

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.09.2017

Judgment Pronounced on : 28.04.2018

CORAM: THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.302 of 2004
and CMP.No.1312 of 2004

M/s.Alpha Commercials
Rep. By its Managing Partner
IV Floor, Jhaver Plaza
1-A, Mahatma Gandhi Salai
Chennai - 600 034. .. Appellant

Vs.

1.Murugesan
2.Peer Mohamed .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the order dated 22.7.2003 passed in W.C.No.69 of 2002 on the file of the Commissioner for Workmen's Compensation No.1, (Deputy Commissioner of Labour No.1).

For Appellant : Mr.Govi Ganesan
For Respondents : No appearance

JUDGMENT

1. The first respondent in WC.No.69 of 2002 has come forward with this appeal under Section 30 of the Workmen Compensation Act, 1923. Parties would be referred to by their ranks before the Tribunal.

2. The brief facts relevant for the current purpose may be stated :

- The petitioner/claimant before the Tribunal below is a manual labourer, that the first respondent is the business establishment, that the second respondent was the Manager of the first respondent, that on 16.2.2000, that the respondents wanted to transport a heavy machinery from their office near Gemini Bridge to a place near Anna Nagar, Chennai, that they hired the services of the petitioner and others for the purpose of loading the machinery in the transport vehicle, that while unloading the said machinery at the place of delivery, petitioner's right hand was trapped inside the machinery because of the negligence of

other labourers involved in unloading, and as a result petitioner suffered injury to his middle finger in the right hand. The petitioner was taken to Government Stanley Medical Hospital and still was taking continuous treatment. He has been medically advised to undergo one more surgery besides physiotherapy exercises and the petitioner was advised to take complete rest for six months, Due to the injury, the petitioner is unable to use the other fingers as well. In short, the petitioner is unable to employ himself in his avocation as a labourer. The petitioner was earning Rs.300/- per day. The doctors estimated the disability of the petitioner at 22% and in all he makes a claim of Rs.2,00,000/- with interest.

3.1. In the counter statement filed by the first respondent, the jural relationship between the first respondent and the petitioner as employer and employee is denied. Secondly, the first respondent is a partnership firm and not a proprietary concern as alleged. Thirdly, the first respondent does not have any branch or business activity at Anna Nagar and at no time has transported any heavy machinery as alleged by the petitioner. Fourthly, the petitioner's Manager is one Khader Ali and the second respondent Peer Mohammed is not its Manager. The percentage of disability and the daily income of the petitioner is also disputed.

3.2. In his counter, the second respondent Peer Mohammed would contend that he was working as a Chief Accountant in the first respondent's company that at no point of time he had engaged the petitioner for transporting any machinery for himself or for the first respondent. He also denies employer-employee relationship between the petitioner and the first respondent. The Workmen Compensation Commissioner had framed as many as five issues. It may be stated here that none of them posed a question, if the petitioner was an employee under the first respondent. On the other hand, the issues proceed on the basis as if the petitioner was the employee under the first respondent. The Commissioner, however drawn adverse inference against the respondent for the non-production of the various registers and drew adverse inference against it to conclude that the petitioner was in the employment of the first respondent. Ultimately, he has passed an award for Rs.47,882/-.

4. The learned counsel for the appellant argued that even as per the averment in the petition, the petitioner describes himself only as a labourer or a coolie. Therefore, even going by his statement, he was not in the regular employ of the first respondent. This would mean that even if registers were produced by the appellant still petitioner name would not find a place there. Secondly, even going by his assertion in the petition, he was engaged only for the specific purpose of

shifting a machinery and unless he is in the regular employ there is no way his name would find a place in any of the registers. If his allegation about the accident is considered, he has not specifically stated from where the machinery was removed and where it was delivered. The proof of this becomes critical because of petitioner's denial both about existence of business facility in Anna Nagar and about shifting a heavy machinery from his office at Gemini to such office. This part of petitioner's allegation therefore is in the realm of imagination and it cannot be considered as a proven fact. Thirdly as to the accident per se, it is his case that his thumb got trapped in the machinery due to the negligence of other labourers engaged in shifting. However he has not examined anyone among the other labourers he has referred to. Taken these aspects wholly, the Tribunal has fallen into great error in concluding that the first respondent/appellant herein is liable.

5. On admission, this Court has framed the following questions of law :

'1. When the appellant had denied the employer and employee relationship with the 1st respondent as his workmen on the date of accident, is it not the initial onus was on the claimant to prove that he met with accident which arose out of and in course of his employment under the appellant ?

2. Whether the Commissioner has acted erroneously in casting the entire burden on the appellant to prove the negative aspect that the employee was not employed under him ?

3. Whether the nature of employment as alleged by the 1st respondent herein is in consonance with the trade or business of the appellant herein ?''

6. There is no representation for the respondents. After carefully considering the arguments advanced on behalf of the appellant, this Court finds considerable merit in the same. As already indicated at the outset, the Tribunal's approach even in framing the issues is not appropriate and it almost appeared to have proceeded on the premise that the petitioner was an employee of the appellant/first respondent. The various circumstances indicated by the counsel for the appellant have not been met adequately by the petitioner and he has left several loose ends in his evidence.

7. The substantial questions of law raised for consideration of this appeal are answered accordingly. In conclusion, this court finds adequate merit in the appeal and the same is

allowed. The award amount in W.C.No.69 of 2002, which is in deposit before the Commissioner for Workmen Compensation No.1 (Deputy Commissioner of Labour No.1), Chennai is directed to be refunded to the appellant herein. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VII)

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Sub-Assistant Registrar

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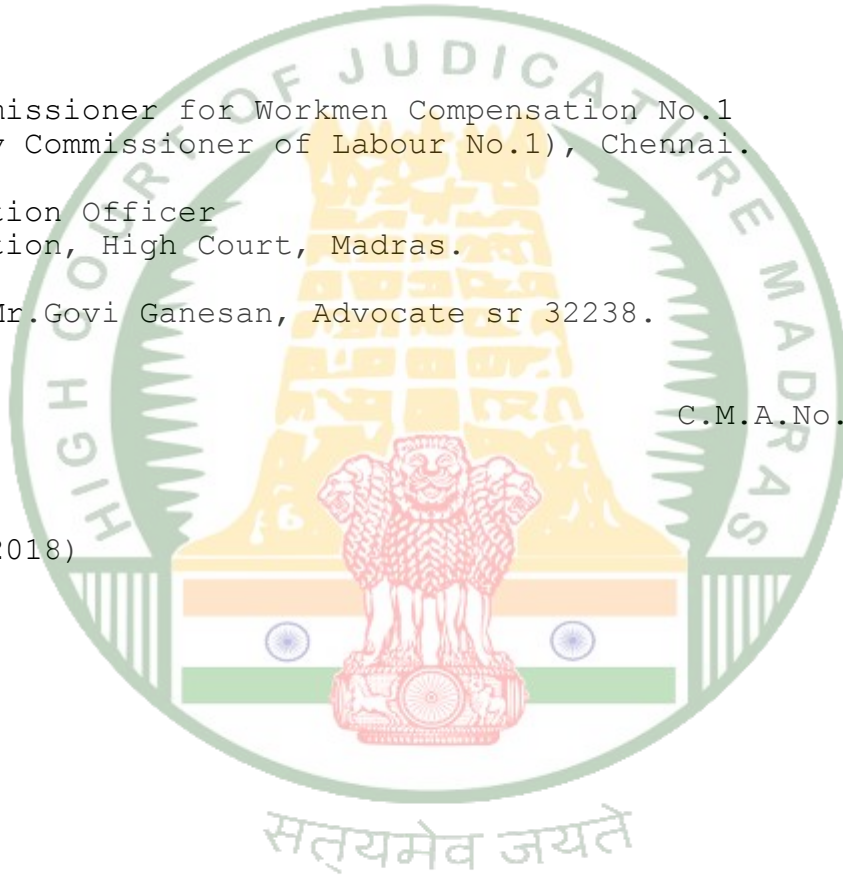
1.The Commissioner for Workmen Compensation No.1
(Deputy Commissioner of Labour No.1), Chennai.

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

+1 CC to Mr.Govi Ganesan, Advocate sr 32238.

C.M.A.No.302 of 2004

CP(CO)
SP(19/06/2018)



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