

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.2680 of 2016
and C.M.P. Nos.19161 of 2016 & 428 of 2018

The General Manager,
BSNL,
Coonoor,
Nilgiris District

... Appellant

-vs-

1.Murugan

2.Kumari

3.Nandakumar

4.Kokila

(Minor respondents 3 and 4 are represented
by their mother Kumari/2nd respondent)

5.D.Kannan

6.Deputy Commissioner of Labour,
Coonoor.

सत्यमेव जयते ... Respondents

Prayer: Appeal filed under Section 30(1) of the Workmen's
Compensation Act, 1923 against the order dated 28.09.2016 made
in W.C. No.2 of 2014, on the file of the Deputy Commissioner of
Labour at Coonoor.

For Appellant : Dr.D.Simon

For Respondents : Ms.V.Malathy
for R1 to R4
: No appearance for R5 & R6

JUDGMENT

The Civil Miscellaneous Appeal has been filed against the award dated 28.09.2016 made in W.C. No.2 of 2014 passed by the Deputy Commissioner of Labour at Coonoor granting a compensation of Rs.11,33,814/- with interest at the rate of 12% per annum, namely Rs.3,38,200/- towards medical expenses and Rs.7,95,614/- towards loss of permanent income to the victim.

2.The learned counsel appearing for the appellant contended that there is no proof of age filed by the victim Murugan. Moreover, when there was no proof of salary filed by the said Murugan, the learned Deputy commissioner of Labour ought not to have awarded huge compensation, which has been arrived taking note of the age of the victim as 40 without any basis. With regard to the salary aspect, the learned counsel appearing for the appellant further pleaded that Deputy Commissioner of Labour has wrongly fixed the salary of the victim without there being any basis and the learned Deputy Commissioner of Labour without even examining the wages in the register maintained by the firm, simply passed an award by the note book produced by the victim. According to the learned counsel appearing for the appellant, the interest awarded by the Deputy Commissioner of Labour is highly excessive. According to the learned counsel appearing for the appellant, it is very difficult on the part of the appellant to pay the compensation to the victim and recover the same from D.Kannan, the fifth respondent herein along with 12% interest, as it would take more time to recover the amount paid to the victim. Finally, he contended that fixing Rs.3,38,200/- towards medical expenses is also highly excessive and therefore, the same is liable to be re-considered.

3.Learned counsel appearing for respondents 1 to 4 would submit that it is an admitted case that the victim, who was employed as Maistry, on 05.07.2012 at about 6.00 p.m., while laying internal cable, due to the electric shock, sustained head injury. Immediately, he was taken to Udhamandalam Government Hospital, in which the victim was advised by the Doctors to get himself admitted in K.P.S. Hospital for further treatment. As per the advice given, he was admitted himself into the said hospital on 06.07.2012 and was then taken to K.G. Hospital, Coimbatore for further treatment. Learned counsel appearing for respondents 1 to 4, in reply, contended that the injured has rightly produced the relevant documents namely, the ration card and medical certificate for the said accident showing that he was aged about 40 years and the same was rightly considered by

the Deputy Commissioner of Labour, the sixth respondent. With regard to the salary certificate, it was contended by the learned counsel for respondents 1 to 4 that as per the Government Order issued by the Central Government, which clearly shows that the minimum wage of workmen has to be taken as Rs.8,000/- per month, the Deputy Commissioner of Labour has rightly fixed Rs.8,000/- as monthly income of the victim. As the victim has lost both the hands, due to the electric shock that had happened during the course of employment, he has to undergo major operation for amputation and therefore, the amount awarded by the learned Deputy Commissioner was not excessive.

4.This Court is not able to find any merit or justification to interfere with the award. It is seen that there was a specific agreement raised between the General Manager, BSNL and the contractor D.Kannan, namely, between the appellant and the fifth respondent herein, clearly showing that as per undertaking given by the contractor, he will be responsible or/and shall pay any compensation as per Workmen Compensation Act, 1923 for injuries or disability or death caused to the labourers in the process of execution of the work and BSNL will not be responsible in this regard. However, as per the said agreement, the contractor agreed to meet and fulfill the provisions of EPF & Misc. Provision Act, 1952, Employees Provident Fund Scheme 1952 and Employees State Insurance Act, Minimum Wages Act and various labour Act. The relevant portion of the agreement reads as under:

'I will be responsible or and shall pay any compensation as per Work man Compensation Act, 1923 Act, for injuries or disability or death caused to the labourers in the process of execution of the work and BSNL will not be responsible in this regard.'

5.A perusal of the agreement clearly shows that D.Kannan, the contractor is responsible for any injury in the process of execution of the work and the BSNL will not be responsible. In this regard, it is useful to refer Section 12(2) of the Workmen Compensation Act as under:

"Sec.12(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 question as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the commissioner."

6.The Deputy Commissioner of Labour, taking note of the fact that when the victim was working with D.Kannan, the Proprietor of M/s.Kanagadhara Communication as Maistry, on 05.07.2012 at about 6.00 p.m., while laying internal cable, due to the electric shock, sustained head injury and he was taken to Udhamandalam Government Hospital, in which the victim was advised by the Doctors to get himself admitted in K.P.S. Hospital for further treatment and as per the advice given, he was admitted himself into the said hospital on 06.07.2012 and was then taken to K.G. Hospital, Coimbatore for further treatment and therefore, the said D.Kannan, Proprietor of M/s.Kanagadhara Communication was responsible for the accident as per the agreement dated 29.08.2011, has come to the conclusion that D.Kannan, Proprietor of M/s.Kanagadhara Communication alone is responsible and liable to pay entire compensation, encouraging vital documentary proof, namely, the agreement dated 29.08.2011, accepting the liability to pay the compensation as per Workmen Compensation Act, 1923 Act, for injuries or disability or death caused to the labourers in the process of execution of the work.

7.The learned Deputy commissioner of Labour, also taking note of the fact that the fifth respondent, D.Kannan, Proprietor of M/s.Kanagadhara Communication remained exparte, holding that he was responsible for the payment of compensation as the injury sustained by the victim was during the course of employment, directed the appellant to pay the compensation on behalf of D.Kannan and recover the same from him later on. It is an admitted case that both the hands of the victim Murugan, who was 40 years old and was paid with Rs.500/- per day towards wages at the time of accident, were amputated during the course of employment. However, he has restricted his monthly income to Rs.8,000/- when the claim was made before the learned Deputy Commissioner of Labour, Coonoor in W.C.No.2 of 2014 wherein the appellant/first respondent therein filed a counter affidavit denying the liability and sought for dismissal of the petition.

8.Since D.Kannan remained absent, the Deputy Commissioner of Labour, holding that the appellant is liable to pay the compensation to the victim and recover the same from D.Kannan, passed an order directing the appellant to pay a sum of Rs.11,33,814/- as compensation along with interest at the rate of 12% on behalf of the fifth respondent herein and recover the same from the fifth respondent. Therefore, this Court finds no merit or justification in the award passed by the sixth

respondent. Accordingly, the Civil Miscellaneous Appeal is dismissed. The victim is entitled to withdraw the entire amount along with interest as awarded by the sixth respondent. Consequently, connected CMPs are closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vga

To

The Deputy Commissioner of Labour,
Coonoor.

+1cc to M/s.V.Malathy, Advocate Sr.48181

C.M.A. No.2680 of 2016 and
C.M.P. Nos.19161 of 2016 & 428 of 2018

vsn II[co]
srg 22/07/2019

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