

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 04.10.2018

CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.4218 of 2005
and
M.P.No.20497 of 2005

The General Manager,
Bharat Sanchar Nigam Limited,
Tollgate, Vellore.

... Appellant / Respondent in W.C.

Vs.

1. Mr.Annamalai
2. Dhanakodi ammal,
3. Ms.Jamuna
4. The Commissioner for Workmen's
Compensation-I, Deputy Commissioner
of Labour-I,
D.M.S.Compound, Teynampet,
Chennai - 6.

... Respondents / Claimants in W.C.

Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act 1923, to set aside the Award dated 28.02.2005 in W.C.No.352 of 2003 passed by the Deputy Commissioner of Labour - I, Chennai - 600 006.

For Appellant : Mr.M.S.Velusamy

For R1 to R3 : Mr.Gupta & Ravi

R4-Court

Judgment

This Civil Miscellaneous Appeal has been filed against the Award dated 28.02.2005 in W.C.No.352 of 2003 passed by the Deputy Commissioner of Labour - I, Chennai - 600 006.

2. The first claimant is the father, the second claimant is the mother and the third claimant is the sister of the deceased Mr.Suresh.

3. The case of the claimants is that the deceased Suresh was working under the appellant herein, namely, Bharat Sanchar Nigam Limited, as a Labourer on daily wages and he was engaged in repairs of Telephone wires. On 20.05.2003, at about 12.15 hours,

when the persons, namely, Mr.Balamurugan, Mr.Suresh, Mr.Sankar & others, engaged in repairs of telephone wires and post at Guljur Thope, Velapadi, Vellore, under the control of Mr.R.Raja, Sub-Divisional Officer, Mr.Suresh and Mr.Balamurugan were electrocuted and died. Due to which, the injured were taken up to Government Hospital, Vellore, by the appellant herein, where both the persons were declared dead. Thereafter, the incident was registered in Cr.No.203/03 at Vellore South Police Station.

4. At the time of the said incident, the deceased Suresh was only 18 years old, and since his death was occurred during the course of employment, his father, mother and sister together, filed an application in W.C.No.352 of 2003 before the Deputy Commissioner of Labour - I, Chennai, claiming compensation. By an order dated 28.02.2005, the Commissioner had awarded a sum of Rs.3,39,570/- as compensation to the claimants. As against the said award, the present Civil Miscellaneous Appeal has been by the appellant herein.

5. Denying all the allegations of the claimants, the appellant filed a counter affidavit, wherein, it has been contended that the deceased Suresh was not a BSNL employee and he was never appointed by BSNL neither a contract labour nor an employee. Hence, the allegation of the claimants that on 20.05.2003 at about 12.15 hours, the persons, namely, Mr.Suresh, Mr.Balamurugan, Mr.Sankar & others, were engaged in repair work of telephone wires and post at Guljur Thope, Velapadi, Vellore, under the control of Sub-Divisional Officer, is not correct. Further, the deceased was never paid any wages directly for any company's work and there is absolutely no privity of contract between BSNL and the deceased Suresh.

6. The appellant would further contend that a work was allotted to the Telecom Mechanic R.Munivelu, to rectify the DP fault at Velapadi, Vellore. It was his duty to attend the fault and if he need any assistance, he had to approach only the company's employees, since there was complete ban on engaging unapproved unskilled labourers for executing any company's work. In this regard, a circular was also issued to all employees of BSNL, vide letter No.GM/Misc./2001-2002/ dated 20.10.2002. But, the Telecom Mechanic R.Munivelu, engaged Suresh (deceased) to attend the said fault, without any approval from the General Manager of BSNL, Vellore and thereby, violating the circular dated 20.10.2002 issued by them.

7. Moreover, the appellant would contend that since deceased Suresh, was an outside labourer and not a company employee, and hence, he was not provided with any protective gadgets, and he met with such incident and died. Thus, the said Suresh died due to his own negligence and the appellant is not liable to pay any compensation to the claimants.

8. Before the Deputy Commissioner of Labour-I, Chennai, the claimants have marked several documents, namely, 1) First Information Report 2) Postmortem Report 3) Death Certificate 4) Education Certificate 5) Magazine News 6) Advocate Notice 7) Acknowledgment Card and Document Notice. The respondent has marked the circular issued by BSNL, vide letter No.GM/Misc./2001-2002/ dated 20.10.2002 and the Pamphlets.

9. The Deputy Commissioner of Labour-I, Chennai, after perusing the documents filed by the parties and the materials available on record, has come to the conclusion that the incident occurred to Suresh, was only in the course of employment with the appellant department, and therefore, awarded a sum of Rs.3,39,570/- as compensation to the claimants.

10. The learned counsel for the appellant department would submit that even though, the deceased Suresh was engaged by the Telecom Mechanic Mr.Munivelu, to rectify the DP fault at Velapadi, Vellore, there was no contract between him and the appellant department, and therefore, the appellant is not liable to pay any compensation to the claimants, for the deceased Suresh.

11. The learned counsel for the appellant department would also submit that even though, a circular dated 20.10.2002 issued by BSNL department that not to engage third party other than the persons, who are the employees of appellant department, the said Munivelu, Telecom Mechanic, without prior permission from the Superior Officer, had engaged Suresh (deceased), to attend the DP fault at Velapadi, Vellore. Hence, the appellant is not liable to compensate the claimants.

12. The learned counsel for the appellant would further submit that even it has been stated in the F.I.R. statement that the deceased Suresh is a contract labour, no evidence has been produced by the claimants, to prove the same. Immediately, the learned counsel for the claimants would submit that there is a proof that the deceased Suresh has been engaged by the appellant, despite the same, the appellant denies the said statement.

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

14. On perusal of the records, it could be seen that the deceased Suresh had attended the work of the appellant department, even though, there was no direct relationship between him and the appellant department.

15. It could be seen from the records that the circular dated 20.10.2002 issued by BSNL department, was only for internal purpose and it was not known to the general public and they were not aware of it. Hence, the contention of the appellant that the Telecom Mechanic, who was allotted work, had engaged other person without prior permission from the department, cannot be accepted by this Court, as the appellant failed to prove, whether the circular was issued to the said mechanic, prior to the incident occurred.

16. It could be further seen that some of the works are done by the appellant department, by engaging Sub Contractors. So, when the appellant department tried to rectify the fault at Velapadi, Vellore, by engaging the Telecom Mechanic R.Munivelu, the said incident was occurred to Suresh (deceased). Moreover, the appellant has not produced any proof to prove that they never engaged casual labour at any point of time, for attending their work and therefore, the appellant department has to compensate the claimants.

17. The Deputy Commissioner of Labour-I, Chennai, has already awarded the compensation for a sum of Rs.3,39,570/- to the claimants and the same was deposited by the appellant by way of Demand Draft. Subsequently, a petition in C.M.P.No.20497 of 2005 in C.M.A.No.4218 of 2005 was filed by the appellant department, to direct the 4 respondent to withheld the award amount of Rs.3,39,570/- in W.C.No.352 of 2003 dated 28.02.2005, on the file of the Workmen's Compensation-I, Deputy Commissioner of Labour-I, Chennai, pending disposal of the above Civil Miscellaneous Appeal. This Court, by an Order dated 21.12.2005, had granted an order of interim injunction permitting the respondents 1 to 3/claimants to withdraw 1/3rd of their respective share amount with accrued interest, which has been already deposited, and the remaining sum awarded to them shall be invested in Indian Bank, High Court Extension Counter, Chennai, in Fixed Deposit, initially for a period of 3 years and the same shall be renewed periodically till the disposal of this Appeal, the interest accrued from such deposit shall be paid to the respondents 1 to 3/claimants once in three months pending further orders. As per the said order, the claimants have already withdrawn 1/3rd of their respective share amount with accrued interest.

18. Under these circumstances, this Court is not inclined to interfere with the order passed by the Deputy Commissioner of Labour-I, Chennai-600 006, in W.C.No.352 of 2003 dated 28.02.2005. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19. The claimants can withdraw the remaining 2/3rd of their respective share amount, which is lying to the credit of W.C.No.352 of 2003, by filing a formal petition before the authority concerned.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1.The Deputy Commissioner of Labour - I,
Chennai - 600 006.

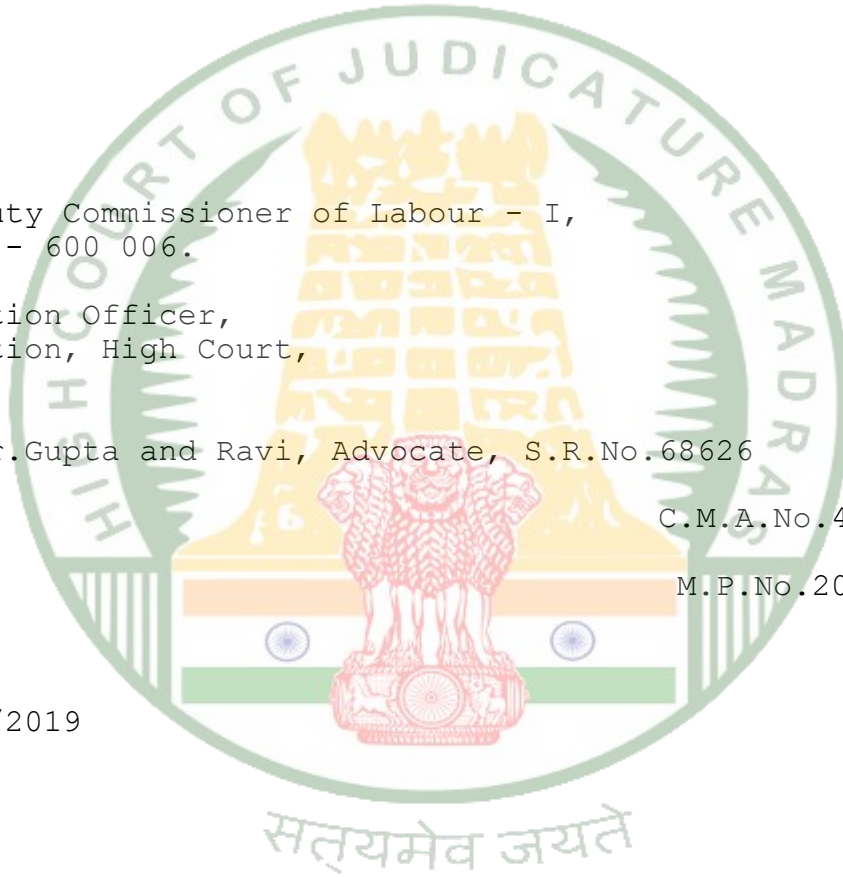
2.The Section Officer,
V.R.Section, High Court,
Madras.

+lcc to Mr.Gupta and Ravi, Advocate, S.R.No.68626

C.M.A.No.4218 of 2005
and
M.P.No.20497 of 2005

GP(CO)

rrs 23/01/2019



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