

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2018

Coram

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.No.2494 of 2015 &
M.P.No.1 of 2015 & C.M.P.No.20232 of 2017

Goodsun Industries (P) Ltd.
Rep. by its Managing Director
206, Perks Complex
Rajalakshmi Mill Road
Upplipalayam
Coimbatore - 15

... Appellant/1st Respondent

v.

1.K.Shanthi
2.Minor C.S.Shyam Christopher
3.P.Asaiayan
4.M.Jothimani

5.G.R.Residency
Siddheswara Complex
12, Veerapandiyar Nagar
Coimbatore

... Respondents/Petitioner, 2nd Respondent

Civil Miscellaneous Appeal filed under section 30 of the Workmen's Compensation Act, 1923 against the order dated 31/08/2015 received by the Appellant on 10.09.2015 made in W.C.No.73 of 2011 on the file of Workmen Compensation Commissioner (Deputy Commissioner of Labour), Coimbatore.

For Appellants : Mr.P.Valliappan

For Respondents: Mr.V.Anandhamoorthy - for R1 & R2

No appearance - for R3 to R5

J U D G M E N T

Challenging the order passed in W.C.No.73 of 2011 on the file of Workmen Compensation Commissioner/Deputy Commissioner of Labour, Coimbatore, the 1st respondent in the Workmen's Compensation Case has filed the above Civil Miscellaneous Appeal.

2. The respondent 1 to 4/claimants have filed the the Workmen's Compensation Case claiming compensation for the death of one Christopher during the course of employment.

3. The brief case of the respondent 1 to 4/claimants is as follows:

(i) According to the respondents 1 to 4/claimants, on 24.11.2010 at about 2.00 p.m., as per the direction of the appellant, the deceased Christopher installed solar water heater at the 5th respondent's premises and was checking the functioning of the solar water heater. At that time, he fell down from the 4th floor of the building and sustained grievous injuries. The police registered a case in Crime No.1850 of 2010.

(ii) The said Christopher was taken to Gokulam Hospital for first aid and thereafter, for further treatment, while he was taken to Kurinchi Hospital, Coimbatore, he died on the way. The body of the deceased was taken to Government Hospital, Coimbatore of post mortem.

(iii) According to the claimants, the deceased had died during the course of employment. Hence, the appellant and the 5th respondent are liable to pay the compensation.

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

(i) According to the appellant, there is no jural relationship of employer-workman between themselves and the deceased Christopher. According to the appellant, it is a company engaged in the manufacture, sale and installation of solar water heaters on job orders received from the customers. The installation and the operation of water heaters are done by the company itself in the premises of the purchasing concerns. The job of the respondent would complete, after the installation and commissioning of water heaters. Thereafter, when any technical snag in the system, such as, blockage of water, etc., occurs, the purchasing parties request the appellant to inform them of the telephone numbers of the mechanics, who can attend to such snags, since it is a specialized product and an ordinary technician cannot attend to such snags. The mechanics have furnished their contact

numbers with the appellant and at the time of installation, the appellant furnishes the contact telephone numbers of few mechanics to the purchasing parties, who, in turn, choose among them a mechanic of their choice, engage them for work and pays the charges therefor.

(ii) The appellant has no nexus with the mechanics and has nothing to do with such repairing work with such mechanics. The deceased Christopher was also a professional mechanic attending such work in various organizations. The appellant neither engages the mechanics for repair work nor pays any wages.

(iii) The 5th respondent purchased the solar water heater from the appellant on 20.11.2010 and the same was installed on the same day. Subsequently, on 23.11.2010, the 5th respondent requested the appellant to give the contact numbers of mechanics alleging some technical snags in the system. The appellant furnished few phone numbers of mechanics including that of Christopher. The appellant was unaware whether the 5th respondent engaged Christopher or not.

(iv) The appellant was informed on 24.11.2010 at about 2.00 p.m. that the 5th respondent had engaged Christopher for repairing the solar water heater. While so, the said Christopher attempted to jump from the 4th floor to commit suicide. The appellant came to know on enquiry that Christopher was in a dejected mood on 24.11.2010 and therefore, attempted to commit suicide. When the persons present were few feet away from him, he jumped from the 4th floor of the 5th respondent hotel and suffered injuries and he succumbed to injuries.

(v) According to the appellant, the said Christopher was taken to Gokulam Hospital for first aid and thereafter, for further treatment while he was taken to Kurinchi Hospital, Coimbatore, he died on the way. Thereafter, he was taken to Coimbatore Medical College Hospital, Coimbatore, where post mortem was done. Out of humanitarian ground, the appellant helped the family of Christopher. In these circumstances, the appellant prayed for dismissal of the petition.

5. The brief case of the 5th respondent is as follows:-

(i) According to the 5th respondent, there is no privity of contract between them and the deceased Christopher. They did not even know the deceased person until the unfortunate incident had happened. The deceased person was brought along by the appellant from Coimbatore to install the solar water heater in their place.

(ii) The deceased person was not an employee of the 5th respondent and they are no way liable to pay compensation. In

these circumstances, the 5th respondent prayed for dismissal of the petition.

6. Before the Deputy Commissioner of Labour, Coimbatore, on the side of the claimants, P.W.1 was examined and 6 documents, Exs.P-1 to P-6 were marked, on the side of the appellant, R.W.1 was examined and 2 documents, Exs.R-1 & R-2 were marked and on the side of the 5th respondent R.W.2 was examined and 3 documents, Exs.R-1 to R-3 were marked.

7. The Deputy Commissioner of Labour, after taking into consideration the oral and documentary evidences let in by both the parties, awarded a total compensation of Rs.8,20,400/- [Rupees eight lakhs twenty thousand and four hundred only] to the claimants.

8. Challenging the award passed by the Deputy Commissioner of Labour, the appellant has filed the above Civil Miscellaneous Appeal.

9. Heard Mr.P.Valliappan, learned counsel appearing for the appellant and Mr.V.Anandhamoorthy, learned counsel appearing for the respondents 1 and 2.

10. It is the case of the appellant that the deceased Christopher was not employed by them and therefore, the claimants are not entitled to claim any compensation from them. It is also the case of the appellant that it is the company engaged in the manufacture, sale and installation of solar water heaters on job orders received from the customers. According to the appellant, they sold solar water heater to the 5th respondent and the same was installed on 20.11.2010. Further, according to them, on 23.11.2010, the 5th respondent complained to them with regard to a snag in the water heater. Hence, they gave the telephone numbers of the mechanics to the 5th respondent and the 5th respondent had entrusted the repair work to the deceased Christopher. However, the 5th respondent in their counter, has specifically stated that the deceased Christopher was brought by the appellant for installing the solar water heater. That apart, R.W.2 also reiterated the stand taken by them in the counter.

11. In Ex.P-6 letter, it has been specifically stated that the deceased Christopher was engaged by the appellant for installing solar water heater at the premises of the 5th respondent. On 24.11.2010, while installing the solar water heater in the 4th floor of the 5th respondent's premises, he fell down accidentally and succumbed to injuries. Ex.P-6 would clearly establish that the deceased was employed by the appellant for installing the solar water heater. The appellant

has not put any questions to P.W.1 with regard to Ex.P-6 document.

12. From the above, it is clear that the deceased was employed by the appellant for the purpose of installing the solar water heater. That apart, admittedly the appellant had paid a sum of Rs.60,000/- [Rupees sixty thousand only] under Ex.P-6 document to the family of the deceased Christopher. The appellant has also admitted that they helped the family members of the deceased Christopher on humanitarian ground. The contents of Ex.P-6 document is supported by the averment made by the appellant in their counter affidavit.

13. When it is the case of the appellant that the deceased was not employed by them, the necessity for paying a sum of Rs.60,000/- to the family of the deceased was not properly explained. When there is no jural relationship between the appellant and the deceased, no person would have paid the amount to the family of the deceased. Therefore, from the above, it is clear that the deceased was employed by the appellant for the purpose of installing the solar water heaters.

14. In these circumstances, the Deputy Commissioner of Labour has rightly come to the conclusion that the deceased was working under the appellant and he had died in the course of employment, therefore, the claimants are entitled for compensation under the Workmen's Compensation Act. Considering all these aspects, the tribunal has rightly fixed the monthly income at Rs.8,000/- and awarded a total compensation of Rs.8,20,400/-.

15. In view of the above, I do not find any error or irregularity in the order passed by the Deputy Commissioner of Labour, Coimbatore. The Civil Miscellaneous appeal is liable to be dismissed. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

Rj

To

The Workmen's Compensation/
Deputy Commissioner of Labour
Coimbatore.

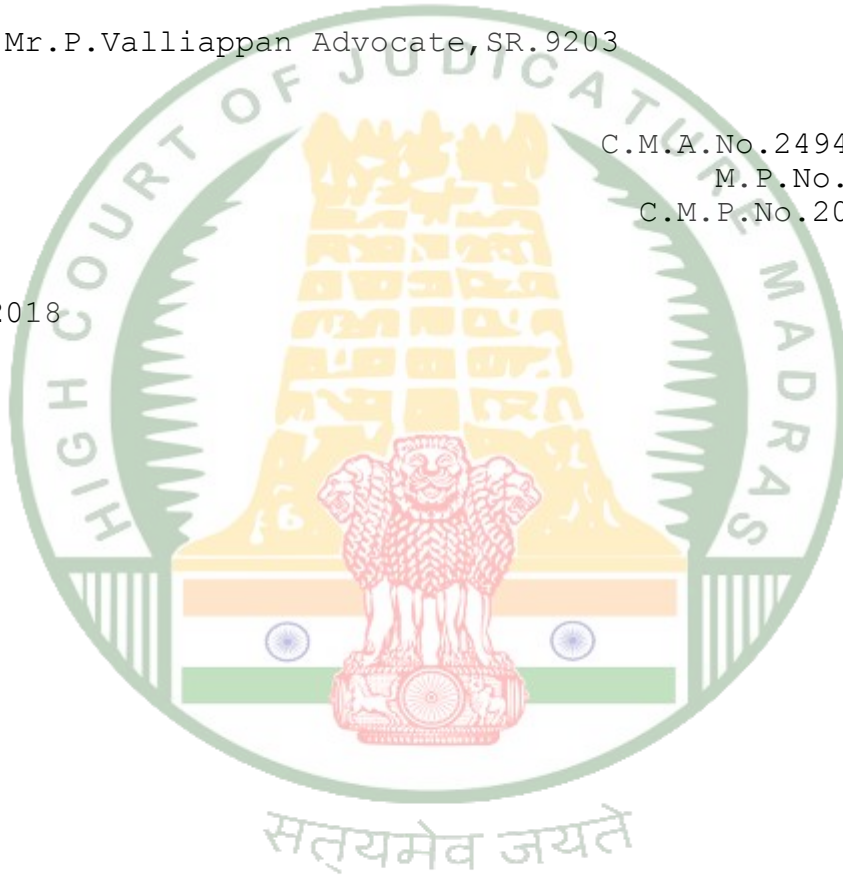
2.The Section Officer,
VR Section,High Court,
Madras.

+ 1 cc to Mr.V.Anandhamoorthy Advocate,SR.9124

+ 1 cc to Mr.P.Valliappan Advocate,SR.9203

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