

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.2329 of 2013

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

... Appellant / Respondent in W.C.

Vs.

1.Mrs.M.Manimala,

2. Ms.M.Asha Rani, ... 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 10.11.2011 in W.C.No.271 of 2007 passed by the Deputy Commissioner of Labour - I, Chennai - 600 006.

For Appellant : Mr.K.R.Ramesh Kumar

For Respondents : Mr.Gupta & Ravi

Judgment

This Civil Miscellaneous Appeal has been filed against the Award dated 10.11.2011 in W.C.No.271 of 2007 passed by the Deputy Commissioner of Labour - I, Chennai - 600 006.

2. The first claimant is the mother and the second claimant is the sister of the deceased M.Balamurugan.

3. The case of the claimants is that the deceased Balamurugan 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.Balamurugan and Mr.Suresh 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 Balamurugan was only 22 years old, and since his death was occurred during the course of employment, his mother and sister together, filed an application in W.C.No.271 of 2007 before the Deputy Commissioner of Labour - I, Chennai, claiming compensation. By an order dated 10.11.2011, the Commissioner had awarded a sum of Rs.2,30,755/- (including funeral expenses of Rs.2500/-) 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 Balamurugan, son of R.Munivelu, 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.Balamurugan, Mr.Suresh, Mr.Sankar & others, were engaged in repairs 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 Balamurugan.

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 has engaged his own son Balamurugan (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 from the complaint given by R.Munivelu, it is clear that in order to have an additional income, he had engaged his own son Balamurugan to attend the said fault. So, when the deceased Balamurugan is a third party to the appellant, the petition came to be filed against the appellant, claiming compensation, and hence, the appellant has filed this Civil Miscellaneous Appeal, seeking to set aside the award passed by the Deputy Commissioner of Labour - I, Chennai, in W.C.No.271 of 2007 dated 10.11.2011.

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) School Transfer Certificate 5) Judgment copy of W.C.No.352/03

and Advocate Notice sent to the respondent. The respondent has marked only the circular issued by BSNL, vide letter No.GM/Misc./2001-2002/ dated 20.10.2002.

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 Balamurugan, was only in the course of employment with the appellant department, and therefore, awarded a sum of Rs.2,30,755/- (including funeral expenses of Rs.2500/-) as compensation to the claimants.

10. The learned counsel for the appellant department would submit that even though, the deceased Balamurugan was engaged by his father, who was working as a Telecom Mechanic under the appellant department, 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 Balamurugan.

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 his own son Balamurugan, 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 balamurugan 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 balamurugan 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 balamurugan 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 Balamurugan (deceased). Moreover, except the circular dated 20.10.2002, 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.2,30,755/- to the claimants and the same was deposited by the appellant by way of Demand Draft dated 09.05.2012 from Indian Bank, Vellore Main Branch, Vellore. Subsequently, a petition in M.P.No.1 of 2013 in C.M.A.No.2329 of 2013 was filed by the appellant department, to direct the respondents to withhold the deposit amount of Rs.2,30,755/- in W.C.No.271 of 2007 dated 17.05.2012 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 25.07.2013, granted an order of interim direction, not to disburse the compensation amount deposited to the credit of W.C.No.271 of 2007 on the file of the Workmen's Compensation-I and Deputy Commissioner of Labour-I, Chennai. Thereafter, the petitioners/claimants had filed a petition in M.P.No.1 of 2014 in C.M.A.No.2329 of 2013, for permitting them to withdraw the sum of Rs.2,30,755/- deposited to the credit of W.C.No.271 of 2007 on the file of the Deputy Commissioner of Labour-I, Chennai, stating that irreparable loss would be caused to the petitioners, if the amount was not permitted to be withdrawn. The said petition was allowed on 18.09.2014 and accordingly, the claimants were permitted to withdraw 50% of the award amount deposited to the credit of W.C.No.271 of 2007 on the file of the Deputy Commissioner of Labour-I, Chennai, and the same was also withdrawn by the claimants.

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.271 of 2007 dated 10.11.2011. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

19. The claimants can withdraw the remaining 50% of the amount, which is lying to the credit of W.C.No.271 of 2007, 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.

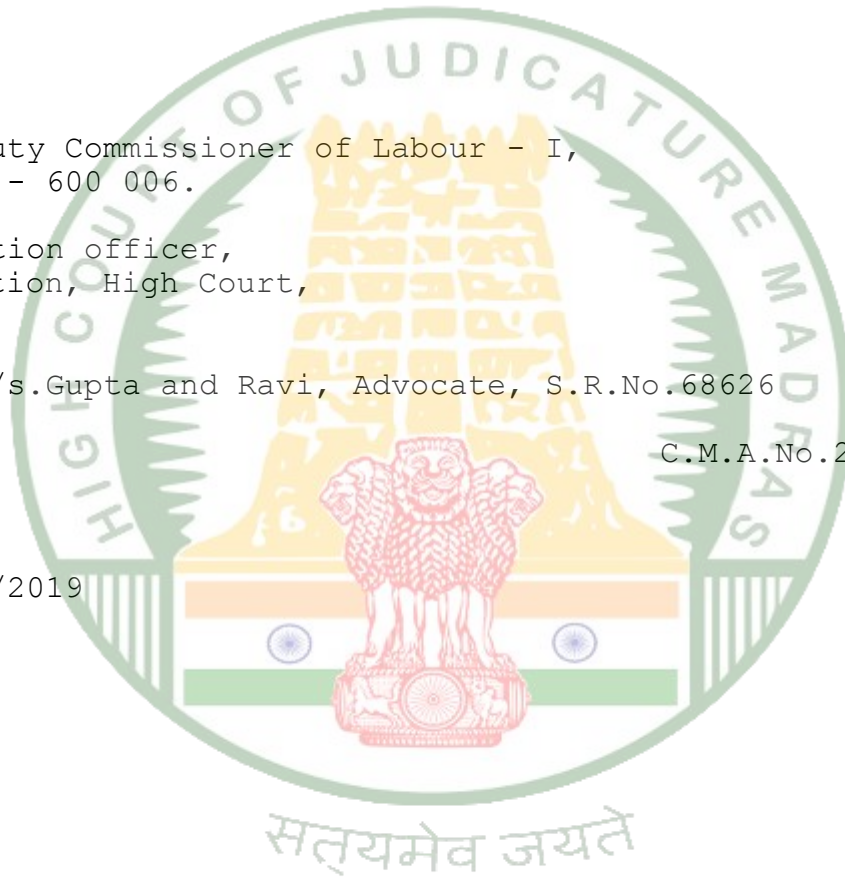
2.The Section officer,
V.R.Section, High Court,
Madras.

+1cc to M/s.Gupta and Ravi, Advocate, S.R.No.68626

C.M.A.No.2329 of 2013

GP(CO)

rrs 23/01/2019



WEB COPY