



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.11.2017

PRONOUNCED ON : 05.12.2017

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.326 of 2011

1.S.Selladurai

2.Rathinam

... Appellants/Petitioners

vs.

The Managing Director,
Salem Steel Plant,
Salem - 636 013.

... Respondent/Respondent

PRAYER:- Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the order, dated 23.07.2001 made in W.C.No.198 of 1997 on the file of the Commissioner for Workmen Compensation (Deputy Commissioner for Labour), Trichy.

For Appellants : Mr.M.Subash Babu
For Respondent : Mr.C.Sundaravadivel

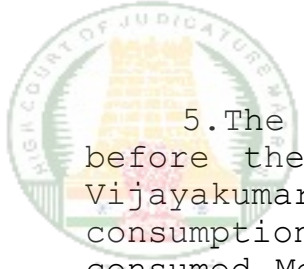
JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellants/petitioners against the order, dated 23.07.2001 made in W.C.No.198 of 1997, on the file of the Commissioner for Workmen Compensation (Deputy Commissioner for Labour), Trichy.

2.W.C.No.198 of 1997 was filed by Chelladurai and Rathinam, who are the father and mother of the deceased-Vijayakumar, who died on 03.08.1995.

3.The claim made by the appellants/petitioners was that their son Vijayakumar, while he was working under the respondent on 03.08.1995 died during the course of employment, while he was working as a Chemical Assistant. It was informed to the appellants/petitioners that the deceased-Vijayakumar consumed poison. The appellants/petitioners herein claimed a sum of Rs.5,00,000/- as compensation from the respondent under Section 22 of the Workmen Compensation Act.

4.The respondent filed a detailed counter-affidavit repeating the claim made by the appellants/petitioners.



5.The main contention raised by the appellants/respondents before the Deputy Commissioner of Labour was that the deceased-Vijayakumar has not committed suicide and he did not died due to consumption of poison. The respondent stated that the deceased had consumed Mercuric chloride, which is not consumed, but only with an intention to commit suicide. The act of consuming Mercuric Chloride is not the part of his employment neither part of his duty. Hence, committing suicide while on work or duty, does not come under the terminology 'during the course of employment'. The respondent on their side examined few of its employees as witnesses. The Commissioner of Labour on 08.11.1999, allowed the claim petition holding that the death occurred during the course of employment and the appellants/petitioners are entitled for compensation and passed an award to the tune of Rs.86,764/- with interest at 6% per annum.

6.Challenging the above award, the respondent herein-the Managing Director, Steel Authority of India, filed an appeal in C.M.A.No.632 of 2000, wherein, this Court by an order, dated 27.07.2000, set aside the order, dated 08.11.1999 passed by the Deputy Commissioner of Labour. The learned Judge had come to the conclusion that consuming of poisonous chemical substance is not a part of duty, however, while setting aside the award, the learned Judge, to give an opportunity to the respondent, remanded the case to the Deputy Commissioner of Labour for reappraisal of evidence, in accordance with law. Thereafter, the matter was remanded back to the Deputy Commissioner of Labour.

7.The appellants/petitioners filed a detailed written arguments before the Deputy Commissioner of Labour seeking reappraisal of evidences already on record by the Deputy Commissioner of Labour before he passed the order, dated 08.11.1999.

8.The respondent also filed a written statement before the Deputy Commissioner of Labour. The Deputy Commissioner of Labour, after remittance, had passed an order, dated 23.07.2001, dismissing the claim petition filed by the appellants/petitioners. As against which, the present Civil Miscellaneous Appeal is filed by the appellants/claimants raising various grounds.

9.Heard the learned counsel for the appellants/petitioners and the learned counsel for the respondent and perused the materials available on record.

10.In this Civil Miscellaneous Appeal, the appellants/petitioners have raised the following substantial questions of law for consideration:-

"a) Whether the Commissioner followed the principles laid down under Section 3(1) of the Act?

b) Whether the Commissioner followed the principle laid down under Section 3(2) and proviso to the said Section of the Act?



c) Whether the Commissioner strictly followed the second proviso to Section 25 of the Act by examining the medical witnesses ie., Dr.Edward attached to the Salem Steel Plant Hospital and Dr.Vallinayagam, the police surgeon, who issued Ex.A.1-post mortem certificate and Ex.R.6-final opinion?"

11.On perusal of the order passed by the Deputy Commissioner of Labour, dated 23.07.2001, it is clearly seen that the Deputy Commissioner of Labour, despite there being a specific direction by this Court in the earlier C.M.A.No.632 of 2000, wherein, the learned Judge at paragraph Nos.14 to 16 has stated as follows:-

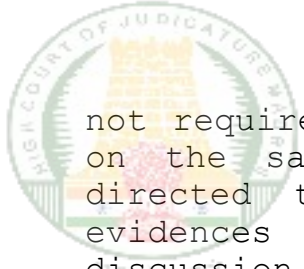
"Therefore, I am inclined to come to the conclusion that consuming of poisonous chemical is not a part of duty and the same is not disputed by the learned counsel for the respondent and therefore the claim cannot be sustained. However, in the interest of Justice, I am inclined to give one more opportunity to the claimant to substantiate his case before the Deputy Commissioner and also having regard to the fact that the Deputy Commissioner has not properly considered the evidence, it would be proper to remit the matter to the Deputy Commissioner for re-appraisal of the evidence in accordance with law.

15.With the result, the appeal is allowed and the matter is remanded to the Deputy Commissioner for proper consideration of the evidence on record and for appropriate decision in accordance with law.

16.The claim petition being of the year 1997, the Deputy Commissioner is directed to dispose of the claim petition within a period of two months from the date of receipt of a copy of this order. No costs."

12.From the reading of the above direction issued by this Court, the learned Judge had come to the conclusion to remit the matter to the Deputy Commissioner of Labour for reappraisal of evidence in accordance with law, who has not properly considered the evidence placed before him. When such a direction is given by this Court, the Deputy Commissioner of Labour ought to have reappraised the evidences, already let in by the parties, however, the Deputy Commissioner of Labour, by his order, dated 23.07.2001, in his 2-1/2 page order has not dealt anything about the evidence or expressed his opinion based on the evidence.

13.On a perusal of the award, it is clearly seen that the Deputy Commissioner of Labour carried away by the discussion made by the Court while disposing C.M.A.No.632 of 2000, dated 27.07.2000, merely because this Court had expressed its opinion that consuming of poisonous chemical substance is not a part of the duty. It is



not required by the Deputy Commissioner of Labour to pass an order on the same line, that too, when this Court has specifically directed the Deputy Commissioner of Labour to reappraise the evidences already let in by the parties. In the absence of any discussion made by the Deputy Commissioner of Labour, while passing the award, dated 23.07.2001, the award passed by the Deputy Commissioner of Labour, deserves to be set aside. However, it may not meet the ends of Justice merely by setting aside the award. Hence, I am of the view that it would be appropriate to remit the matter back to the Deputy Commissioner of Labour directing the Deputy Commissioner of Labour to reappraise the evidences already adduced by the parties and pass an award accordingly. It is made clear that this case is not remitted back to assess whether consuming of poisonous chemical substance would part of duty or not. The case is remitted back to the Commissioner of Labour only to appreciate the evidence whether the said deceased Vijayakumar consumed poison or poisonous chemical was administered accidentally during the course of employment, while he was on duty on the fateful day viz., on 03.08.1995.

14. In view of the foregoing reasons, the matter is remanded back to the Deputy Commissioner of Labour, Trichirappalli, for proper and careful consideration of evidence on record afresh and to pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order.

15. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner for Workmen Compensation,
(Deputy Commissioner for Labour), Trichy.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.M.SUBASH BABU, ADVOCATE IN SR No. 91197

PS

TE/KP/SAR-2 : 15/12/2017 : 4P/4C