

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	24.10.2019
Pronounced On	05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2116 of 2003

V.Mani

.. Appellant

vs

Jayaraman

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 19.09.2002 passed in W.C.No.186 of 1999 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour) Salem.

For appellant : Mr.P.Mani

J U D G M E N T

The appellant is aggrieved by the impugned order dated 19.09.2002 passed by the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour) Salem in W.C.No.186 of 1999.

2.By the impugned order, the Deputy Commissioner of Labour has dismissed the claim petition filed by the appellant.

3.A brief fact of the case, the appellant was engaged by the respondent in connection with demolishing and reconstruction of a house at Ammapet, Salem. It is stated that on 10.01.1999, during the course of employment, the appellant fell down when he was removing tiles from the said building. Therefore, he sustained grievous injury and was rushed to the hospital and where it was diagnosed that the appellant had suffered fracture of the left thigh.

4.It is the case of the appellant that he was operated on 29.01.1999 and was assessed to 40% of permanent disability. Therefore, he was unable to work in future.

5. According to the appellant, he was earning a sum of Rs.4,500/- per month from the respondent. Apart from the salary the appellant receiving a sum of Rs.3,000/- per year as festival bonus. Therefore, the appellant filed a claim petition on 14.05.1999 for a sum of Rs.2,50,000/- as compensation under the Workmen's Compensation Act, 1923.

6. The respondent has denied the liability by stating that the appellant was not his employee. It is stated that the respondent himself was employed as a salesman working in Desal Jari Center, No.47, P.V.Iyer Street, Lane for about 35 years under Sri.D.Deepan and therefore question of the appellant being considered as an employee of the respondent does not arise. The respondent further denied the knowledge of the alleged accident and alleged injury of the appellant.

7. After considering the evidences of the appellant, the Deputy Commissioner of Labour has concluded that the appellant not impleaded the owner of the house where the demolishing and reconstruction work was taking place and has therefore concluded that the appellant has not proved that he was employed with the respondent.

8. In the present Civil Miscellaneous Appeal has raised the following substantial question of law:-

i. Whether the Authority below erred in law and misdirected himself in dismissing the complaint merely because the present complaint was not filed against the owner of the building where, the accident occurred when in fact the applicant was employed by the opposite party building contractor and there was no privity of contract or relationship between the application and the owner of the building?

ii. Whether in law the order passed by the Authority below is sustainable when he has failed to consider and appreciate the evidence on record in their proper perspective?

9. Heard the learned counsel for the appellant. There is no representation for the respondent.

10. It is submitted that the appellant had produced two witness PW 1 and PW 2 and therefore, the Authority ought not to have ignored the evidence of PW 1 and PW 2.

11.I have considered the arguments and the records. Two witnesses examined by the appellant were himself as PW 1 and one subramaniam as PW 2. There is no discussion regarding the evidence of PW 2. At the same time, the Deputy Commissioner has referred the witness of the respondent namely Thiru Jayaraman as RW 1 and Thiru. Deepak as RW 2.

12.The evidence of RW 2 states that the appellant was working in Desal Jari Center between 8.30 A.M and 7.00 P.M. Therefore, there was contrary to the plea of the appellant.

13.There is no reason as to why the evidence of PW 2 Subramaniam has been ignored and not discussed in the impugned order passed by the Deputy Commissioner of Labour before rejecting the claim petition of the appellant.

14.Therefore, I remit the case back to the Commissioner of Workmen's Compensation (Deputy Commissioner of Labour) to pass a fresh order after giving a fresh opportunity to the appellant to establish the facts.

15.Commissioner of Workmen's Compensation (Deputy Commissioner of Labour) is requested to pass a fresh order within a period of six months from the date of receipt of a copy of this order.

16.The present Civil Miscellaneous Appeal is disposed by way of remand. No cost.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.Commissioner of Workmen Compensation
(Deputy Commissioner of Labour) Salem.

Copy To L.The Section Officer,
V.R.Section. High Court,
Madras.

C.M.A.No.2116 of 2003

VG I(CO)