

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.29996 of 2003
and
WP.MP.No.36612 of 2003

Kamaraj

...Petitioner

Vs

1. Deputy Commissioner of Labour,
Authority under the Workmen,
Compensation Act,
Madurai.

2. P.Sundharam

3. S.Vasantha

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, or any other appropriate writ, order or direction to call for the records of the 1st respondent made in I.A.No.29 of 2003 in W.C.No.228 of 2002 and quash the same and hold that the deceased Mrs.Packiam is not a workman under Section 2(1)(n)(ii) of the Workmen's Compensation Act, 1923 and consequently hold that the respondents 2 and 3 are not entitled for compensation under the Workmen's Compensation Act, 1923 insofar as the petitioner is concerned.

For Petitioner : Ms.Kavya Silambanan
for Mr.N.Umapathi

For Respondents: Mr.K.Rajendra Prasad, AGP
for R1
No Appearance
for R2 & R3

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O R D E R

The order under challenge in the present Writ Petition is an interim order, wherein the petitioner herein had questioned the maintainability of the main petition on the ground that the deceased was not a workman as defined under Section 2(1)(n)(ii) of the Workmen's Compensation Act, 1923.

2. The Commissioner had come to the conclusion that the

deceased was a workman as defined under the Act on the ground that the nature of work done by the deceased is connected with construction activity of the building in question.

3. The learned counsel for the petitioner submitted that the claimant was not employed in a building as defined under Schedule II Clause (VIII) of the Workmen's Compensation Act and as such, she cannot be determined to be a workman as defined under Section 2(1)(n)(ii) of the Act. According to the learned counsel for the petitioner, the criteria prescribed for the building under the definition has not been referred to in the Workmen's Compensation petition.

4. In my view, the question as to whether the wife of the 2nd respondent was a workman could be determined during the final hearing of the workmen's petition filed under Workmen's Compensation Act as one of the issues and dismissing the main petition on this preliminary issue, may not be proper.

5. It is made clear that this Court has not expressed any of its views with regard to the status of the 2nd respondent's wife and it would be open to the Commissioner to address the issue of maintainability on the merits of the case, without being influenced by the observations made in this order.

6. In the light of the above observations, the order of the 1st respondent made in I.A.No.29 of 2003 in W.C.No.228 of 2002 dated 01.09.2003, is confirmed. Accordingly, the present Writ Petition stands closed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

hvk

To

1. Deputy Commissioner of Labour,
Authority under the Workmen
Compensation Act,
Madurai.

WP.No.29996 of 2003

and

WP.MP.No.36612 of 2003

CA (CO)

GN(11/03/2019)