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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.883 of 2015

and

MP (MD) No.1 of 2015

The Superintending Engineer,
TWAD Board, Sewerage Circle,
Tanjavore.

... Appellant

Vs.

1. N.Dinesh Kumar

2. The Commissioner,
Tanjavore Municipality,
Tanjavore.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 30(1) of the Workmen Compensation Act, 1923, to set aside the award of the Deputy Commissioner of Labour, Trichy in WC.No.52 of 2009 dated 31.03.2015.

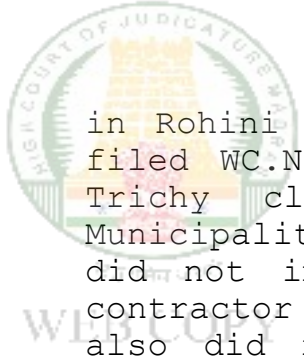
For Appellant : Mrs.Lakshmi Gopinathan
for Mrs.Porkodi Karnan

For Respondents : Mr.M.P.Senthil for R1
Mr.S.Pakalavan for R2

JUDGMENT

This appeal has been filed by the TWAD Board questioning the order dated 31.03.2015 passed by the Deputy Commissioner of Labour, Trichy in WC.No.52 of 2009.

2.The Tanjore Municipality entrusted the work of laying under ground drainage to TWAD Board by entering into a contract. TWAD Board in turn engaged a sub contractor by name, Sekar. The claimant namely, N.Dinesh Kumar, the first respondent herein was an employee under the said subcontractor individual. On 27.03.2008, when he was engaged in his work, he met with an accident. He was an inpatient



in Rohini Hospital, Tanjore from 27.03.2008, till 18.04.2008. He filed WC.No.52 of 2009 before the Deputy Commissioner of Labour, Trichy claiming compensation. He impleaded the Tanjore Municipality as well as TWAD Board as respondents. Strangely, he did not implead his immediate employer Sekar, who was the sub contractor as one of the respondents. The appellant TWAD Board also did not take steps to get the said Sekar impleaded as a respondent. It is open to the respondents in a claim petition of this nature also to take applications to bring all the interested parties on record. This was not done.

3. When the matter was taken up for hearing, the appellant board filed their proof affidavit. I went through the contents of the said proof affidavit. The only defence taken by the appellant was that the claim petition was not maintainable, since the said Sekar was not made as a party. It was not the stand of the appellant that liability must be jointly fastened on the appellant board as well as the Tanjore Municipality which awarded the work. The Deputy Commissioner for Workmen Compensation by order dated 31.03.2015 granted a sum of Rs.1,11,889/- as compensation payable to the said workman. Aggrieved by the same, TWAD Board has filed this appeal.

4. This appeal was admitted and the following substantial questions of law arose for consideration :

"1. Whether the Workmen's compensation petition is maintainable for non joinder of the contractor as a party to the proceedings ?

2. Whether the learned Commissioner is correct in putting the liability on the appellant which is against the terms of contract.."

5. Heard the learned counsel for the parties.

6. The learned standing counsel appearing for the TWAD Board contended that Tanjore Municipality which entrusted the work should also share 50% of the liability. Reliance was placed on Section 12 of Employees Compensation Act, 1923. As rightly pointed out by the learned counsel appearing for the claimant, the purpose of Section 12(1) of the Act is to award compensation to the workmen without undue delay. This Section is intended to get over the technical plea of immediate liability. The principal contractor is made vicariously liable to ensure that payment is made to the claimant at the earliest. Of course, the contractor is not absolved of his liability to indemnify the principal, who has compensated the injured workmen in terms of the Act.

7. In the present case, Tanjore Municipality had awarded the work to TWAD Board. The TWAD Board had engaged the contractor Sekar. Dinesh Kumar was employed under the said Sekar. Dinesh Kumar suffered injury in the course of his employment. That he has to be compensated cannot admit of any doubt. The question is who is to pay first and who is to bear the ultimate liability. I am of the



view that the appellant TWAD Board alone can be considered as the principal employer. Therefore, the Commissioner for Workmen Compensation rightly fastened the liability on the appellant TWAD Board. There is nothing wrong in exonerating of the Tanjore Municipality.

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8.It is true that Section 12(2) of the Act states that all questions as to the right to and the amount of any such indemnify shall, in default of agreement, be settled by the Commissioner. In this case, the workman did not array his immediate employer Sekar as party to the proceedings. This was also pointed out by the appellant board in its counter. All that the appellant could have done is to take out an interim application for bringing the said Sekar on record. Having failed to do so, it is not open to the appellant board to now contend that the workmen compensation petition is not maintainable for non joinder of the contractor as a party to the proceedings. As far as the worker is concerned his only concern is payment of compensation for the injuries suffered by him. He rightly made the principal employer as a party. It is for the principal employer viz., the appellant Board to have invoked Section 12(2) of the Act for impleading the contractor as the third respondent. The petition filed by the worker under the Employees Compensation Act, 1923 cannot be said to be not maintainable for non joinder of his immediate employer. I therefore answer both the substantial questions of law that arise for determination in this appeal against the appellant.

9.The learned counsel appearing for the appellant board had enclosed a copy of the contract entered into between the appellant board and the contractor. In particular Clause 55 of the said contract reads as under :

*55.Accident or Injury to Workmen :
The employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.*

10.It is therefore clear that the ultimate liability would fall on the said contractor Sekar. It is open to the appellant board to satisfy the award passed by the Commissioner for Workmen Compensation and thereafter, recover the same from its contractor. Since the contractor is not before me, I am not in a position to pass an order binding him also. All that this Court can observe is that it is open to the appellant board to proceed against the said contractor for enforcement of its rights in terms of Clause 55 of the contract.



11. With these observations, this appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Tanjavore Municipality,
Tanjavore.
2. The Deputy Commissioner of Labour, Trichy.
3. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO M/s.POLAX LEGAL SOLUTIONS, IN SR No. 87675
+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 87753

SKM

TE/JC/SAR-4 : 29/11/2017 : 4P/6C

C.M.A. (MD) No.883 of 2015 and
MP (MD) No.1 of 2015
15.11.2017