

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.11969 of 2017

P.Shanthi

...Petitioner

Vs

1.Tamil Nadu Manual Workers Welfare Board,
Rep by its Secretary,
G/133, I Main Road, II and III Floor,
TNHB Chinthamani Super Market Shopping Complex,
Anna Nagar East, Chennai - 600 102.

2.Labour Officer (SSS),
Kancheepuram,
Kancheepuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of certiorarified mandamus calling for the concerned records from the second respondent, quash the order of the second respondent dated 24.02.2015 bearing Na.Ka.No.A/007105/2015 as illegal, arbitrary and contrary to clause 11 of the Tamil Nadu Manual workers (Construction Workers) Welfare Scheme, 1994 and consequently direct the respondents to pay Rs.1,00,000/- to the petitioner in terms of clause 11 of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994 along with interest at the rate of 18% per annum from the date of the death of the petitioner's husband till the payment.

For Petitioner :Mr.Balan Haridas

For Respondents:Mr.J.Ramesh,
Additional Government Pleader

O R D E R

The order passed by the second respondent dated 24.02.2015 is sought to be quashed on the ground that the same is in violation of clause 11 of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994 and direct the respondent to pay Rs.1,00,000/- to the petitioner in terms of clause 11 of the Scheme along with interest at the rate of 18% per annum.

2.The learned counsel appearing on behalf of the petitioner states that the petitioner is the wife of late M.Pandiyar, who was working as mason. The husband of the writ petitioner registered his name with the first respondent Board in Regn. No.01-45100/17.03.199. On 10.09.2010, the husband of the writ petitioner went for work as usual. While he was proceeding to his work place at about 7.45 A.M., he was hit by a van bearing Regn. No.TN21 U 7913 and suffered serious injuries. He was admitted in the hospital and subsequently, passed away on the same day. The petitioner says that she had three minor children. The father-in-law and mother-in-law of the writ petitioner are very old and infirm. On account of sudden death of the husband of the writ petitioner, who was a sole breadwinner of the family, the family was in indigent circumstances and was not in a position even to meet the day to day expenditure. The petitioner has no other source of income to lead his life. The petitioner is now doing some menial work and struggling even to feed her children and old in-laws.

3. The grievance of the writ petitioner is that in the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994, provides, in the event of death of the member, the compensation of Rs.1,00,000/- is to be paid. The said amount of Rs.1,00,000/- as per the scheme has not been paid to the writ petitioner, on the ground that the husband of the writ petitioner had not died, during the course of employment, but died while proceeding to his work place.

4. The learned counsel appearing on behalf of the writ petitioner states that clause 11(2) of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994 provides definition for accident means any bodily injury or death or loss of limbs or loss of sight resulting solely and directly from accident arising out of and in the course of his employment but does not include any intentional self injury, suicide, attempted suicide, injury caused while under the influence of intoxicating liquor or drugs or caused by insanity or resulting from the commission of any breach of the law, or rules, regulations or instructions applicable, from time to time. This apart as per Section 20 of the Tamil Nadu Manual Workers (Regulation of Employment Conditions of Work) Act 1993, the procedures contemplated under the Workmen's Compensation Act, 1923 to be applied for the purpose of following the procedures. Thus, the course of employment is defined under the Workmen Compensation Act to be followed for the purpose of applying clause 11(2) of the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994.

5. Applying the above definition, the learned counsel for the petitioner contended that the husband of the writ petitioner, while proceeding to his work place, met with an accident and subsequently died. Therefore, the same is to be construed as an accident occurred, during the course of employment and therefore, the benefit of compensation of Rs.1,00,000/- cannot be denied as per the terms and conditions of the scheme.

6. This Court is also of an opinion that an employee while going to attend the duty and returning from work place to be treated as course of employment, because the same is for the purpose of attending the work. The Welfare Scheme like compensation cannot be denied on the technical ground that an accident took place, while the employee was returning to home. While awarding such compensation, the Court must have liberal interpretation and a pragmatic approach, keeping in mind the status and other consequential circumstances arouse, on account of sudden demise of the labour.

7. In the present case on hand, the husband of the petitioner was the sole breadwinner of the family and died, during the course of employment. Thus, this Court is of an undoubted opinion that the compensation under the scheme should not have been denied by the competent authorities. The learned counsel for the petitioner cited the Judgement of this Court passed in the case of V.Maheswari Secretary T.N.M.L.S.S. vs. Welfare Board, Chennai reported in 2007 (3) L.L.N.411 the relevant portion is extracted hereunder:

"The arguments were advanced on the stand taken by the second respondent-insurance company. Sri Vijayaraghavan, learned counsel appearing for the insurance company submitted that the murder due to personal enmity is not covered by the policy and, therefore, they are not liable to make any payment. This argument is not available to the second respondent in view of the fact that S. 20 of the Manual Workers Act applies the provisions of the Workmen's Compensation Act, 1923, to the manual workers, which read as follows:

"Section 20. Application of Workmen's Compensation Act, 1923, to the Manual Workers:

The provisions of the Workmen's Compensation Act, 1923 (Central Act 8 of 1923) and the rules made from time-to-time thereunder, shall mutatis mutandis apply to manual workers employed in any scheduled employment to which this Act applies, and for that purpose they shall be deemed to be

workmen within the meaning of that Act;
and in relation to such workmen,
employer shall mean where a Board makes
payment of wages to any such workmen,
the Board, and in any other case, the
employer as defined in this Act."

8. For all these reasons, this Court is of an opinion that the writ petition deserves consideration. Accordingly, the impugned order passed by the second respondent in proceeding Na.Ka.No.A/007105/2015 dated 24.02.2015 is quashed and the respondents are directed to pay the compensation amount of Rs.1,00,000/- along with the accrued interest at 8% per annum, from the date of death till the date of realisation to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above observations, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
Tamil Nadu Manual Workers Welfare Board,
G/133, I Main Road, II and III Floor,
TNHB Chinthamani Super Market Shopping Complex,
Anna Nagar East, Chennai - 600 102.
- 2.The Labour Officer (SSS),
Kancheepuram, Kancheepuram District.

+1cc to Government Pleader Sr.No.30002
+1cc to Mr.Balan Haridas, Advocate SR.No.30285

NA(CO)
sm:15.5.2018

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