



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.517 of 2015
and
MP(MD)No.1 of 2015

S.Arasappan ... Appellant/Respondent

Vs.

1.Sudhamathi

2.Minor Sudhakran
Rep.by his mother and guardian
1st respondent

3.Petchimuthu

4.Gandhimathi ... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workmen Compensation Act, 1923, against the order dated 07.07.2014 made in W.C.No.540 of 2004 on the file of the Commissioner for Workmen Compensation, Tiruchirappalli.

For Appellant	: Mr.G.Sridharan
For Respondents	: Mr.G.Karnan for R3&R4
	No appearance for R1& R2
	R2 - Minor

JUDGMENT

Heard the learned counsel on either side.

2.The husband of the first respondent herein died on 16.04.2004 as a result of Cardiac arrest. He was aged 30 years when he died. He died leaving behind his wife and his minor son and aged parents.

3.According to the claimants, he was working as Chef in the hotel run by the appellant. The death took place in the course of employment. Therefore, the claim under Workmen Compensation Act, 1923 was made in W.C.No.540 of 2004 on the file of the Commissioner for Workmen Compensation, Tiruchirappalli. The authority allowed the claim and directed the appellant to pay a sum of Rs.2,48,540/- with interest. Questioning the same, the appellant has filed this appeal.

4.The appeal is admitted on the following substantial question of law.



"Whether the claimants are entitled for compensation in the absence of the proof that the death of the said Manoharan occurred arising out and in the course of employment?"

5. It is seen that an award dated 12.01.2011 was earlier passed in favour of the claimants. The same was set aside on 18.08.2011 in CMA(MD)No.551 of 2011 by this Court and the matter was remanded. Following the remand, there appears to have been a settlement between the parties. Even a joint memo was filed, but, the authority declined to take note of the said compromise and proceeded to pass the impugned award.

6. It is seen that the witnesses examined on the side of the claimants were not cross examined. This probablise the case of the appellant that he definitely thought the matter has been amicably settled and therefore did not expect any adverse award. But, that would not prevent the appellant from questioning the award on merits.

7. The learned counsel appearing for the appellant contended that there is no legally acceptable material on record to arrive at a conclusion that there was employer employee relationship between the appellant and the deceased. The attendance register has been marked as Ex.P5. But, the name of the deceased did not find place. PW.2 Tamilselvan was examined. The said Tamilselvan was former employee of the appellant and there is already a pending dispute between them. Therefore, the testimony of PW.2 Tamilselvan is obviously a tainted one. But, the authority has come to the conclusion that employer employee relationship existed solely on the strength of said testimony of said Tamilselvan. The testimony of Tamilselvan does not inspire any confidence.

8. I am therefore of the view that the impugned award is perverse and it is liable to be set aside. I therefore answer the substantial question of law framed in this appeal in favour of the appellant. This Civil Miscellaneous Appeal is allowed by setting aside the order dated 07.07.2014 made in W.C.No.540 of 2004 on the file of the Commissioner for Workmen Compensation, Tiruchirappalli.

9. It is seen that the claimants have withdrawn 50% of the amount deposited by the appellant with accrued interest. Considering the fact that the deceased left behind his young wife and son and also aged parents, the learned counsel for the appellant would fairly submit that he would prevail upon the appellant not to press for recovery of the said withdrawn amount. The appellant pursuant to the advice of his counsel has also filed affidavit to that effect. This stand of the appellant is appreciated. Though the appeal is allowed, it is made clear that the claimants are not liable to return or refund the amount



already withdrawn by them. The appellant shall not take any steps for recovery of the said amount. The appellant is entitled to refund of the remaining 50% of the deposited amount with accrued interest.

10. This Civil Miscellaneous Appeal is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner for Workmen Compensation,
Tiruchirappalli.

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

+1cc to Mr. G. KARNAN, Advocate, SR. 84738

+1cc to Mr. G. SRIDHARAN, Advocate, SR. 84766

C.M.A. (MD) No. 517 of 2015
and

MP (MD) No. 1 of 2015
31.10.2017

SKM

KK/SKN RSK/SAR 1/23.11.2017/ 3P- 5C/