

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2643 of 2008
and
M.P.No.1 of 2008

The Managing Director,
Arun Excello Foundation Private Ltd.,
No.30, West Cost Road,
Royapettah,
Chennai - 600 014. ... Appellant/1st Respondent

vs

1.Lokesh

2.The National Insurance Company Ltd.,
No.25, Whites Road, Mamta Complex,
3rd Floor, Chennai - 600 014. ... 1st Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the order dated 01.10.2007 passed by the Deputy Commissioner of Labour II, Chennai in W.C.C.No.43 of 2005.

For Appellant : Mr.P.Vasudevan

For R1 : M/s.S.Ramya for
Mr.J.Mahalingam

For R2 : No appearance

J U D G M E N T

The appellant is aggrieved by the impugned order dated 01.10.2007 passed by the Deputy Commissioner of Labour - 1 in W.C.No.43 of 2004.

2.By the impugned order, the Deputy Commissioner of Labour - 1 has awarded a sum of Rs.3,07,541/- as compensation to the 1st respondent/claimant.

3.The 1st respondent/claimant was engaged as a plumber in the construction being put up by the appellant Arun Excello Foundation Pvt.Ltd. On 02.05.2004 at about 10.30 a.m while the 1st respondent was working on the 4th floor, he slipped and fell down from the 4th floor and sustained grievous injuries and is stated to be permanently disabled.

4.According to the 1st respondent, he was earning a sum of Rs.150 per day as wages and therefore, claimed a compensation of Rs.10,00,000/- from the appellant.

5.According to the appellant, the 1st respondent/claimant was earning a sum of Rs.100/- per day as wages. Therefore the Deputy Commissioner of Labour -1 erred in fixing a sum of Rs.4,000/- per month as wages as per G.O.No.(2d).No.29, dated 24.04.2000, Labour and Employment Department, as per Minimum Wages Act, 1948 while awarding the compensation to the 1st respondent/claimant.

6.Aggrieved by the same, the present Civil Miscellaneous Appeal has been filed.

7.In this appeal, the appellant Construction company has raised the following substantial questions of law for consideration:-

- i. Whether the learned Deputy Commissioner, Labour is right in holding that the 1st respondent is the employer of the Appellant/Respondent in the absence of any evidence?
- ii. Whether the learned Deputy Commissioner, Labour is empowered to give a finding that the workmen policy No.500600/41/03/8600037 from 21.02.2004 to 20.08.2004 will not create any liability to the 2nd respondent?
- iii. Whether in the absence of any evidence, the learned Deputy Commissioner Labour is empowered to hold that the daily wages of the 1st respondent is Rs.150/- and to determine the age of the 1st respondent?

8.Heard the learned counsels for the appellant and the 1st respondent.

9.The learned counsel for the appellant submits that the wages payable to a plumber by the appellant cannot be fixed under G.O.No.(2d).No.29, Labour and Employment Department of the Minimum Wages Act, 1948 for mere in absence of evidence . Therefore, he submits that the order of the Deputy Commissioner of Labour-1 is liable to be interfered with.

10.Per contra, the learned counsel for the 1st respondent submits that the order of the Deputy Commissioner of Labour- 2 is well reasoned and requires no interference.

11.I have considered the arguments advanced by the learned counsels for the appellant and the 1st respondent. There were no evidence tendered by the appellant to show that the 1st respondent plumber engaged was earning only Rs.100/- per day as wages. Equally, the 1st respondent/claimant has also not any tendered evidence to show that the he was earning Rs.150/- as claimed by him in his claim petition. Therefore, the wages fixed by the Deputy Commissioner of Labour II under the statutory mechanism provided under the aforesaid Government Order cannot be faulted with.

12.In my view, the order of the Deputy Commissioner of Labour - 2 is well reasoned in absence of direct evidence of the wages paid and received.

13.I am therefore of the view, the order of the Deputy Commissioner of Labour - 2 cannot be interfered. In view of the above reasoning, the present Civil Miscellaneous Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

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Assistant Registrar

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Sub Assistant Registrar

To

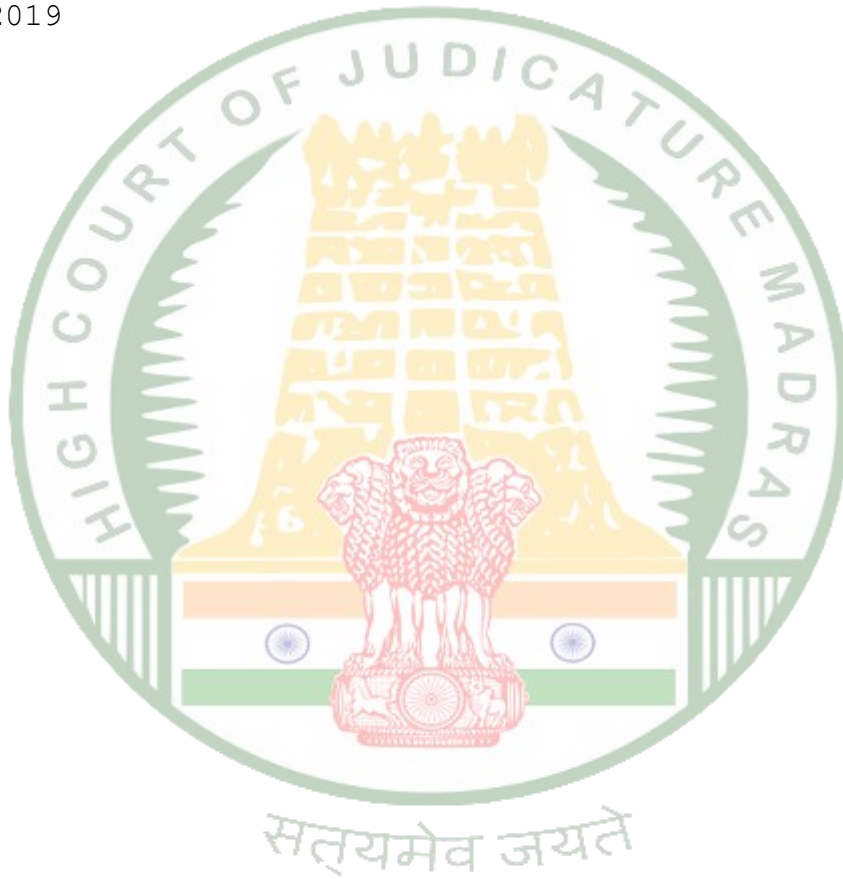
1.The Deputy Commissioner of Labour II,
Chennai.

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

+1cc to Mr.P.Vasudevan, Advocate sr.93524

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and
M.P.No.1 of 2009

mr(co)
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