

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.A.No.2147 of 2010

N.Shanmugam

.. Appellant

Vs

1.The Deputy Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore - 641 018.

2.Mr.K.P.Manoharan

3.Mr.Raviselvam

4.Mr.Ravichandran

... Respondents

Prayer : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the order dated 23.01.2010 made in W.C.No.90 of 2006 on the file of the Deputy Commissioner of Labour-cum-Tribunal for Workmen Compensation, Coimbatore.

For Appellant : Mr.M.Aravind Subramaniam,
Amicus Curie

For R1 : Mr.N.Manikandan, GA

For R2 to R4 : Mr.Prahalad Bhad
for Mr.R.Parthasarathy

JUDGMENT

This appeal is directed against the impugned order dated 23.01.2010 passed in W.C.No.90 of 2006 by the learned Deputy Commissioner of Labour-cum-Tribunal for Workmen Compensation, Coimbatore/first respondent herein, in and by which, the claim of the appellant seeking compensation was rejected on ground that there was no relationship of employer and employee between the appellant and the respondents 2 to 4.

2. When the matter was taken up on 02.08.2019, no one has represented for the appellant and the matter stood adjourned

to 05.08.2019, but, even on 05.08.2019, no one has appeared for the appellant and therefore, this Court, taking note of the injuries suffered by the appellant, appointed Mr.M.Aravind Subramaniam, learned counsel, as Amicus Curiae for the appellant, to assist the Court.

3. Mr.M.Aravind Subramaniam, learned Amicus Curiae for the appellant submitted that the appellant was engaged in unloading of goods from the lorry for about 25 years on commission basis. He was also engaged in the Clearing and Forwarding Department of respondent Company for about 20 years. Whiles, on 01.01.2006, when he was loading the goods in the lorry bearing Registration No.TN-27-V-2553, a heavy machine carried by a crane fell on his left foot and thereafter, he was admitted in Ganga Hospital, Coimbatore, from 01.01.2006 to 09.01.2009 as inpatient and in view of grievous injuries, a below knee amputation on his left leg was done in the said hospital.

4. Continuing further, it is submitted that in view of amputation on his left leg, he was unable to take care of his two children and since the date of said accident, he has been suffering even to eke out his livelihood. The appellant had spent more than Rs.60,000/- in the said Hospital towards medical expenditure, but, the respondent Company has not even bothered to pay the said sum and therefore, the appellant had paid the said sum by selling his wife's gold jewelery. Besides, a sum of Rs.20,000/- paid by the respondent/management towards monthly remuneration was also stopped as he was unable to continue his employment. In view of the sudden accident causing grievous injuries in his left leg leading to amputation, the appellant has laid the claim petition before the first respondent for payment of compensation to the tune of Rs.27,07,725/-.

5. Countering the finding given by the learned first respondent that there was no employer and employee relationship between the appellant and the respondent Company, learned Amicus Curiae, drawing the notice of this Court Section 2(1)(dd) read with Clause (xxvi) of Schedule II of the Employee's Compensation Act, 1923 (in short "Act"), submitted that the scope of Section 2(1)(dd) r/w Clause (xxvi), which states that any person employed in the handling or transport of goods in, or within the precincts of any warehouse or other place in which goods are stored is included in the definition of employee/workman, was not even discussed by the first respondent while passing the impugned order.

6. Explaining further, it is argued that Schedule II

of the Act states the list of persons, who are included in the definition of workmen/employees, subject to the provision of Section 2(1)(dd) of the Act, that is to say, any person employed in the handling or transport of goods in, or within the precincts of any warehouse or other place in which goods are stored. Therefore, in the case on hand, since the appellant was engaged in the Clearing and Forwarding Department of the respondent Company, he is falling within the meaning of employee and he is covered under Section 2(1)(dd) r/w Clause (xxvi) of Schedule II of the Act, hence, as the learned Deputy Commissioner of Labour has failed to take note of the extended meaning given under the Act, the impugned order is liable to be set aside.

7. In support of his submissions, referring to the judgment of the Gujarat High Court in *Sulekham Stainless Steel Rolling Mill Vs. Babubhai Chanaji* [MANU/GJ/0629/2002], wherein it is held that the workman shall be entitled for compensation even if there is no relationship of employer and employee with the principal employer, argued that the law is well settled that if one is workman, it does not matter whether he is substitute, even if he had no direct relation with the principal employer. In other words, even if there is no relationship with the principal employer, a substitute will be a workman if he has engaged for the service of the principal employer and he has occupied in the performance of the work/duty for the principal employer or if he has retained for the services of the principal employer.

8. Referring to one another judgment in the case of *T.N.Narayanaswamy Vs. Pattusamy* [1997 II MLJ 221], learned Amicus Curie argued that in the said judgment, the Hon'ble Mr. Justice Govardhan has held that as per Section 2(1)(n) of the workman compensation Act, workers who have been employed in a casual manner are not excluded from the definition of the word "workman", for, any person other than a person whose employment is of casual nature and who is employed otherwise than for the purpose of trade or business, is a workman as per the above definition. Therefore, the finding given by the learned Commissioner is liable to go, learned Amicus Curie pleaded.

9. Again, taking support of a judgment of the Kerala High Court in the case of *Shah Vs. Rajankutty & Others* [I 2006 ACC 783], learned Amicus Curie pleaded that in the said case, when loading and unloading worker collapsed and fell down due to heart attack, it was held that such a casual workman employed is also entitled for compensation under the Workmen's Compensation

Act, provided if he has employed for the purpose of the employer's trade or business.

10. Per contra, learned counsel appearing for the respondents 2 to 4, urging this Court to dismiss the appeal, argued that as per Section 30 of the Act, no appeal shall lie against any order of the Deputy Commissioner of Labour unless a substantial question of law is involved in the appeal. Therefore, when the impugned order passed by the learned Deputy Commissioner holds that there was no relationship of employer and employee between the appellant and the respondent Company, the present appeal filed by the appellant challenging the question of fact is liable to be dismissed. Arguing further, it is contended that whether or not, in any given case, the relationship of master and servant exists is a question of fact, therefore, to set aside such question of fact, this appeal is not maintainable.

11. It is further submitted that the loading of the goods is being done by the Forwarding and Clearing Department of the respondent Company using sophisticated equipments, machines and cranes and therefore, there was no need for the appellant to stand or roam in the loading area. His business ends with sending the lorry to the loading areas and it is for him to collect the documents if any from the Officer and that the Company had instructed to all the lorry operators to sit at the separate notified area. Moreover, he was only a lorry operator doing his own business and hence, there was no need for him to come to the loading yard itself. Disputing the payment of commission, it is further submitted that the respondent Company has never paid any commission to the appellant. When the appellant was an independent lorry operator under the name and style of M/s.Sudarsan Transport Company, there was no relationship of employer and employee between the appellant and the respondent Company, for, the appellant was doing independent business of lorry transports and hence, he is not entitled to claim any compensation.

12. Continuing further, it is submitted that the respondents have taken all precautionary measures by putting warning boards, such as Stocks and Delivery areas, Be Cautions, Do not Trespass, Do not Divert the attention of loadmen, etc. In spite of such warning boards, the appellant had entered into the loading area violating all the cautions and directions of the respondent Company, as a result, the accident had taken place, which had ultimately lead to the amputation of his left leg. When the respondent Company has a separate notified seated areas for the lorry operators, person like the appellant cannot

enter into the loading area, wherein huge machineries are being handled by the expert persons. However, the petitioner had wrongly trespassed into the loading area without proper pass, hence, he is not entitled for compensation. Further, the learned Commissioner also on appreciation of facts and evidence held that there is no relationship of employer and employee, hence, such a finding being question of fact, this appeal is liable to fail and no inference is called for.

13. In support of his submissions, referring to a decision of the Hon'ble Apex Court in The State of Kerala and Another Vs. R.E.D'Souza [1971 (1) SCC 533], he further argued that when the question of principle to a particular case has been upheld by the Court, the appeal does not call for interference.

14. Heard the learned counsel appearing on either side and perused the materials available before this Court.

15. It is not in dispute that the accident had taken place on 01.01.2006 in the premises of the respondents 2 to 4 and thereafter, he was admitted in Ganga Hospital, Coimbatore, till 09.01.2006 as inpatient, where his left leg has been amputated. It is also not in dispute that he was engaged in the Clearing and Forwarding Department of the respondent Company for about 20 years and while he was loading the goods in the lorry bearing Registration No.TN-27-V-2553, a heavy machine carried by a crane fell on his left foot and it has resulted in amputation of his left leg. The only stand taken by the respondent management is that he was not serving as an employee/workman, but, he was engaged only as an agent to do the loading/unloading of goods.

16. At this juncture, it is necessary to extract Section 12 of the Act, which reads as under:

"12. Contracting. --(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that

employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing an employee from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

The object of enacting the above said provision is to give protection to the workmen and secure compensation from the persons, who can pay and in case of an accident, such workmen will not be dependent. The main object of enacting Section 12 of the Act is to secure compensation to the employees, who have been engaged through the Contractor by the Principal Employer for its ordinary part of the business, which, in the ordinary course, the principal employer is supposed to carry out by its own servants. While imposing this liability on the Principal Employer, sub-Section (2) of Section 12 of the Act has provided that the principal employer will be entitled to be indemnified by the contractor in case the Principal Employer is required to pay compensation to the employees of the contractor. Therefore,

in the case on hand, even if it is assumed that the appellant was engaged only as agent to perform certain work assigned to him, the respondent Company is liable to pay compensation as per Section 12 of the Act.

17. Besides, as could be seen from the disability certificate dated 19.04.2006 issued by Dr.Hari Venkatramani, Ganga Hospital, Coimbatore, he had suffered 50 % of permanent disability and it is also categorically stated therein that he underwent below knee amputation of his left leg on 01.01.2006. Moreover, WW2-Krishnaraj, Watchman, during the chief examination on 05.05.2008, deposed that the respondent management had not engaged separate workmen for unloading of the machineries on the eventful date. WW3-Thangam, Security, during the chief examination on 28.07.2008, deposed that he was unaware of the nature of production activity carried on by the respondents 2 to 4 and that there were no separate workman engaged for loading/unloading the machineries. During his cross examination on 21.04.2009, WW3-Thangam, deposed that the accident did not occur due to the negligence of the appellant. Therefore, from the above said depositions, it is clearly established that the appellant was employed by the respondents 2 to 4 and therefore, it goes without saying that the accident had occurred in the premises of the respondents 2 to 4 during the course of his employment. But, the first respondent has failed to consider any of the aforesaid depositions, hence, in my considered view, the impugned order passed by the first respondent against the depositions of WW2 and WW3 cannot be sustained.

18. Further, MW1-P.Damodarasamy, Personnel Officer, during the chief examination on 14.07.2009, deposed that on the eventful day, cranes were operated by WW2 and WW3 (Securities), who were having prior training. Even on Sunday i.e. 01.01.2006, they were carrying loading/unloading of machineries, therefore, merely the accident had taken place on Sunday being a Holiday, the claim of the appellant seeking compensation cannot be brushed aside.

19. Now, let me see who is workman. The term "workman/employee" is defined in Section 2(1)(dd) and Clause (xxvi) of Schedule II of the Act. For better appreciation, the said provisions are extracted below:-

SCHEDULE II

[Section 2(1)(dd)]

LIST OF PERSONS WHO, SUBJECT TO THE
PROVISIONS OF SECTION 2(1)(dd), ARE INCLUDED IN

THE DEFINITION OF EMPLOYEES.

The following persons are employees within the meaning of Section 2(1)(dd) and subject to the provisions of that section, that is to say, any person who is --

(i).....

(ii).....

.....

....

.....

....

(xxvi) employed in the handling or transport of goods in, or within the precincts of, --

(a) any warehouse or other place in which goods are stored, or

(b) any market ; or

(xxvii)

A conjoint reading of Section 2(1)(dd) and Clause (xxvi) depict that persons, who are employed in the handling or transport of goods in or within the precincts of any warehouse or other place in which goods are stored, or any market, are included within the definition of employees, therefore, the appellant herein, who was admittedly engaged by the respondent Company on the eventful day, is also coming within the definition of employee. Without reference to this definition, the learned Deputy Commissioner of Labour has given a finding against the appellant holding that he is not a workman. As the definition squarely covers the case of the appellant that he is a workman, the finding given by the learned Deputy Commission of Labour against such definition is perverse and therefore, this Court holds that the appeal is maintainable.

20. While considering almost similar and identical issue, learned Single Judge of this High Court, in T.N.Narayanaswamy Vs. Pattusamy [(1997) IILLJ 23 Mad], has held thus:-

"7. The next contention of the learned counsel appearing for the appellant is that even if the petitioner was engaged as a workman he was only a casual labourer for agricultural operations and Section 2(1)(n) is not attracted and the Schedule to Section 2(1)(n) also does not include in its definition agricultural labourers. Section 2(1)(n) of the

Workmen's Compensation Act does not exclude workers who have been employed in a casual manner, from the definition of the word "workman". Any person other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business is a workman as per the above definition. The work of the petitioner herein cannot be considered to be of a casual nature since grinding or hulling paddy is a regular work to remove the husk. Further, it cannot be considered as a work which is not connected with the Opposite Party's trade or business. Therefore, this ground of attack also is not a tenable one. Regarding the contention of the learned counsel appearing for the appellant that the petitioner being an agriculturist, he cannot be considered as a workman and agriculturists are not mentioned in Schedule II is not convincing since clause (xxix) of Schedule II makes any person employed in farming by tractors or other contrivances driven by steam or other mechanical power or by electricity, as a "workman". Similarly, clause (xxxviii) which makes any person employed in cultivation of land or rearing or maintenance of livestock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty five persons have been employed, also to be considered as a "workman". Therefore, the petitioner who was engaged in the grinding machine in the field of the Opposite Party cannot be excluded from the definition of the word "Workman".

In the above said judgment of Mr. Justice Govardhan holding that Clause (xxxviii) makes any person employed in cultivation of land or rearing or maintenance of livestock or forest operations or fishing in which on any one day of the preceding twelve months more than twenty five persons have been employed also to be considered as a workman, clearly brings the case of the appellant as workman as per Clause (xxvi), which says that any person, employed in the handling or transport of goods in or within the precincts of any warehouse or other place in which goods are stored, is coming within the definition of workman, hence, the appellant, who was engaged in the loading and unloading of goods inside the premises of the opposite party cannot be excluded from the definition of the word "workman".

Therefore, the impugned order passed by the first respondent holding that the appellant was not serving as a workman in the respondent Company is liable to be set aside in the light of meaning given in Clause (xxvi) of Schedule II of the Act.

21. In yet another judgment, the Hon'ble Division Bench of the Kerala High Court in Shah Vs. Rajankutty and others [I(2006)ACC783] has held that if a loading and unloading worker during the course of employment collapsed and fell down due to heart attack, he is also entitled for compensation provided that he has to prove that the death has got a connection with the employment and to get the compensation, it must be in the course of employment and arising out of the employment. In the present case, as highlighted above, it is not in dispute that the left leg of the appellant was amputated after falling of machines on his left leg on 01.01.2006, inside the premises of the opposite party, therefore, there is no doubt that the accident had occurred only during the course of employment, hence, in my considered view, the claim made by the appellant with sufficient proof has been erroneously rejected by the first respondent, therefore, this Court finds no impediment to set aside the same as unsustainable in law.

22. Thus, for all the reasons stated above, the impugned order is set aside and the matter is remitted back to the first respondent only for determination of just compensation in accordance with law. The said exercise shall be done within a period of three months from the date of receipt of a copy of this judgment. This Court places on record its appreciation for the assistance of Mr.M.Aravind Subramaniam, learned Amicus Curie in this matter. The Secretary, High Court Legal Services Committee, Chennai, is directed to pay a sum of Rs.5,000/- to the learned Amicus Curies for the services rendered by him.

23. In fine, the Civil Miscellaneous Appeal is allowed to the extent mentioned above. No Costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Deputy Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore - 641 018.

2.The Deputy Commissioner of Labour-cum-Tribunal for workmen compensation,
Coimbatore.

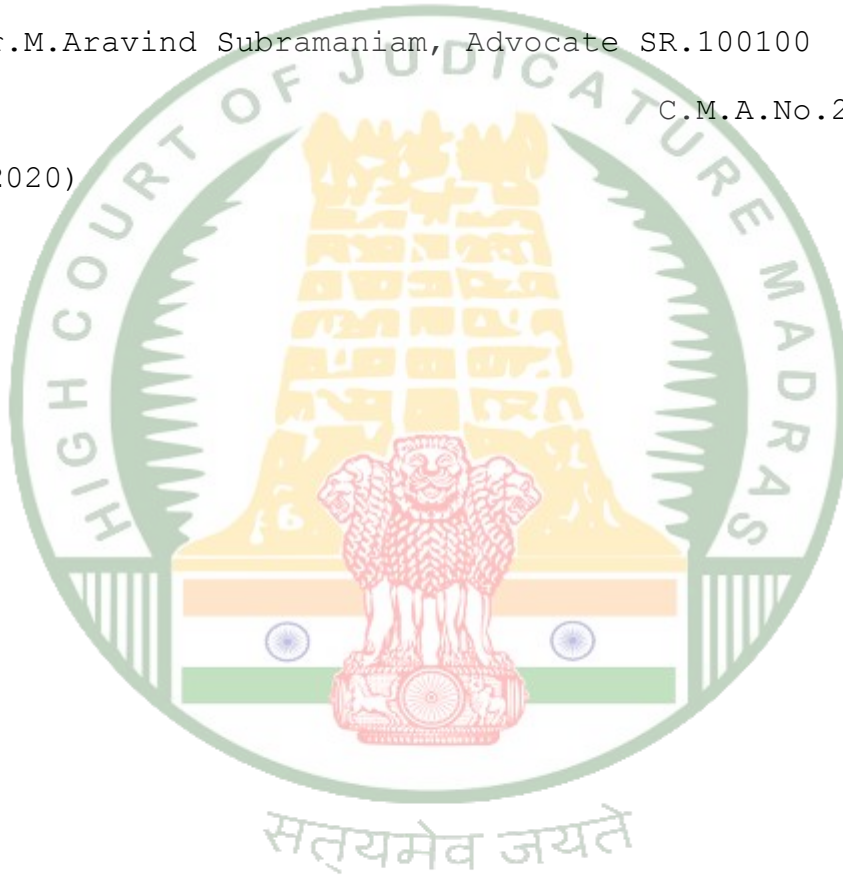
3.The secretary,
High Court Legal Services Committee,
Chennai.

Copy to: The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.M.Aravind Subramaniam, Advocate SR.100100

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