

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
24.09.2019	16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.1849 of 2007

The Management,
M/s.Ace Glass Containers Limited,
Thondamanatham,
Vazhudavoor S.O.,
Pondicherry 605 502. ... Appellant

vs.

1.T.Veerappan
2.Sulochana

3.Vaishali Constructions,
Engineering Contractor,
No.13, 1st Street, SMV Puram (East)
Villianur Post, Pondicherry.

4.The Deputy Commissioner of Labour II,
DMS Campus, Chennai - 6.

5.The Regional Director,
Employees State Insurance Corporation
ESIC Complex,
Bouvankare Street,
Mudaliarpuram, Pondicherry 605 004.

(R5 Suo moto impleaded as party respondent
vide Court order dated 03.12.2018 made in
G.A.No.1849 of 2007) ... Respondents

PRAYER: Appeal filed under Section 30 of the Workmen's
Compensation Act, 1923 against the order of the Commissioner for
Workmen's Compensation - II, Chennai dated 14.06.2007 passed in
W.C.No.57 of 2005 dated 16.06.2007

For Appellant : Mr.S.Sai Prasad for
Mr.Sai Raj Associates

For R1 & R2 : M/s.K.Velankanni for
Mr.T.Dhanyakumar

For R5 : Mr.T.N.C.Kaushik

JUDGMENT

C.SARAVANAN, J.

The appellant is aggrieved by the impugned order dated 14.06.2007 passed by the Commissioner of Workmen's Compensation II, Chennai in W.C.No.57 of 2005 under the Provisions of the Employees Compensation Act, 1923 (Workmen's Compensation Act, 1923)

2. By the impugned order, the Workmen's Compensation II, Chennai has awarded a sum of Rs.4,36,900/- as compensation to the 1st and 2nd respondent under the Workmen's Compensation Act 1923

3.The Respondent Nos.1 and 2 are the parents of the deceased/worker Iyyappan who died while working in the appellant's premises on 03.07.2004. In these circumstances, the first and second respondents had filed a claim petition before the Commissioner of Workmen's Compensation Authority II, Chennai on 03.02.2005 claiming a sum of Rs.4,36,490/-.

4. The said claim was contested by the appellant herein on the ground that the third respondent had covered the employees/workers under the provisions of the Employee State Insurance Act 1948 and therefore, the awarded compensation was contrary to the provisions of Section 53 of Employees State Insurance Act, 1948. In this connection reference was made under Section 53 of the Employees State Insurance Act, 1948 which reads as under:

53.Bar against receiving or recovery of Compensation under any other law-An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.

5. The learned counsel for the appellant submitted that as per the decision of the Honble Supreme Court in (a) Bharagath Engineering Vs R.Ranganayaki and Another 2003-1-LLJ, the claim under Workmen's Compensation Act was denied. Relevant portion of the decision reads as under:

11.When considered in the background of statutory provisions, noted above, the payment or non payment of contributions and action or non action prior to or subsequent to the ate of

accident is really inconsequential. The deceased employee was clearly an insured person as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the compensation Act were excluded statutorily. The High Court was not justified in holding otherwise. We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation, and shall be extended to the eligible persons.

6. The learned counsel for the appellant has also relied on the decision of the Court in *A. Trehan Vs. M/s. Associated Electrical Agencies* and another, 1996-I-LLJ, also compensation under workmen's Compensation Act was denied. Relevant portion of the said decision reads as under:

11. In this background and context we have to consider the effect of the bar created by Section 53 of the ESI Act. Bar is against receiving or recovering any compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise in respect of an employment injury. The bar is absolute as can be seen from the use of the words shall not be entitled to receive or recover, "whether from the employer of the insured person or from any other person", "any compensation or damages" and "under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise". The words "employed by the legislature" are clear and unequivocal. When such a bar is created in clear and express terms it would neither be permissible nor proper to infer a different intention by referring to the previous history of the legislation. That would amount to bypassing the bar and defeating the object of the provision. In view of the clear language of the Section we find no justification in interpreting or construing it as not taking away the right of the workman who is an insured person and as employee under the ESI Act to claim compensation under the Workmen's Compensation Act. We are of the opinion that

the High Court was right in holding that in view of the bar created by Section 53 the application for compensation filed by the appellant under the Workmen's Compensation Act was not maintainable".

Therefore he submits that the order passed by the Commissioner of Workmen's Compensation, Chennai is to be set aside and the present appeal is liable to be allowed.

7. Per contra, the learned counsel for the respondents 1 and 2 submits that the order of the Commissioner of Workmen's Compensation is well reasoned and requires no interference. It is submitted that no evidence was filed by the appellant before the said authority and therefore the appeal is liable to be dismissed.

8. I have considered the records produced by the appellant and the arguments of the learned counsel for the appellant and the 5th respondent viz., Regional Director, Employees State Insurance Corporation, ESIC Complex, Bouvankare Street, Mudaliarpet, Pondicherry.

9. The case of the appellant is that the impugned order passed by the Commissioner, Workmen Compensation, Chennai 2 is unsustainable. The finding that the appellant has not produced any evidence to substantiate the deceased was covered under the ESI Act, 1948 and therefore the compensation was to be awarded to the respondent Nos.1 and 2 under the Workmen's Compensation Act, 1923 was liable to be set aside.

10 It is submitted that Respondent Nos.1 and 2 were entitled for dependent benefit and no compensation under the provisions of the Workmen's Compensation Act, 1923 in view of Section 53 of the Employees State Insurance Act .

11. The appellant has raised the following substantial question of law:

a. Whether the Commissioner for the Workmen's compensation is entitled to entertain a claim for compensation in respect of an "insured person" under the provisions of the Workmen's Compensation Act, in view of the bar to such claim as contained under the ESI Act?

b. Whether on the facts of the case, whether the Commissioner for Workmen's Compensation erred in concluding that the

deceased was not covered under the employees' State Insurance Act, 1948?

c. Whether on the facts and circumstances of the case, the reasoning and findings of the Commissioner for Workmen's Compensation are perverse? "

12. I have perused the records filed by the appellant. In annexure to Form 16 (Regulation 68) dated 05.07.2004 it is stated that on 3rd July 2004, M/s.Vaishali Constructions (Engineering Contractors) was allotted a structural fabrication work in their Cold End Lehr area. After making the necessary safety work permit, the work commenced with all the personal protective equipments such as Gloves, Goggles, Safety belt, helmet and Safety shoes. Deceased Mr.V.Iyappan, son of Mr.Veerappan aged around 24 years was welding with two others helpers Mr.Selvaraj & Mr.Manikandan who were standing below and giving the electrodes to him.

13. At about 12.30 p.m. the helpers noticed that the deceased Iyappan was standing idle and was not welding and therefore tried to draw his attention. However, there was no response and they noticed that the deceased Iyappan was leaning unconsciously and the helmet he was wearing fell off from his head and when the said helpers tried to reach out to help him, he fell off the structural but did not fall down to the ground as the safety belt held him back. After this, the helpers had taken him to the First Aid center. It was suspected to be a case of cardiac arrest and he was taken for further medical care to JIPMER Hospital, Ramanathapuram and thereafter to JIPMER Hospital, Gorimedu, Pondicherry. At JIPMER, after examination, the doctors declared that Mr.Iyappan declared dead on arrival.

14. The appellant has also filed a copy of the Return of Declaration Form which is undated wherein the name of the deceased has been mentioned at Sl.No.19.

15. The learned counsel for the appellant also drew my attention to the following chalan showing payments made under Employees State Insurance Act, 1948.

Sl.N o.	Period	Date	Amount	No of employers
1	April 2004	02.06.200 4	1950	20
2	May 2004	22.06.2004	1779	23

Sl.N o.	Period	Date	Amount	No of employers
3	June 2004	06.07.2004	2664	36
4	July 2004	19.06.2004	15	1

16. In the Returns filed by the appellant on 16.7.2004 under Regulation 26, the employers and employees contribution as detailed above has been captured. However, the fact that more than one employees/workers were employed on the date of accident on 3.7.2004 shows that the deceased employee may not have covered been by any ESI scheme on the said date. Further, Return of Declaration Form is undated but bears the name of the deceased twice at serial number 16 and 19. It does not give the period for which the aforesaid Return of Declaration has been filed.

17. Even as per the appellant, other persons namely Mr. Selvaraj and Mr. Manikandan were working as helpers along with the deceased V.Iyyappan at the time on the date of accident on 3.7.2004. The name of Mr. Selvaraj is not found in the said Return of Declaration. Further, single contribution for the month of July for an amount of Rs.15 on 19.7.2004 is subsequent to the date of the death of the deceased. It shows that the ESI registration was perhaps obtained subsequent to the date of the deceased V.Iyyappan to make it seen as if the deceased was covered under the scheme under the Employment Insurance Act. The wage Register for the month of June also does not bear any signature of the deceased.

18. Thus, it is clear that there is no direct evidence to show as to when the deceased V.Ayyappan was insured by the respondent under the Employment Insurance Act. In all probability, the insurance registration was obtained post facto after the death and therefore mere reference to the letter dated 07.06.2005 of the ESI Department asking R1 and R2 to give details will not suffice.

19. In the impugned order, the Commissioner of Workmen's Compensation has clearly mentioned that none of the records of the 3rd respondent Vaisali Construction indicate that the deceased V.Iyappan was insured with the ESI before his death. The appellant has also not produced any documents as to from when the deceased was insured under the Employment Insurance Act. Therefore, the conclusion of the Commissioner for Workmen Compensation that the deceased V.Iyappan was a worker under the provisions within the meaning of Workmen Compensation Act, 1923 is liable to be sustained.

20. In the light of the above discussion, I am of the view that the present appeal is liable to be dismissed and substantial question of law answered against the appellant. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kkd

To

1. Commissioner for Workmen's Compensation - II,
Chennai.
- 2.The Deputy Commissioner of Labour II,
DMS Campus, Chennai - 6.
- 3.The Regional Director,
Employees State Insurance Corporation
ESIC Complex,
Bouvankare Street,
Mudaliarpet, Pondicherry 605 004.

+1cc to Mr.T.Dhanya Kumar, Advocate, S.R.No. 87023

C.M.A.No.1849 of 2007

SVI (CO)

GN(05/12/2019)

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