



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (NPD) No.873 of 2006

M/s.Bhoruka Steels Ltd.,
174, Thamby Chetty Street,
Chennai - 600 001.

.. Petitioner

vs

Sahaya Mary

.. Respondent

Revision filed under Article 227 of Constitution of India against the order dated 20.12.2004 passed in W.C.No.116 of 2003 on the file of the Deputy Commissioner of Labour - I, Chennai-6.

For Petitioner : Mr.R.Gopinath

For Respondent : Smt.S.Sujatha
(Legal Aid Counsel)

ORDER

This revision is directed against the order dated 20.12.2004 passed in W.C.No.116 of 2003 on the file of the Deputy Commissioner of Labour - I, Chennai-6.

2. The respondent herein has filed W.C.No.116 of 2003 seeking compensation of a sum of Rs.3,00,000/- for the death of her father Siluvai Gruse, who was engaged as a gear man for unloading work from the ship M.V.Julietta. According to the respondent, the petitioner company, being involved in the importation of iron and steel raw materials in the usual business course, receives ship loads for their business purposes.

3. On 17.05.2002, the petitioner company had engaged M/s.Sri Kaligambal Reconstitution Transporting and Labour Contracts, as its contractor, for carrying on the unloading operation of the steel rods. While doing unloading operation, at 18.15 hours, bundle of steel rods which were handled by the deck crane by the ship M.V.Julietta snapped and the steel rod struck the respondent's father, who sustained injuries. Immediately, after the accident, Siluvai Gruse was taken to National Hospital,



Second Line Beach, where he succumbed to injuries. On 17.05.2002, at about 11.30 P.M., the Supervisor of the petitioner lodged a compliant in Harbour Police Station in Crime No.35 of 2002 under Section 304(A) IPC. Since the accident occurred while the deceased Siluvai Gruse was in employment under the petitioner, the respondent has claimed compensation of Rs.3,00,000/- from the petitioner for the death of her father.

4. The claim petition was resisted by the petitioner stating that on the date of accident itself, the petitioner company has paid an ex-gratia amount of Rs.45,000/- to the respondent to meet the medical expenses of the injured and thereafter, further sum of Rs.25,000/- was paid. It is stated that as per the Workmen's Compensation Act, 1923, the claim petition is not maintainable, as the respondent was not a dependent of the deceased Siluvai Gruse. It is also stated that the claim petition is not maintainable for non-joinder of the immediate employer, namely, the contractor, M/s.Shri Kaligambal Reconstitution Transporting & Labour Contracts. According to the petitioner, the deceased having failed to take necessary safeguards provided by the contractor while engaging himself in the job of unloading the steel rods, the negligence is wholly contributable to him.

5. Upon consideration of the oral and documentary evidence, the Deputy Commissioner of Labour-I, Chennai, awarded compensation of Rs.2,71,120/- in favour of the respondent and directed the compensation amount to be deposited within a period of 30 days, failing which the petitioner was directed to pay interest at the rate of 12% per annum from the date of accident till the date of deposit.

6. I heard Mr.R.Gopinath, learned counsel for the petitioner and though notice was served on the respondent, but no one was represented on behalf of the respondent. Hence, this Court appointed one Smt.S.Sujatha, as Legal Aid Advocate and this Court hear the arguments of Smt.S.Sujatha, learned counsel appearing for the respondent. Perused the materials available on record.

7. The learned counsel for the petitioner submitted that though on 29.11.2004 the petitioner has filed petition to re-open the proceedings, the same was not considered by the Deputy Commissioner of Labour-I, who proceeded to pass an award. He submitted that the act of the Authority fastening the liability is bereft of consideration of the defence put forth by the petitioner.

8. According to the learned counsel, failure to provide an opportunity to the petitioner to adduce both oral and documentary evidence is in violation of the principles of



natural justice. Therefore, the order of the Deputy Commissioner of Labour-I is liable to be set aside.

9. Per contra, the learned counsel for the respondent submitted that despite several opportunities given to the petitioner, they have not come forward to produce evidence and based on the oral and documentary evidence only, the Deputy Commissioner of Labour has awarded compensation and, therefore, there is no need to interfere with the same.

10. It appears that in order to prove the claim before the Deputy Commissioner of Labour-I, the respondent examined herself as P.W.1 and marked four documents viz., First Information Report, Post-mortem certificate, lawyer notice and legal heir certificate.

11. On perusal of the order of the Commissioner, I find that despite opportunity given to the petitioner, they have not appeared before the Authority and, therefore, they have been set ex parte. In its order, the Commissioner held that in the absence of any rebuttal evidence on the side of the petitioner, it is to be held that the respondent has proved her case. The Commissioner further held that the accident occurred while the deceased Siluvai Gruse was working under the petitioner and therefore, the petitioner is liable to pay the compensation to the respondent.

12. The argument of the petitioner is that they are not liable to pay compensation to the respondent for the death of Siluvai Gruse on the ground that on the date of accident, the deceased was working with the contractor and therefore, the petitioner was not liable to pay compensation. Therefore, the order of the Commissioner is unsustainable.

13. First of all, there is no proof on the side of the petitioner to show that the deceased was not working under the petitioner on the date of accident. On a perusal of the counter affidavit, I find that in paragraph 4, it has been stated that "as an immediate ex-gratia, a sum of Rs.45,000/- (Rupees forty five thousand only) was paid by the respondent company herein to meet the medical expenses of the injured and thereupon a further sum of Rs.25,000/- (Rupees twenty five thousand) was also paid to the applicant". The aforesaid clearly shows that on the date of accident, the deceased was working under the petitioner and that the Commissioner was right in fastening the liability on the petitioner.

14. Though in the counter, the petitioner has raised a plea that in terms of Section 2(d) of the Workmen's Compensation Act, 1923, the respondent is not entitled to get the compensation and the respondent will not come under the purview of dependent, as



she was a married woman, to fortify the said plea, no document has been produced by the petitioner. On the other hand, the respondent has filed Ex.P4 legal heir certificate before the Commissioner and upon perusal of the legal heir certificate, the Commissioner came to the conclusion that the respondent is entitled to get the compensation. Therefore, this Court is not inclined to take a different view.

15. Coming to the quantum of compensation awarded, by the Commissioner, no ground has been raised by the petitioner that the quantum of compensation awarded by the Commissioner is on the higher side.

16. It is seen that taking into account the age of the deceased, monthly salary and the cost of living index applicable at the relevant point of time, the Commissioner has awarded Rs.2,71,120/- as compensation, which, in my considered opinion, appears to be a reasonable one. As far as the default interest awarded by the Commissioner is concerned, the same is in accordance with law and no interference is warranted.

17. For the foregoing reasons, I am of the view that there is no illegality or perversity in the order of the Deputy Commissioner of Labour-I, Chennai-6 and the revision is liable to be dismissed. The petitioner is directed to deposit the award amount of Rs.2,71,120/- within a period of 60 days with the interest at the rate of 12% per annum from the date of accident till the date of deposit.

18. Accordingly, the Civil Revision Petition is dismissed. No costs.

19. The High Court Legal Aid Authority is directed to pay a sum of Rs.3,000/- as fees to Smt.S.Sujatha, the Legal Aid Advocate.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Labour - I,
Chennai-6.



2.The Secretary,
High Court Legal Services Authority
High Court, Madras-104

3.The Section Officer,
VR Section,
High Court, Madras.

+2cc to M/s.S.Sujatha, Advocate sr.no.35430
+1cc to M/s.R.Gopinath, Advocate sr.no.35616

C.R.P. (NPD) No.873 of 2006

nr 12/06/2018