



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2017

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.277 of 2013

and

MP.(MD).No.1 of 2013

1.K.Raja

2.R.Ramkumar

... Appellants/1st and 2nd respondents

Vs.

1.Ramar

... 1st Respondent / Petitioner

2.A.Selvam

... 2nd Respondent/ 3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act against the order dated 15.11.2010 received on 22.04.2011 made in W.C.No.522 of 2004 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour) Trichy.

For Appellant : Mr.M.Subash Babu
For R-1 : Mr.L.Prabhu
For R-2 : Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen Compensation Act against the order dated 15.11.2010 received on 22.04.2011 made in W.C.No.522 of 2004 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour) Trichy.

2. The parties are referred to as per the rank mentioned by the Court below.

3. The case of the petitioner is that while he was working as a stone-worker/work man under the second respondent therein and during the course of his employment, he sustained multiple injuries in his forearm and elbow and as a result, the right hand of the petitioner is totally fractured. In this connection, a case in Cr.No.775/2003 under Sections 286 and 338 of IPC was registered against the first and the second respondent. After the accident, he was earning a sum of Rs.6,000/- per month and due to the accident, he completely lost his income. Stating all these facts, he filed a petition under the Workman



Compensation Act claiming compensation against the respondents therein.

4. The first and second respondent filed a detailed counter affidavit denying the entire averments made by the petitioner/workman and pleaded that they are not liable to pay compensation.

5. The Court below after considering the pleadings, oral and documentary evidence and the arguments advanced on either side and also appreciating the evidence on record, fixed the liability on the first and the second respondent therein and consequently, awarded a compensation amount of Rs.64,247/- with 12% interest to be payable to the petitioner from the date of accident. Aggrieved over the same, the first and second respondent are before this Court.

6. At the time of admission, this civil miscellaneous appeal is admitted on the following substantial questions of law:-

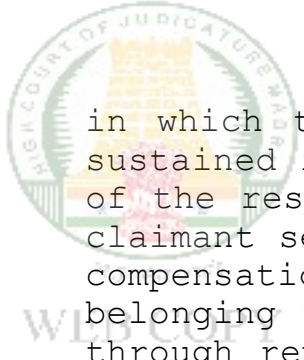
- (i) Whether getting compensation under workmen compensation act employee-employer relationship is necessary or not?
- (ii) Whether the injured is working as employee under the appellant's and he sustained injury in the course of employment?
- (iii) Whether the injured proved that the first appellant is the owner of the quarry and the lease owner of the quarry?

7. The learned counsel for the first and second respondent would submit that the petitioner himself invited the accident and therefore, they cannot be held responsible to pay the compensation and that amount awarded by the Court below is on the higher side and hence, the award of the Tribunal is to be set aside.

8. *Per contra*, the learned counsel appearing for the petitioner would submit that based on oral and documentary evidence, the Court below awarded a just and reasonable compensation and hence, this appeal filed by the first and the second respondent is liable to be dismissed and prays for appropriate orders.

9. Heard the learned counsel appearing for the respective parties and perused the materials available on record.

10. As far as the first substantial question of law is concerned, it is true that for claiming compensation employer-employee relationship is necessary, to which, the Court below rightly relied on the First Information Report, wherein, it is found that the first respondent is the owner of the stone quarry,



in which the claimant had worked as a stone-quarry labourer and sustained injury. Further, there is no document filed on the side of the respondents to refute the said aspect. Added further, the claimant sent a legal notice to all the three respondents claiming compensation due to the injury sustained in the stone quarry belonging to them and the same was not refuted by the respondents through reply notice to the claimant. Therefore, it is very much proved that there is employer-employee relationship between the claimant and the respondents and further, it is also proved that the claimants sustained during the course of the employment. The court below also found that the first respondent is the owner of the quarry and the second respondent and the third respondent are actually running the quarry in question. Accordingly, this Court answers all the substantial question of law in favour of the claimant.

11. That apart, it is seen that at Page No.17 of the typed set of pages, the learned Judge has elaborately discussed about the way in which the parties are liable to pay compensation. Admittedly, though the quarry stands in the name of the first respondent and as earlier pointed out, it was actually managed by the second and third respondents. In fact, the said fact was unearthed by the Court below during the cross-examination of one Ramar. Considering all these aspects, the Court below arrived at just and reasonable compensation fixing the liability both on the first as well as the second respondent. Further, the learned Judge also found that there is no contradictory evidence to show that they are not liable to pay compensation and rightly decided as to the liability on the first and the second respondent, in which, there is no interference is required. During the course of employment, the petitioner sustained grievous injuries to the extent of 44% disability and as a result, he has lost 38% of his earning capacity. Above all, the award given by the Court below is also very low and therefore, the award of the tribunal stands confirmed. To sum up, I do not intend any merits to interfere with the order of the Court below.

12. In the result, this appeal is dismissed by confirming the order of the Court below and the Court below is directed to disburse the entire award amount with accrued interests and costs from the date of accident till the date of realisation to the claimant, directly to the Personal Savings Bank Account Number of the claimant, through RTGS/NEFT system, after getting his Account Details, within a period of two weeks from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed. No Costs.

List the matter, for reporting compliance on 05.11.2017.

Sd/-
Assistance Registrar (RTI)



To,

The Commissioner of Workmen Compensation
(Deputy Commissioner of Labour) Trichy.

Copy to:-

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

+One cc to Mr.L.Prabhu, Advocate, SR.No.66514

+One cc to Mr.M.Subash Babu, Advocate, SR.No.66833

ssm

RL/5C/4P/KP/SAR1/11/10/2017

C.M.A (MD) No.277 of 2013

20.07.2017