

RESERVED ON : 01.02.2018
DELIVERED ON : 07.02.2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2018

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
C.M.A.No.2123 of 2015 &
M.P.No.1 of 2015

1. A.Rajamanickam

2. Rukmani Calanders

Represented by its Proprietor A.Palanisamy
Son of Ayyasamy Chettiar
318, Bhavani Main Road
Veerappan Chathiram Post
Erode District - 638 004.

3. A.Palanisamy ... Appellants/Respondents

vs.

V.Subramani ... Respondent /Petitioner

Civil Miscellaneous Appeal filed under section 30 of the Workmen's Compensation Act, 1923 against the order dated 19.05.2015 made in W.C.No.548 of 2005 on the file of Commissioner for Workmen's Compensation/Deputy Commissioner of Labour, Salem.

For Appellants : Mr.C.E.Pratap
For Respondent : Mr.C.Kulanthaivel

J U D G M E N T

Challenging the order passed in W.C.No.548 of 2005 on the file of Commissioner for Workmen's Compensation/Deputy Commissioner of Labour, Salem, the respondents in the Workmen's Compensation Case, who are the employers, have filed the above Civil Miscellaneous Appeal.

2. The respondent filed the claim petition before the Deputy Commissioner of Labour, Salem, claiming a total compensation of Rs.5,00,000/- (Rupees five lakhs only) for the injuries sustained by him in the course of employment.

3. The brief case of the respondent-claimant is as follows:

(i) According to the respondent-claimant, he was working in the 2nd appellant Calender Factory as the Machine Operator. According to him, the 3rd appellant is the Sole Proprietor and the 1st appellant is the Manager of the Company. According to him, he was working in the 2nd appellant's Factory for the past 10 years and getting a daily wage of Rs.150/-.

(ii) On 17.03.2005, when the respondent was working in the Machine and while drying the cloth, his left hand got struck in the sending belt, five fingers were crushed and burnt up to the palm. Immediately, the co-workers, viz., Basker and T.Subramani, took the claimant to the L.K.M. Hospital, Erode and the claimant was admitted in the hospital and took treatment till 02.05.2005. The claimant also underwent surgery in the said hospital. Subsequently for further treatment he took treatment in Sree Ramakrishna Hospital, Coimbatore. Believing the words of the appellants, the respondent-claimant did not take any action against them.

(iii) According to the respondent-claimant, due to the accident, the claimant's four fingers in the left hand were amputated and the nerves were also affected. The respondent is not in a position to carry out any work in his left hand. The claimant incurred a sum of Rs.1,00,000/- towards medical expenses. The accident had occurred in the course of employment. Hence, the appellants are liable to pay the compensation. In these circumstances, the claimant has filed the claim petition claiming a compensation of Rs.5,00,000/- (Rupees five lakhs only) together with interest.

4. The brief case of the 3rd appellant is as follows:-

(i) According to the 3rd appellant he does not own any Calendering Mill, by name Rukmani Calenders as mentioned in the claim petition and he is not the Proprietor of any such Mill. The respondent never worked under them at any point of time. There is absolutely no employer-employee relationship between the appellants and the respondent. It is utter false to say that the respondent was working in the Rukmani Calenders of the appellants as Calender Machine Operator for the past 10 years or drawing wage of Rs.150/- per day.

(ii) According to the 3rd appellant, it is totally false to say that on 17.03.2005 or any other date when the respondent was working in the Rukmani Calenders and while drying the cloth, his left hand struck in the sending belt and five fingers were crushed and burnt upto the palm. There was no such incident occurred in the 3rd appellant's premises.

(iii) The 3rd appellant never gave any false promise to the

respondent. There was no police complaint made by the respondent or any petition filed to the Labour Authorities or atleast a lawyer's notice to the appellants soon after the incident. The 3rd appellant came to know about such an allegation only in the lawyer's notice dated 12.07.2005 issued four months after the alleged incident. Since the notice was not connected with the 3rd appellant, he got confused and hence, he did not send any reply. Further, the respondent has not produced a single document to show that he was working under the 3rd appellant. In these circumstances, the 3rd appellant prayed for dismissal of the claim petition.

5. Before the Deputy Commissioner of Labour, on the side of the respondent-claimant, 5 witnesses were examined and 13 documents, Exs.A-1 to A-13 were marked and on the side of the appellants, R.W.1 was examined and 4 documents, Exs.R-1 to R-4 were marked .

6. The Deputy Commissioner of Labour, after taking into consideration the oral and documentary evidences let in by both the parties, directed the appellants 2 and 3 to pay a total sum of Rs1,62,662/- (Rupees one lakh sixty two thousand six hundred and sixty two only) as compensation to the respondent-claimant.

7. Challenging the award passed by the Deputy Commissioner of Labour, the appellants have filed the above Civil Miscellaneous Appeal.

8. Heard Mr.C.E.Pratap, learned counsel appearing for the appellants and Mr.C.Kulanthaivel, learned counsel appearing for the respondent.

9.1 On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that it is the case of the respondent that he was employed with the 2nd appellant company as Calender Machine Operator and that he sustained injuries on 17.03.2005, resulting in, amputation of four fingers in his left hand. The appellants' contention is that the respondent was not at all employed by them and that there is no employer-employee relationship between them. The respondent-claimant was examined as P.W.1 and in his evidence he has stated that he was employed with the appellants for more than 10 years and was getting a daily wage of Rs.150/-. However, in the cross examination, when the appellants specifically put questions with regard to the employment of the respondent, the respondent has not produced any document to prove the said contention.

9.2 The Deputy Commissioner of Labour, while awarding compensation took into consideration Ex.P-13 case sheet,

wherein, a signature was found, which was said to be that of the 1st appellant. In order to establish that the signature found in Ex.P-13 is not that of the 1st appellant, the appellants produced Exs.R1 to R4, in which, the 1st appellant has affixed his signature in English. Except in Ex.P-13, in all other documents, the 1st appellant has affixed his signature only in English. That apart, in Ex.P-13, after writing the 1st appellant's name in Tamil, in bracket, it has been mentioned as "Proprietor". In fact, even according to the respondent, the 1st appellant is not the Proprietor of the 2nd appellant company. He is only the Manager of the Company. According to the respondent, the 3rd appellant is the Proprietor of the 2nd appellant company. In spite of the appellants producing Exs.R-1 to R-4 to establish that the signature found in Ex.P-13 is not that of the 1st appellant, the respondent has not taken any steps to prove that the 1st appellant has also accompanied him to the hospital and affixed his signature in Ex.P-13.

9.3 The Doctor, who treated the respondent, was examined as P.W.5. In his evidence, while deposing about the injuries sustained by the respondent, he deposed that he does not know whether the 1st appellant, viz., Raja Manickam, has signed in Ex.P-13.

9.4 That apart, in spite of sustaining grievous injuries, no police complaint was lodged either by the persons accompanied with the respondent to the hospital or by the hospital authorities. The reason for not lodging a police complaint was not explained by the respondent-claimant in any manner whatsoever.

9.5 The respondent-claimant also examined another Doctor as P.W.3, who treated the respondent for the injuries sustained by him and issued disability certificate. In his evidence, not only in the cross examination, even in the chief examination, he has deposed that the respondent came to him for taking treatment and for obtaining disability certificate for the injuries sustained by him in a road accident. Though P.W.3 has stated that the respondent approached him for getting treatment and getting a disability certificate for the injuries sustained by him in the road accident and a specific question was also put to him in the cross examination, wherein also, he admitted that the respondent had approached him for treatment and for getting the disability certificate for the injuries sustained by him in the road accident. The evidence of P.W.3 clearly falsify the case of the respondent-claimant.

9.6 The disability certificate was marked as Ex.P-8. The disability certificate was obtained on 16.06.2009, i.e., four years after the filing of the claim petition before the Deputy Commissioner of Labour.

9.7 In the claim petition filed by the respondent he has mentioned only the name of one Basker and T.Subramani, who took him to L.K.M. Hospital on 17.03.2005. He has not mentioned the name of the 1st appellant viz., Rajamanickam in the claim petition. But, in Ex.P-13, the hospital case sheet, it has been mentioned as though the 1st appellant had admitted him in the hospital. In order to establish that the respondent was not employed in the 2nd appellant company, the appellants produced the Attendance Register of the employees and on a perusal of the same it is clear that the name of the respondent as well as P.W.4 do not find a place.

9.8 In spite of the appellants contending that there is no employer-employee relationship between them, the respondent has not produced a single document to establish the said relationship. According to the appellants, P.W.4, who is the alleged eye-witness, was also not their employee and even P.W.4 has not produced any document to prove that he was employed with the appellants. In spite of all these discrepancies, the Deputy Commissioner of Labour awarded a compensation of Rs.1,62,662/-.

10. When the respondent-claimant failed to establish the employer-employee relationship, the Deputy Commissioner of Labour should not have awarded compensation. That apart, as already stated, even P.W.3, has also stated that the respondent-claimant approached him for taking treatment and for obtaining the disability certificate for the injuries sustained by him in the road accident and not for the injuries as alleged in the claim petition.

11. Apart from this, the respondent though stated that one Basker and T.Subramani took him to hospital, in Ex.P-13 hospital case sheet, the name of the 1st appellant has been included and subsequently, in the evidence, P.W.1 has stated that he was accompanied by the 1st appellant also. The signature found in Ex.P13 clearly differs from the admitted signature found in Exs.R-1 to R-4.

12. In these circumstances, the Deputy Commissioner of Labour erroneously awarded compensation to the respondent. Hence, the order passed by the Deputy Commissioner of Labour, Salem in W.C.No.548 of 2005 is set aside and the above Civil Miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Rj

To

1.The Commissioner for Workmen's Compensation/
Deputy Commissioner of Labour
Salem.

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

+lcc to Mr.C.E.Pratap, Advocate SR.No.9255

+lcc to Mr.C.Kulanthaivel, Advocate SR.No.9687

C.M.A.No.2123 of 2015 &
M.P.No.1 of 2015

KK(CO)
GN(23/02/2018)



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