

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1676 of 2007

and

C.M.P.No.1 of 2007

The New India Assurance Company Limited,
66-C, North Car Street,
Thirchengode,
Namakkal District. ... Appellant/3rd Respondent

Vs.

1.Selvambal
2.Minor Ganesh
3.Minor Mohan
all at New Agraharam Village,
Panaiyolaipadi Post, Chengam Taluk,
(minors rep by their mother
1st respondent, Selvambal) ... 1-3 Respondents/Petitioners
4.R.Muthuswamy
5.Kuppuswamy ... 4 & 5 Respondents/1 & 2 Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 25th day of April, 2007, made in W.C.Case No.30 of 2004, on the file of Commissioner of Workmen's Compensation - 1 (Deputy Commissioner of Labour - 1), Chennai - 6.

For Appellant : Mr.J.Chandran

For Respondents : Mr.K.B.Arul (R1 to R3)

Mr.G.R.Balakumr for
M/s.T.S.Gopalan & Co for R5

R4- not ready in Notice

J U D G M E N T

At the time of admission, this Court had framed the following question of law to be decided in appeal:

Is a commission agent, a workman under the W.C.Act?

2. Assailing the impugned order of the Deputy Commissioner of Labour, the learned counsel for the appellant-insurance company submits that there is a clear admission in the claim petition of the respondent Nos.1 to 3 where they have stated that the deceased Narayanan was employed as an agent of the 4th respondent herein for the past 12 years and that the deceased was getting a salary of Rs.3000 from the said respondent and was paid commission for the rig points on foot length basis.

3. It is submitted that since the deceased was an agent admittedly getting commission from the 4th respondent owner of the bore well rig mounted carry, the appellant-Insurance Company cannot be made liable to pay compensation due to the death of the said Narayanan.

4. It is further submitted that the deceased Narayanan died after being struck by thunder while resting in the shelter provided by the 5th respondent herein for whom the bore well was being dug on contract basis.

5. It is submitted that the deceased was no way connected with the insured bore well Lorry and therefore no compensation can be awarded under the provisions of the Workmen's Compensation Act, 1953. It is further submitted that the 4th respondent has paid a sum of Rs.1,25,000 to the claimants under settlement arrived before the panchayat and therefore also the application is liable to be dismissed.

6. I have considered the arguments advanced on behalf of the appellant and the respondents.

7. Though there are minor contradiction in the claim petition filed by the claimants (respondent Nos.1 to 3), the same is liable to be ignored due to inaccurate drafting. In the proceedings before the Deputy Commissioner, copy of reply dated 29.08.2001 issued on behalf of the 1st respondent in response to a legal notice issued on behalf of the claimants, the 5th respondent has clearly admitted that the work was entrusted on contract basis with the help of broker named Ganesan of Chetpet and several workmen including the deceased Narayanan were resting in the shelter near the bore well when the deceased Narayanan was struck by lightning and was seriously injured. Though the 4th respondent made arrangements for taking the injured Narayanan for treatment, the said Narayanan succumb to the injury. Thus, it stands concluded

that the deceased was an employee of the 4th respondent and died in the course of employment.

8. Consequently, I find no reasons to interfere with the impugned order. At the same time, liberty is given to the appellant to recover the amount from the 4th respondent in accordance with law.

9. The civil miscellaneous appeal stands dismissed with the above observation. No costs. Consequently, connected Civil Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of workmen's Compensation - 1
(Deputy Commissioner of Labour - 1),
Chennai - 6.

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.98993
+1cc to Mr.J.Chandran, Advocate SR.99020
+1cc to Mr.K.B.Arul, Advocate SR.99099

C.M.A.No.1676 of 2007
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SSD (CO)
CB (02/03/2020)

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