raised in this appeal against the appellant. Even as regards the quantum, the amount awarded cannot be said to be excessive. The formula laid down in the Statute has been applied. There is 40% disability and based on the same, compensation has been awarded.

6. I find no merit in this appeal. It stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

1. The Deputy Commissioner of Labour,
(Commissioner for Workmen's Compensation)
Tirunelveli.

2. The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.V.O.S.KALAISELVAM, ADVOCATE IN SR No. 82559
+ 1 CC TO Mr.B.RAJESH SARAIVANAN, ADVOCATE IN SR No. 82714

ARUL

TE/SKN-RSK/SAR-2 : 24/11/2017 : 3P/5C

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