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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A.No.585 of 2006

1.J.Meenakshi		Minors
2.J.Revathi		
3.J.Gomathi		
4.J.Jeeva		

Cause title Accepted vide made in Court dated 21/12/05 and made in CMP 20057 if 2005

(Appellants 2 to 4 are minors, represented and made in CMP of by their mother / 1st appellant J.Meenakshi)

.... Appellants/Petitioner

Vs

1.Authority under the Workmen Compensation Act
Deputy Commissioner of Labour-2,
D.M.S.Compound, Chennai - 600 006.

2.Gopichand IdandossRespondents/Opposite Party

Prayer : Appeal under Section 30 of the Workmen Compensation Act to set aside the order of the first respondent made in W.C.No.5 of 2003 dated 13.07.2004 and further direct the second respondent to pay a sum of Rs.4,00,000/- to the appellants.

For Appellants : Mr.A.Nagarathinam

For Respondents :Mrs.A.Srijayanthi, Special Govt.Pleader-
for R1
Mr.P.J.George assisted by
Mr.K.Suryanarayanan
for M/s.M.R.Dharanichander - for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been directed against the impugned award dated 13.07.2004 passed by the learned Deputy Commissioner of Labour-2 (Authority under the Workmen Compensation Act) at Chennai, refusing to accept the claim for payment of compensation in favour of the claimants of the deceased workman Jayaraman.



2. Mr.A.Nagarathinam, learned counsel for the appellants, assailing the impugned award, submitted that on 28.03.2002 the deceased Jayaraman was working in the first respondent's house situated at No.4, Kasturi Rangan Road, Gopalapuram, Chennai, along with others. While the deceased Jayaraman was working in the ground floor, other persons were engaged in fixing the windows at the next floor. At that time, all of a sudden, a big window and steel fell from the building directly on the deceased, resulting in the deceased Jayaraman sustaining serious head injuries and his neck was pierced by the steel rod. Immediately thereafter, he was rushed to Aysha Hospital, Kilpauk and after he was hospitalised, he was taking treatment till 26.04.2002, when he was discharged on the doctors advice that there was no hope for recovery. Thereafter, the deceased Jayaraman was taken to the Government Hospital, Royapettah, and he succumbed to death on 16.06.2002, due to the injuries sustained by him on 28.03.2002 at the house of the second respondent,

3. Learned counsel for the appellants, indicating the poor drafting of the counsel, who handled the case at the lower level, indicated two infirmities in the drafting in Paragraph No.3 and Paragraph No.7. Learned counsel further submitted that when paragraph No.3 has been drafted in such a poor manner that it was mentioned therein that the deceased Jayaraman, while working as Kalthatchar, died in an accident on 16.06.2002, the said error has been made good in paragraphs 6 and 7, making it clear that only due to the serious head injuries sustained by the deceased Jayaraman on 28.03.2002, he died on 16.06.2002. However, paragraph 7 says that he died at the house of the opposite party instead of the house of the deceased. This has been wrongly understood by the learned Deputy Commissioner of Labour-2, Chennai and he erroneously rejected the claim, accepting the reply given by the opposite party respondent that the deceased Jayaraman died not due to the injuries sustained by him from the accident that took place on 28.03.2002, but due to the injuries sustained by him on a subsequent accident that took place on 16.06.2002. There was no such accident that took place on 16.06.2002.

4. Contending further, learned counsel for the appellants submitted that the Discharge Summary filed by the second respondent clearly shows that the date of admission as 28.03.2002 and date of discharge as 26.04.2002, and that the deceased underwent surgery on 09.04.2002. As per the Discharge Summary, a perusal of the procedure adopted for surgery indicates that all cut exposed, C5, C6 disc excised, bone graft laid, fixed with cervical 'H' plate using two screws proximally in C5 and two screws distally. Explaining further, the learned counsel for the appellants would submit that when the deceased Jayaraman, after the accident took place on 28.03.2002, underwent the surgery on 09.04.2002 and in the hospital plate was also inserted with



four screws viz., two screws proximally in C5 and two screws distally, it is highly impossible for the deceased Jayaraman to work in any other place inviting yet another accident on 16.06.2002.

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5. Referring to the documents filed by the second respondent viz., the medical certificate enclosed by the second respondent at Page No.10, learned counsel for the appellants stated that the said medical document clearly shows that the deceased was also having bed sores even on 27.05.2002, and when the deceased Jayaraman was having bed sores even on 27.05.2002, then it is highly impossible for him to accept any employment. Therefore, the erroneous finding given by the learned Deputy Commissioner that the deceased died not due to the accident that took place on 28.03.2002, but he died to yet another accident took place on 16.06.2002, without reading the claim petition correctly, is liable to be interfered with by this Court.

6. Pleading further, the learned counsel for the appellants had drawn the attention of this Court, to the counter affidavit filed by the respondent. Reading paragraph No.3 and 4, he stated that when the second respondent has taken a plea that there was no employer-employee relationship between the deceased Jayaraman and the second respondent herein, there is no necessity to take the injured Jayaraman on 28.03.2002 to Aysha Hospital, Kilpauk. Moreover, the learned counsel for the appellants also pointed out the inconsistent stand taken in the counter affidavit that the second respondent has paid all the expenses of Rs.50,000 for the hospitalisation of the deceased at Aysha Hospital, besides a sum of Rs.15,000/- towards cost of medicines purchased and also a sum of Rs.10,000/- towards medical expenses. He submits that had there been no employer and employee relationship between the deceased and the second respondent, the second respondent would not have taken the deceased to Aysha Hospital on the date of accident on 28.03.2002 and extended all possible help by paying the huge amount of Rs.50,000/- towards hospitalisation expenses and also making a further payment of Rs.30,000/-. Again revisiting the inconsistent stand taken by the second respondent, learned counsel for the appellants would submit that had there been no relationship between the deceased Jayaraman and the second respondent opposite party and had there been no accident took place on 28.03.2002, the second respondent would have left the issue then and there itself, without having taken the injured to the Aysha Hospital, Kilpauk and providing all medical help by paying Rs.50000/- towards hospitalisation and also making a further deposit of Rs.30,000/- in the name of the deceased in Bharat Overseas Bank, Anna Salai, Chennai. This clearly shows that he wanted to escape from the payment of compensation in the manner known to law. But, these factual aspects have been completely overlooked by the Deputy Commissioner of Labour, who is the authority under the



Workmens Compensation Act. In view of the only accident that took place on 28.03.2002, the deceased Jayaraman, who is the only breadwinner of the family died, leaving behind the entire family on the streets, as a result, irreparable loss has been caused to the claimants. So pleading, the learned counsel for the appellants concluded his arguments, seeking the indulgence of this Court to interfere with the order passed by the learned Deputy Commissioner of Labour-II, Chennai and also a direction from this Court towards payment of compensation to the claimants.

7. Per contra, Mr.P.J.George, assisted by Mr.K.Suryanarayanan, learned counsel appearing for the second respondent, opposing the above prayer, vehemently contended that it is the own claim of the claimants that two accidents took place, although there was only one accident that took place on 28.03.2002, and that the deceased Jayaraman was not directly employed by the second respondent. However, when the second respondent came to know of the accident in which a big window with steel fell on the deceased, causing serious injuries, and that he was rushed to the hospital, on humanitarian consideration, all the medical expenses were meted out by the second respondent. In addition thereto, to show the compassion, the second respondent also came forward to offer a sum of Rs.30,000/- to be deposited in the name of the said Jayaraman in Bharat Overseas Bank, Anna Salai, Chennai, and the same was also acknowledged by the deceased Jayaraman. But, there was no master and servant relationship between the deceased and the opposite party. Learned counsel further submits that even though the second respondent handed over the original bank receipts to the claimants / appellants, the same cannot be put against them, fixing direct liability for payment of compensation, the reason being that when in the claim petition itself it has been stated that the deceased Jayaraman has died in an accident that took place on 16.06.2002. He reiterated that the deceased Jayaraman was neither employed nor seen in the premises of the second respondent on 16.06.2002. Moreover, when there was no accident took place on 16.06.2002 in his premises and when in the claim petition itself, it is mentioned that on 16.06.2002 the accident took place outside the premises of the second respondent, the second respondent cannot be made liable to pay any compensation. Therefore, the cause of death of the deceased Jayaraman was from the accident that took place on 16.06.2002 as per their own pleading, and hence the reasoning and conclusion given by the learned Deputy Commissioner of Labour-II, Chennai, rejecting the claim is well in order and does not call for any interference by this Court. Learned counsel for the respondent, would however submit that on compassionate grounds, the second respondent is willing to pay ex-gratia amount, but not the compensation as prayed for by the claimants / appellants herein.



8. Learned counsel for the second respondent, referring to the Discharge Summary issued by the Aysha Hospital, Kilpauk, submits that the surgery took place on 09.04.2002 and the deceased was discharged with a stable condition. Therefore, after getting discharged consequently the deceased might have met with a fatal accident on 16.06.2002, and this has been clearly analysed by the Deputy Commissioner of Labour and therefore, no interference is called for in the impugned award.

9. Heard the learned counsel for both sides. When the claim was made by the appellants / claimants of the deceased, it was pleaded that the deceased Jayaraman, aged about 37 years, who was working as Kalthatchar had unfortunately died in an accident that occurred on 28.03.2002, when the deceased was working on the ground floor and the other persons were engaged in fixing the windows at the next floor, due to the sudden fall of a big window with steel from the next floor on the deceased, resulting in serious head injuries and his neck was pierced by the steel rod. He was rushed to the nearby Aysha Hospital, Kilpauk and this has been so clearly admitted by the respondents in paragraph No.5 of the counter affidavit, which reads thus,

" 5. The opposite party denies all the allegations and averments stated in para 6 and 7 of the petition and submits that immediately after coming to know of the accident through the contractor Mr.Govindasami, the opposite party rushed to the spot and made arrangements to admit the victim to the nearby private hospital on humanitarian ground."

10. Yet another document viz., the sworn-in statement obtained from the deceased by the second respondent dated 07.05.2002 also shows that the second respondent, after coming to know of the accident through the contractor Mr.Govindasami, rushed the injured from the spot to Aysha Hospital, Kilpauk on humanitarian grounds, on 28.03.2002 and he was given treatment till the date of discharge on 26.04.2002. This clearly shows that there was a relationship of employer and employee between the deceased and the second respondent, the reason being, in paragraph No.6 of the counter affidavit, it is mentioned that at the request of the contractor Govindasami and out of humanitarian grounds, the second respondent has paid all the expenses of Rs.50,000/- for hospitalisation of the deceased at the Aysha Hospital, Kilpauk, besides paying a sum of Rs.15,000/- towards the cost of purchase of medicines and that the second respondent also paid a sum of Rs.10,000/- in cash



to the appellants and on request of the appellants, deposited a further sum of Rs.30,000/- in the name of the deceased husband of the first appellant, in Bharat Overseas Bank, Anna Salai, Chennai. This also clearly shows that, but for the accident that occurred on 28.03.2002, while the deceased Jayaraman was working at the ground floor, while other persons were engaged in fixing the windows at the next floor, due to the sudden fall of a big window with steel from the first floor, the deceased sustained serious head injuries and his neck was pierced by the steel rod, there was no need or necessity for the second respondent to rush the deceased to Aysha Hospital.

11. Moreover, even if the claim of the second respondent that he had shown humanitarian approach by taking the injured to the hospital, firstly it is not known as to why out of the turn he had paid the hospitalisation expenses of Rs.50,000/-, secondly came forward to pay Rs.15,000/- towards cost of medicines, thirdly paid a sum of Rs.10,000/- in cash to the appellants, and fourthly, acceding to the further request of the appellants, deposited a sum of Rs.30,000/- in the name of the deceased Jayaraman at the Bharat Overseas Bank, Anna Salai, Chennai. All these clearly shows that the deceased was employed under the second respondent in his premises and during the course of employment, he sustained serious injuries, as a result of which he succumbed to death.

12. The findings given by the learned Deputy Commissioner of Labour-II, Chennai rejecting the claim of the appellants, are centered around two line pleadings made in paragraph No.3, wherein it is stated that the deceased Jayaraman was working as Kalthatchar and he died in an accident that took place on 16.06.2002, whereas paragraph Nos.5,6 and 7 clearly shows that on 28.03.2002, when the deceased was working at the ground level, all of a sudden a big window with steel fell from the first floor directly on the deceased, piercing his neck and he sustained serious injuries and thereafter he was rushed to Aysha Hospital, Kilpauk for immediate treatment. It is clearly established by the claimants that the deceased was rushed to Aysha Hospital, Kilpauk for immediate hospitalisation on 28.03.2002, and admittedly he was taking treatment till he was discharged on 26.04.2002 and that he underwent major surgery, which could be seen from the Discharge Summary issued by the said Aysha Hospital. It is also pertinent to extract the surgery procedure as mentioned in the Discharge Summary, which reads as under:

"Procedure:

Under GA with the patient supine, thro oblique incision 3 fingers breadth above clavicle under the platysma is splitted with carotid retracted



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laterally trachea / oesophagus retracted medially. All cut exposed. C5, C6 disc excised. Bone graft laid fixed with a cervical H plate using two screws proximally in C5 and 2 screws distally. Wound irrigated and closed with a DT."

13. When the deceased underwent a major surgery on 09.04.2002, involving fixation of a plate with 2 screws proximally in C5 and 2 screws distally, it is highly unimaginable and impossible for any patient to accept any employment or do any physical labour on 16.06.2002. This has been completely overlooked by the learned Deputy Commissioner of Labour, while considering the claim petition made by the claimants. When it is established by the claimants that on 09.04.2002, the deceased underwent a major surgery, involving insertion of a cervical 'H' plate using two screws proximally in C5 and two screws distally, no patient or injured can be expected to work anywhere. Therefore, the arguments advanced by the learned counsel for the second respondent that it is the basic burden on the part of the appellants to establish as to how the accident had happened, is far from acceptance, the reason being, when the claim petition specifically mentioned in paragraphs 5, 6 and 7 that the accident took place on 28.03.2002 when the deceased was working on the ground floor and other persons were engaged in fixing the windows on the next floor, and that subsequently a big window with steel fell from the first floor directly on the deceased Jayaraman, causing serious head injuries and also his neck was pierced by the steel rod, immediately he was rushed to Aysha Hospital, Kilpauk for treatment and that after treatment he was discharged only on 09.04.2002, and that he was bed ridden till 28.05.2002. One another document filed by the claimants clearly shows that on 27.05.2002, the deceased had bed sores, that means, he was bed ridden continuously after discharge from Aysha Hospital, Kilpauk and he was unable to move.

14. Therefore, when the deceased Jayaraman died on 16.06.2002, the cause of death was only due to the accident that took place on 28.03.2002 and hence the findings and conclusion arrived at by the learned Deputy Commissioner of Labour-II, Chennai based on the poor drafting of the claim petition by an inexperienced lawyer has severely deprecated the claim of the claimants. This Court, on a reading of the entire claim petition, particularly paragraphs 5, 6 and 7, is of the considered view that the claimants have rightly and beyond all reasonable doubt, have established their case. But, strangely and ironically the Deputy Commissioner of Labour-II, Chennai has committed a serious error in rejecting the claim of the claimants and therefore, the impugned award is liable to be set aside.



15. Accordingly, the impugned award dated 13.07.2004 in W.C.No.5 of 2003 passed by the Deputy Commissioner of Labour-II, Chennai, is set aside and the claimants / appellants are entitled for the compensation along as prayed for with interest at the rate of 12% payable from the date of the accident till the date of actual payment, and the second respondent is directed to pay the compensation within a period of four weeks from the date of receipt of a copy of this judgment. With the above directions, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner of Labour-2,
D.M.S.Compound, Chennai - 600 006.

+1cc ot Mr.A.Nagarathinam, Advocate Sr.70523
+1cc to Mr.M.R.Dharanichander, Advocate Sr.69667

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