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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A. No. 1282 of 2008

and

M.P. No. 1 of 2008

Palanisamy

... Appellant

Vs

1. Poongodi
2. Minor Prakasam
3. Minor Mohanapriya
(Respondents 2 & 3 being minors
represented by their mother and
natural guardian Poongodi)
4. Periyakaruvayan @ Muniappan
5. Nachimuthu

... Respondents

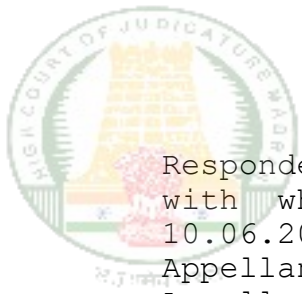
Prayer: Civil Miscellaneous Appeal has been filed under Section 30 of the Workmen's Compensation Act, 1923, to call for the records comprised in W.C. No. 199 of 2002 on the file of the Deputy Labour Commissioner for Workmen Compensation at Salem dated 03.08.2006 whereby awarding a compensation of Rs.1,60,610/- and a sum of Rs.2,500/- towards funeral expenses totalling Rs.1,63,110/- in terms of provisions under the Workmen Compensation Act.

For Appellant	: Mr. V. Ayyadurai
For R1 to R3	: Mr. N. Manokaran
For R4	: Not ready in notice
For R5	: No appearance

JUDGMENT

The Appellant is aggrieved by the impugned order dated 03.08.2006 passed by the Deputy Commissioner of Labour in W.C. No. 199 of 2002.

2. By the impugned order, the Deputy Commissioner of Labour has awarded a sum of Rs.1,63,110/- to the Respondents No.1 to 3 who are the dependents of the deceased Mani. The deceased Mani was employed as a Mason to undertake construction work in the house being constructed for the Appellant by the Fourth



Respondent-Supervisor. The Fifth Respondent is the contractor with whom the appellant had contracted an agreement dated 10.06.2000 wherein, it was specifically agreed between the Appellant and the Fifth Respondent-contractor, that the Appellant would not be liable for compensation for any liabilities arising out of the injuries or the accident that may arise in the course of construction of the house for the Appellant.

3. In this case, the deceased Mani met with an accident when he was undertaking construction of the Appellant's house on 15.12.2000. The deceased Mani succumbed to the injuries on 24.12.2000 at the National Hospital, Erode and therefore the Respondents No.1 to 3 who were the dependents of the deceased Mani filed a claim petition before the Deputy Commissioner of Labour under the Workmens' Compensation Act, 1923.

4. In the claim petition it was categorically stated that the deceased Mani was employed for constructing the house of the Appellant under the Fourth Respondent Maistry who was employed by the Fifth Respondent herein. Since the Appellant is the owner of the house is also was called upon to pay the compensation as principal employer in the said claim petition jointly and severally along with the other two persons namely the Fourth and Fifth Respondent herein. The Appellant has also filed counter denying liability and relied on the aforesaid agreement dated 10.06.2000 sent by the Fifth Respondent.

5. The Deputy Commissioner of Labour has framed the following four issues:

(1) Whether the deceased Mani died out of accident occurred in the work place while he was working under the Respondents?

(2) What is his age and salary at the time of death?

(3) What is the compensation to which the Petitioners are entitled to?

(4) Who has to pay the compensation?

There is no dispute that the injury which resulted in death of the deceased Mani was on account of employment and in the course of employment.

6. At the time of admission of this Court/Appellant has raised the following questions of law:

(1) Whether the Tribunal is right in holding that Appellant is Employer with the meaning of Section 2(E) of Workmen Compensation Act regarding the Ex.D.1 agreement and Ex.M.1 no liability entered into between Appellant and the Fifth Respondent?

(2) Whether the Award under Appeal constituted error in law for want of appreciating



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the documentation evidences especially Ex.D.1 Ex.M.1 and its binding nature?

(3) Whether the finding of Tribunal are exfacie illegal warranting interference in the Appeal?

(4) Whether the quantum of award is in accordance with law? in the First Additional District Court, Coimbatore in A.O.P. No. 376 of 2005.

7. Assailing the order of the Deputy Commissioner of Labour, the learned counsel for the Appellant submits that the owner of the property is not a principal employer within the meaning of Section 2 (1) (e) of the Workmen's Compensation Act, 1923 much less a principal employer and therefore, no liability can be fastening on the Appellant under Section 12 of the said Act. In this connection, the learned counsel referred to the decision of the Division Bench of Kerala High Court in the case of Easow Easow Vs Rajan Kallippara Thekkeveetil & Another, 1998 (1) LLJ wherein in paragraph (5) it was held as under:

"5. It is not possible to spell out an employer employee relationship between the claimant and the appellant from the statement also. The term employer is defined in Section 2 (1)(e) of the Workmen's Compensation Act, 1923. There is nothing to indicate that the owner of a land is liable, as an employer, for any accident that may take place to a workman under a contractor, who is allowed to extract rocks on the abovesaid basis. Thus it is not possible to uphold the finding of the Commissioner that the claimant was an employee under the appellant and find him liable to compensate for the injury. The order of the Commissioner as regards the appellant is liable to be set aside."

8. The learned counsel for the Appellant also referred another decision of the Karnataka High Court in the case of Dr. B. Radhakrishna Vs Gouramma and others, 2000 (2) LLJ wherein in paragraph (4) & (5) it was held as follows:

"4. Unless it is shown that the Appellant is principal employer, he cannot be saddled with any liability. To fasten the liability, two things are required namely that there was contract and he was principal employer. In the case on hand, of course the Appellant had given contract not for the purposes for which he was carrying out the trade. These two decisions make it clear that the Appellant is not



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responsible to pay any compensation. Hence it goes without saying that the direction of the Commissioner that the Appellant is also responsible to the extent of 50% cannot sustain. This portion of the order is set aside. Hence the following order.

5. In the result, the appeal is allowed, the portion of the order that the appellant is also responsible to the extent of 50% is set aside. The Respondent No.3 is also further directed to make good of this compensation to the Respondents 1 and 2. The amount that has been in deposit by the Appellant shall be refunded to him."

The learned counsel submits that the impugned order passed by the Deputy Commissioner of Labour is liable to set aside.

9. Per contra, the learned counsel appearing for the Respondents submits that the order passed by the Deputy Commissioner of Labour is well reasoned and requires no interference. He submits that the order is well reasoned and the Appellant being the owner of the property is the principal employer and therefore notwithstanding the contract between the Appellant and the main contractor, Appellant was also liable to pay the amount. The learned counsel also relied upon a decision of this Court in the case of The superintending Engineer, Tiruvannamalai Electricity System, North Arcot District Vs S. Kannaiyan & 2 others, 1999 (III) CTC 416, wherein this Court has categorically held that an employee under a contractor is entitled to compensation from the principal employer and the contract entered in to between the contractor and the principal employer cannot have an over-riding effect over and above the provisions of the Act and therefore the principal employer cannot avoid his liability to pay the compensation.

10. Heard the learned counsel for the Appellant and the Respondents.

11. The only issue for the consideration of this Court is whether the Appellant-the owner of the house can also be held liable to pay compensation to the Respondents No.1 to 3, dependents of the said deceased Mani?

12. A perusal of the impugned order passed by the Deputy Commissioner of Labour under the provisions of Workmen's Compensation Act, 1923 answers the test under the Act. At the same time, it would be improper to infer that only the Appellant will be liable to pay the amount under the Act. The Appellant is merely the owner of the House. He had entered into a



contract with the Fifth Respondent on 10.06.2000 wherein, he has specifically insulated himself from any liability arising out of the accident or death.

13. In my view, the Fifth Respondent also should have been liable to pay compensation as the Contractor. Since, there is a private arrangement between the Appellant and the Fifth Respondent. I am of the view that liberty should be given to the Appellant to recover the amount from the Fifth Respondent interms of contract/agreement dated 10.06.2000.

14. Accordingly, the appeal filed by the Appellant is disposed, giving liberty to Appellant to enforce his remedy under the contract in accordance with law against the Fifth Respondent. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner for Workmen's Compensation
(Deputy Commissioner of Labour), Salem.
2. The Section Officer,
Vernacular Section, High Court of Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.98212

C.M.A.No. 1282 of 2008
and
M.P. No. 1 of 2008

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srg 22/01/2020