

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2850 of 2007

Henkel Spic India Limited
444/3-A, 2nd Street,
Yekambara Naicker Industrial Estate
Alappakkam, Porur,
Chennai - 600 116.

... Appellant

vs

1. Rasammal

2. S.Baskaran

3. Sayees Chennai Company
C/o.Henkel Spic India Ltd.,
Alappakkam, Porur, Chennai-116.

4. The Commissioner for Workmen Compensation - I/
The Deputy Commissioner of Labour - I,
Chennai - 600 006.

... Respondents

Prayer:

The Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 25.04.2005 passed in WC.No.263 of 1999 on the file of the Commissioner for Workmen's Compensation Court - I/Deputy Commissioner of Labour - I, Chennai - 6.

For Appellant : Mr.M.Tamil Thendral Arasu
for Mr.P.Mani

For R1 : No Appearance

For R2 : Vacated

For R3 : No such company

For R4 : Court

J U D G M E N T

The Appellant Insurance Company is aggrieved by the impugned order dated 25.04.2005 passed by the Deputy Commissioner of Labour - I, Chennai in WC.No.263 of 1999. By the impugned order, the Deputy Commissioner of Labour - I, Chennai, has awarded a sum of Rs.2,19,950 as compensation to the claimants who are the Respondents 1 and 2 in this appeal.

2. It is the case of the claimant that on 24.12.1998, the deceased Swaminathan was employed by the 2nd respondent herein and was cleaning the overhead tank belonging to the third opposite party, sustained burn injury, due to electric shock in the course of the employment. The learned Deputy Commissioner of Labour I, has held that the 2nd respondent and the appellant jointly and severally liable for the death of Swaminathan employed by the 2nd respondent herein. The appellant has raised three questions of Law as substantial questions of law, which read as under:-

1. Whether the authority below erred in directing the appellant to pay the compensation amount when there existed no relationship of employer and workman between appellant and the deceased?

2. Whether the authority below erred in casting burden on the appellant to disprove that there existed no relationship of employer and workman between appellant and the deceased when it is for the applicant to prove the said relationship positively?

3. Whether the authority below erred in directing payment of compensation for the death of the deceased who allegedly died while cleaning the overhead tank which was not the work for which he was employed by the opposite parties 1 and 2?

4. Heard the learned counsel for the appellant. There is no representation for the 1st respondent/Claimant. Notice on the 2nd and 3rd respondent has not been served till date.

5. I have perused the records and the order passed by the Deputy Commissioner of Labour-I.

6. The case of the appellant before the Deputy Commissioner of Labour-I was that the deceased Swaminathan was not employed by it and perhaps the deceased Swaminathan had gained access to the premises unauthorisedly and died in an accident and that the

maintenance of the property was not on it. Therefore, no liability can be fastened on the appellant.

7. The 2nd and 3rd respondents were incharge of the aforesaid godown on behalf of the appellant. The appellant, 2nd and 3rd respondents, all of them have distanced from the incident. However, the finding and fact has been given by the Deputy Commissioner of Labour concluded that the deceased Swaminathan was cleaning over head the tank of the property which was used as godown rented by the appellant and was under the care and control of the 2nd and 3rd respondents and that the 2nd respondent was the partner of the 3rd respondent.

8. Thus, the appellant cannot be distance itself from the incident as the deceased Swaminathan was employed as load man at the premises by the 2nd and 3rd respondents on behalf of the appellant.

9. The Deputy Commissioner of Labour-I has given definite conclusion fixing the responsibility on the appellant. The documents produced before the Deputy Commissioner of Labour-I also indicates the maintenance of the property was on the appellant and therefore, the defence of the appellant that the deceased Swaminathan would have gained unauthorised access to the property and met with an accident, cannot be countenanced.

10. I do not find any merits in the present Civil Miscellaneous Appeal. The findings of facts arrived by the Deputy Commissioner of Labour-I cannot be assailed in the guise of substantial questions of law.

11. In the light of the above discussion, the Civil Miscellaneous Appeal filed by the appellant is liable to be dismissed. The 1st respondent is entitled to withdraw the amount which was depo0osited by the appellant, if it has not already been withdrawn.

12. The present Civil Miscellaneous Appeal is dismissed. No costs.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

drl

To

1. The Commissioner for Workmen's Compensation
Court - I/Deputy Commissioner of Labour - I,
Chennai - 6.
2. The Section Officer,
V.R. Section, High Court, Madras.

C.M.A.No.2850 of 2007

NRL (CO)
CS/24/01/2020



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