

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.10.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1661 of 2006

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.
2. The Assistant Engineer/O&M,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle,
Vallalar Nagar/North,
Chennai - 600 001. ... Appellants / Respondent 3 & 4

Vs.

1. Tmt.S.Kamatchi
2. Thiru.Subramani
3. Tmt.Prabhavathi
4. Selvi. Sangeetha
5. Selvan. Boopathy ... Respondents / Claimants
6. Thiru.Harikrishnan ... Respondent / 1st Opposite Party
7. Thiru.Ayyanar ... Respondent / 2nd Opposite Party
8. M/s.Abirami Electricals
3/85, Kaviarasu Kannadasan Nagar,
Chennai - 600 118. ... Respondent / 5th Opposite Party

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the order dated 27.06.2005 passed in W.C.No.137 of 1999 by the Commissioner for Workmen Compensation - I (Deputy Commissioner for Workmen Compensation No.1) Chennai - 6.

For Appellants : No Appearance

For R1, R3 to R5 : Mr.K.Raja

For R7 : No Appearance

Judgment

This Civil Miscellaneous Appeal has been filed challenging the order dated 27.06.2005 passed in W.C.No.137 of 1999 by the Commissioner for Workmen Compensation - I (Deputy Commissioner for Workmen Compensation No.1) Chennai - 6.

2. The following substantial questions of law have been raised for consideration:

1) Whether the deceased died out of and in the course of employment under appellant board is sustainable both on law and facts?

2) Whether the lower authority is correct in holding that the deceased was employed by the Board at the time of his death?

3) Whether the quantum of compensation fixed by the lower authority in the absence of any acceptable evidence is substitute both in law and on facts?

4) Whether the findings of the lower authority that the deceased was a workmen and consequently fixing the liability on the appellant board was based on any legally acceptable evidence?

5) Any other substantial question of law as this Hon'ble Court may deem fit and proper in the circumstances of the case.

3. The 1st claimant is the mother of the deceased Workman, namely, S.Mannar, the 2nd claimant is the father, the 3rd claimant is the wife and the 4th and 5th claimants are the children of the said Mannar.

4. The case of the claimants is that the deceased Mannar was working as helper with effect from 01.05.1985 till his death in the office of the appellants and the 6th respondent herein is the Contractor, who was carrying contract works in the office of the appellants and executing the works through the 7th respondent herein. At the time of working, the deceased Mannar was receiving a salary of Rs.2,500/- per month from the 6th and 7th respondents herein.

5. The claimants would contend that when the Mannar (deceased) was working with the appellants, usually, he used to attend the office by 8.00 A.M. and leave the office by 11.00 P.M., and very often he used to work continuously for more than 2 days without any rest. While so, on 19.12.1997, since the 6th

and 7th respondents had extracted heavy works from the said Mannar, he came back from duty by 11.00 P.M. with heavy chest pain and passed away on 20.12.1997 at 8.00 P.M., in the course of employment. Therefore, the claimants would contend that only the heavy work stress, given by the 6th and 7th respondents, had caused the death of the said Mannar, hence, claimed a compensation of Rs.5,00,000/- from the appellants, under the Workmen Compensation Act, 1923.

6. The claimants would also contend that the entire family of the said Mannar was depending on his income only and since he passed away, they are in lurch. Further, the claimants would contend that the Government had regularized the services of the persons who similarly placed like the deceased Mannar, and as per the same, if the deceased Mannar was alive, he would also been absorbed as a permanent employee for a monthly wages of Rs.8000/-. Moreover, the claimants would contend that the 6th and 7th respondents had assured that they would compensate the claimants, but, till date, they have never paid any amount to them.

7. Furthermore, the claimants would contend that they issued a legal notice dated 27.01.1999 to the respondents, claiming compensation under Workmen Compensation Act, despite the same, the respondents neither complied with the demands nor deposited any amount to the claimants. Moreover, the claimants would contend that the 6th and 7th respondents had collected huge amounts to an extent of Rs.20,000/- from the coworkers, in order to contribute claimants' family to do funeral ceremonies of the deceased Mannar, and even that amount was not paid to the claimants till date. Therefore, the claimants filed an application under Workmen Compensation Act, 1923, seeking a direction to the 6th and 7th respondents to forthwith pay the compensation of Rs.5,00,000/- or any other compensation to which they may be entitled.

8. Denying the allegations of the claimants, the appellants/3rd and 4th respondents, filed a counter affidavit by contending that the deceased Mannar was working as a Contract Labour in Vallalar Nagar Section temporarily under the control of the registered contractors. However, he was working with effect from January 1986 only and not from 01.05.1985 as alleged by the claimants in their application. The 6th respondent herein is one of the contractors, who executed agreement for carrying out piece work labour contract in Vallalar Nagar Section. As per the conditions of agreement executed by the contractors, the contractors should pay a sum of Rs.34/- towards daily wages per head. However, it is not known to the appellants whether the contractor was paying a sum of Rs.2,500/- per month to the deceased Mannar, as they are not paying daily wages to the

contract labourers directly.

9. The appellants/3rd and 4th respondents would also contend that they never extracted heavy works from any contract labour for more than 12 hours and the contention of the claimants that the deceased Mannar was working continuously for more than 2 days without taking any rest, as a result, he died is false. Moreover, appellants would contend that the Tamil Nadu Electricity Board is a statutory body and it has to strictly follow the rules and regulations with regard to welfare of the employees, and it cannot extract more work from the employees other than the prescribed time limit, i.e. eight hours a day (including Tea Break and Lunch Break).

10. The appellants/3rd and 4th respondents would further contend that on 19.12.1997, the deceased had not attended any work in Vallalar Nagar Section and if at all any works extracted by the 6th and 7th respondents in some other place, the appellants will not be held responsible for the same. Moreover, it is not known to the appellants whether the deceased was passed away naturally or due to any other cause, and the claimants had not even submitted any medical report from any medical officers to prove that the death of the Mannar was occurred only due to heavy extraction of works by the appellants.

11. The appellants/3rd and 4th respondents would further contend that the contract labours are not directly controlled by the Board officials, hence, it is not known to the appellants whether the deceased was receiving the salary of Rs.2,500/- per month from the 6th and 7th respondents herein. However, the total emolument of a helper in the Tamil Nadu Electricity Board is only Rs.3050/- and not Rs.8000/- per month as alleged by the claimants in their application.

12. In addition, the appellants/3rd and 4th respondents would contend that in the legal notice dated 27.01.1999 sent by the claimants, the name of the deceased had not been mentioned, hence, a letter from the appellants' office was sent to the claimants to mention the name of the deceased for verification, but, no reply has been received. In the meantime, the claimants filed W.C.No.137 of 1999 before the Commissioner for Workmen Compensation - I, Chennai, claiming compensation, and the Commissioner, by his order dated 27.06.2005, allowed the same as against the appellants. Hence, this Civil Miscellaneous Appeal is filed.

13. Heard the learned counsel for the respondents and perused the materials available on record.

14. On perusal of the order of the Commissioner dated

27.06.2005, the 6th respondent had submitted before the Commissioner that he was not a permanent contractor under the appellants and he undertook the work periodically on the basis of contract. Further, on 19.12.1997, he had not made any contract with the appellants and the deceased Mannar did not work under him on the said date, hence, he is not liable to pay any compensation to the claimants, and sought for dismissal of the application filed by the claimants.

15. The 7th respondent had also submitted before the Commissioner that the deceased Mannar was working on a temporary basis under the appellants, under the control of the 6th respondent, accordingly, the 6th respondent is the primary contractor and there is no master or servant relationship between the deceased Mannar and the 7th respondent. Further, it has been submitted that the deceased Mannar was paying the daily wages of Rs.34/- from the 6th respondent and he did not work under the appellants, and the 7th respondent is not liable to pay any compensation to the claimants, and sought for dismissal of the application.

16. The Commissioner, after perusing the materials available on record and after hearing the parties, based on the documents and evidences of the claimants, has come to the conclusion that the death of the Mannar occurred during the course of employment. Further, based on the birth and death certificates of the deceased, the Commissioner has fixed the age of the deceased when he died as 31, and with regard to the salary of the deceased, the Commissioner has held that though it has been stated by the appellants that the contract laborers were paying only the daily wages as Rs.34/-, no evidences have been placed by them to prove the same, hence, the Commissioner has concluded that the deceased had been paid the maximum salary of Rs.2000/- per month under the Workmen Compensation Act. Moreover, the Commissioner has held that though the 7th respondent, namely, Thiru.Ayyanar, is a primary contractor of the deceased, he was controlled by the 6th respondent, who is the contractor of the appellant board, hence, the appellant board is liable to pay compensation to the claimants. In addition, considering the factors, age and salary of the deceased, the Commissioner has fixed the compensation amount as Rs.2,05,950/- and directed the appellant board to pay the said sum within thirty days from the date of receipt of the said order, and failing which, it has to be deposited along with interest at 12% from the date of accident till the date of deposit of the amount.

17. On perusal of the materials available on record, it is categorically clear that the appellants have engaged the 6th and 7th respondents for carrying out piece work and the 6th and 7th

respondents executed the agreement through the contract laborers including the deceased Mannar, and as per the instructions of the appellants, the 5th respondent had paid the wages to the laborers through the 7th respondent. Accordingly, the appellants are the primary persons, who engaged these contractors, and hence, the Commissioner has imposed the liability on the appellants, directing the appellants to pay the compensation of Rs.2,05,950/- to the claimants for the death caused to the said Mannar.

18. Under these circumstances, the order of the Commissioner dated 27.06.2005 passed in W.C.No.137 of 1999, is confirmed and the substantial questions of law raised by the appellants are answered in favour of the claimants. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

19. It is submitted that out of 50% of the compensation amount, 5% has already been withdrawn by the claimants.

20. The remaining 45% of the amount can also be withdrawn by the claimants by filing a formal petition before the authority concerned.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

raja

To

The Commissioner for Workmen Compensation-I
(Deputy Commissioner for Workmen Compensation No.1)
Chennai - 6.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.K.Raja, Advocate, S.R.No. 67874

C.M.A.No.1661 of 2006

PP(CO)
GN(23/07/2019)