

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1223 of 2010
and M.P.No.1 of 2010

M. Selvam ... Appellant/Opposite Party
Vs.

Kaliraj @ Kalidas ... Respondent/Claimant

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 20.01.2010 in W.C.No.120 of 2002 on the file of the Deputy Commissioner of Labour, Coimbatore - 18.

For Appellant : Mr.K.S.Viswanathan
For Respondent : No Appearance

J U D G M E N T

Challenging the award of compensation made in W.C.No.120 of 2002 dated 20.01.2010 by the Deputy Commissioner of Labour, Coimbatore-18, the employer has preferred this Civil Miscellaneous Appeal.

2. The appellant raised the grounds that the claimant was the minor at the time of alleged accident and that he has not proved his employment status and income. In the absence of any evidence produced by the claimant that he was employed under the appellant, the award of compensation ought not to have been made by the authority. Therefore, the employer/appellant has preferred this appeal on the following substantial questions of law:-

A) Whether the learned authority was right in holding the claim was maintainable when the respondent failed to establish that he was a workman employed with the appellant?

B) Whether the learned authority was right in holding that the alleged accident took place during the course of employment when no evidence was placed regarding the same?

C) Whether the learned authority right in rejecting the request for cross examining the Medical Board made by the appellant in I.A.No.44 of 2009 in W.C.No.120 of 2002 dated 25.11.2009 and thereby accepting the report of the Medical Board as correct?

D) Whether the learned authority right in disregarding the report of the Inspector, Ramanathapuram Police Station in RCS.No.775 of 2003 in Crime No.1454 of 2002 which clearly stated that after due investigation the complaint was closed as mistake of fact.

3. I have given careful consideration to the materials available on record.

4. On the side of the claimant, the mother of the claimant was examined as P.W.1, and the claimant examined himself as P.W.2. They have let in evidence in support of their claim and marked documents as Ex.A1 to A12.

5. The appellant/employer has failed to produce attendance register and wage register, etc., to disprove the claim of the respondent/ claimant.

6. In the absence of any contra evidence, it should be construed that the claimant was under the employment of the employer. Even the evidence of R.W.1 would probablise that the claimant was present at his house, where the accident had taken place. It is also deposed by R.W.1 that the claimant used to come with his mother. In such circumstances, it shall be construed that the claimant was carrying out work at the instructions of the employer and thereby, he was employed under him. The authority below has also given categorical finding that the employment was not disproved by the clinching evidence by the employer and therefore, the claimant is entitled to compensation as the accident had taken place during the course of his employment.

7. I do not find any infirmity in the order dated 20.01.2010 in W.C.No.120 of 2002 passed by the authority and the disability was also proved by the certificate issued by the Medical Board. In such circumstances, the employment status as well as the injuries suffered by the claimant during the course of employment have been well proved and the order passed by the authority under Workmen's Compensation is not required to be interfered with. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8. The learned counsel appearing for the appellant would submit that the appellant has already deposited the entire award amount with the authority. Hence, the respondent is entitled to withdraw the amount deposited with accrued interest.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

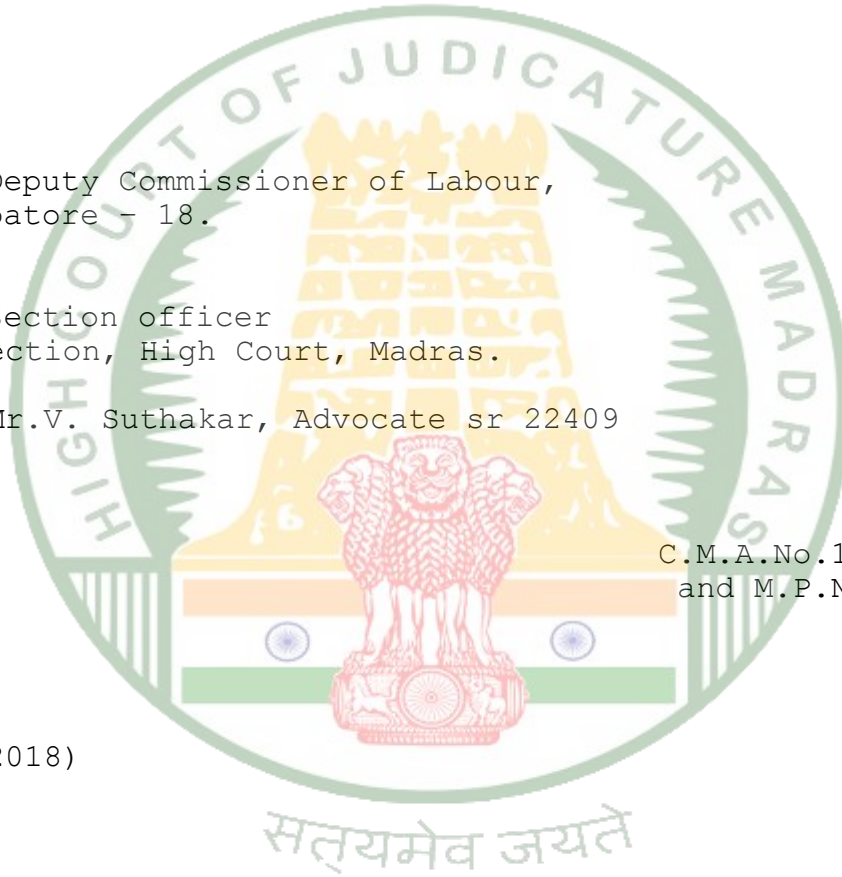
The Deputy Commissioner of Labour,
Coimbatore - 18.

Copy to
The Section officer
VR Section, High Court, Madras.

+1 CC to Mr.V. Suthakar, Advocate sr 22409

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GJII (CO)
SP(06/04/2018)



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