

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A. No. 1629 of 2008

and

M.P. No. 1 of 2008

M/s. Jumbo Bags Ltd.,
Represented by its Managing Director,
Thatchur Road,
Thatchur Village,
Ponneri Taluk, Thiruvallur District. Appellant

Vs

1. Lalitha
2. Needhi,
Contractor,
Jumbo Bags Private Ltd.,
Thatchoor Village,
Panjetty Post,
Ponneri Taluk, Thiruvallur District. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 30 of Workmens' Compensation Act, against the order of the Deputy Commissioner of Labour II, Chennai, the authority under the Workmen Compensation Act, dated 28.09.2007 in W.C. No. 270 of 2005 and the same is liable to be set aside.

For Appellant : Mr. Balan Haridas

For R1 : No appearance

For R2 : Not ready in notice

JUDGMENT

The Appellant employer is aggrieved by the impugned order dated 28.09.2007 passed by the Deputy Commissioner of Labour II, Chennai in W.C. No. 270 of 2005.

2. By the impugned order, the Deputy Commissioner of Labour II, Chennai has awarded a sum of Rs.1,15,328/- to the First Respondent. It is the contention of the Appellant that the First Respondent Lalitha who filed a claim petition, was only a daily wage worker and not a regular employee of the

Appellant Private Company and therefore she was not entitled to compensation under the provisions of Workmens' Compensation Act, 2002.

3. At the time of admission of the Appeal, the following substantial questions of law have been framed:

"1. When the First Respondent failed to prove her employment and that the injury was suffered in the course of her employment with the appellant through the Second Respondent and when it was proved by the Appellant and the First Respondent that the First Respondent is not their employee, whether the learned authority was right in allowing the claim of the First Respondent?

2. When it is held by Hon'ble Supreme Court in a Judgment reported in 2007 (1) SCC (L&S) page 679 that it is for the person who claims to be employee under a management to prove the same, whether the learned authority was right in holding that the Appellant and Second Respondent disprove that First Respondent was not employed by them?

3. When there had no proof of employment, proof of the claim for wages, whether the authority was right in fixing the wages as Rs.3,000/- per month and computing the compensation?

4. When the disability certificate issued by the Institute for Research and Rehabilitation of Hand Department of Plastic Surgery dated 30.10.2002 assess the disability of 25%, whether the learned authority was right in fixing the loss of earning capacity at 30%?

4. I have perused the impugned order passed by the Deputy Commissioner of Labour II, Chennai. The Appellant has disputed the factum of accident and the status of the First Respondent. It is submitted that the Appellant cannot be construed as 'worker' within the meaning of the definition in 2(n) of the Workmens' Compensation Act, 1923. Since there is a finding of fact given by the Deputy Commissioner of Labour II, that the First Respondent was a workman within the meaning under the Provisions of the aforesaid Act, I find no any reasons to interfere with the same in the present appeal as no question of law much less the substantial question of law arises for consideration.

5. Accordingly, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (DR-CJ conf)

//True Copy//

Sub Assistant Registrar

arb

To

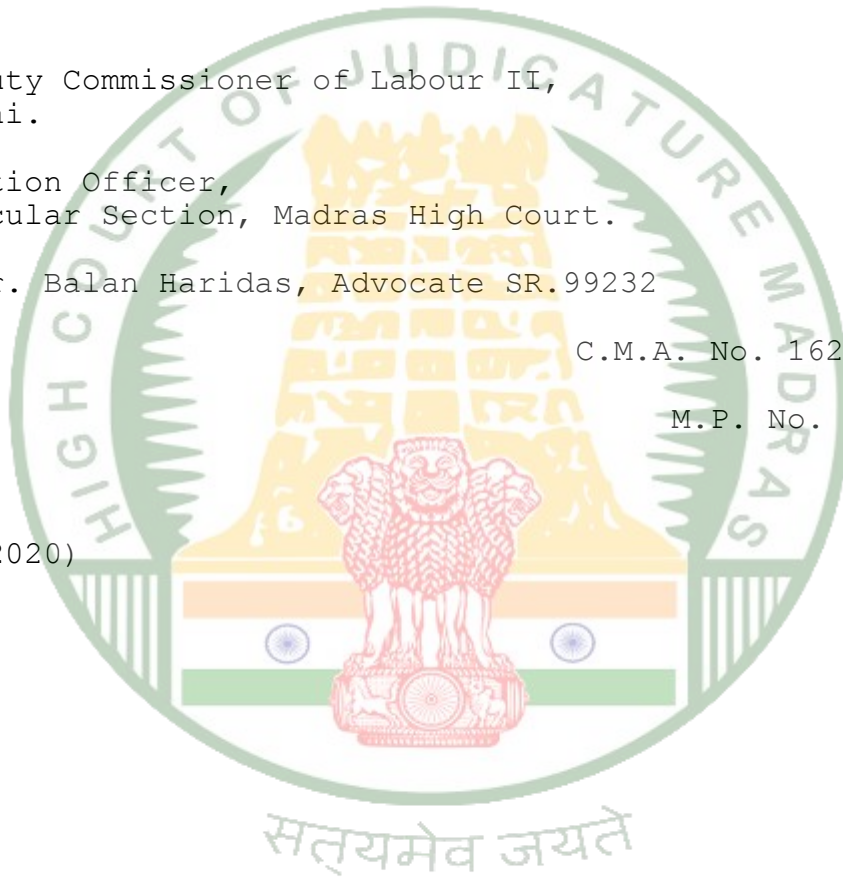
1.The Deputy Commissioner of Labour II,
Chennai.

2.The Section Officer,
Vernacular Section, Madras High Court.

+lcc to Mr. Balan Haridas, Advocate SR.99232

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SSV(CO)
CB(27/01/2020)



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