



IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	05.11.2019
Pronounced On	13.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.209 of 2005
and
C.M.P.No.1071 of 2005

Rathnasabapathy

...appellant

vs

Dhandapani

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 19.03.2004 of the Commissioner for Workmen's Compensation, Coimbatore in W.C.No.79 of 2003.

For appellant : Mr.M.Kandasamy for
Mr.M.R.Dharani Chandar
For Respondent : Not ready in notice

J U D G M E N T

The appellant has challenged the impugned order dated 19.03.2004 passed by the Commissioner for Workmen's Compensation, Coimbatore in W.C.No.79 of 2003 filed by the respondent.

2.The respondent had filed a claim petition before the Commissioner for Workmen's Compensation, Coimbatore vide above claim petition for compensation of Rs.10,00,000/-.



3.By the impugned order, Commissioner for Workmen's Compensation has awarded a sum of Rs.2,18,114/- to the respondent to be paid by the appellant.

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4.The respondent had alleged in the claim petition that on 19.07.2002 at about 11.00 am when he was working as a Maistry for construction of the house for the appellant, he fell down from the 2nd floor and suffered injury on his head. In the said proceedings, the appellant had contested the employer-employee relationship between them and had further stated that the respondent was not employed as a maistry but as a mason and was paid a sum of Rs.50/- per day. It was also stated that respondent was under the influence of liquor as a result of which he fell from the 2nd floor while working.

5.The Commissioner for Workmen's Compensation by the impugned order has concluded that there was employer-employee relationship between the appellant and the respondent and that the respondent as a workman was entitled for compensation.

6.Though the name of the respondent is printed in the cause list, there is no representation for the respondent. However, the printed list states that the respondent not ready in notice. I therefore do not wish to adjourn the case as the dispute pertains to the year 2002 and the present Civil Miscellaneous Appeal is of the year 2005.

7.At the time of admission, this Court has framed the following substantial questions of law for consideration:-

- i. Whether the appellant is an 'employer' within the meaning of the Workmen's Compensation Act, 1923?
- ii. Whether the respondent engaged as a helper on daily rated basis in construction of a dwelling house for own occupation is entitled to compensation under the Workmen's Compensation Act, 1923?
- iii. Whether the Minimum Wages G.O.No.(2D).No.29, Labour and Employment Department, dated 24.04.2000 is applicable to the respondent engaged as a helper in construction of a house?



8.I have considered the facts and circumstances of the case and the decision cited by the learned counsel for the appellant.

9.The facts are not in dispute. The accident and the nature of injury suffered by the respondent is not in dispute. In the present appeal, the appellant has mainly questioned the applicability of Workmen's Compensation Act, 1923 for compensation being paid to the respondent.

10.According to the appellant, the respondent was not employed by him on regular basis. The learned counsel for the appellant referred to the decision of the Calcutta High Court in Gopal Das Nandy and Another vs Alladi Bibee, 1967 2 LLJ 95 wherein the Court referred to the definition of the Workmen's Compensation Act, 1923 in Section 2(n) to conclude that the casual worker cannot be construed as a workmen for the purpose of the said Act.

11.In the above judgment, the appellant had several houses in Konnagar and Calcutta, that they received rent to the extent of Rs.5,000/- to 5,500/- per month and that the Konnagar fire brigade station was a tenant of the premises of 5A, Grand Trunk Road, Konnagar and therefore, in the facts peculiar to said case, the Court concluded the they were not carrying on business in which the deceased worked as a workmen.

12.Therefore, the said decision cited by the learned counsel for the appellant is not applicable to the facts of the present case. The deceased in the said case was employed by the appellant therein. There conclusion was arrived that the employee was casual domestic employee which was not disputed.

13.The definition of Workmen's in Section 2(n) of the Workmen's Compensation Act, 1923 reads as under:-

2. (n) "Workman" means any person who is -

(1)

(i)

(ii) employed in any such capacity as is specified in Schedule II,

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of Union; and any reference to



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a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them.

- (2)
(3)

14.The definition makes it very clear that a person is a workman whose employment is not casual. The Deputy Commissioner for Workmen's Compensation has held that the respondent was a workman employed by the appellant. It is a finding of fact that the respondent was a workman engaged in the construction by the appellant herein.

15.The conclusion of facts arrived by the Commissioner for Workmen's Compensation in W.C.No.79 of 2003 that the respondent was a worker cannot be interfered based on submissions of the learned counsel for the appellant.

16.I am of view that there are no merits in the present Civil Miscellaneous Appeal. The present Civil Miscellaneous Appeal is accordingly dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner for Workmen's Compensation,
Coimbatore.

2.The Section Officer,
V.R.Section. High Court,
Madras.

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and
C.M.P.No.1071 of 2005

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