



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2014

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

Review Application(MD)No.15 of 2014
and
M.P(MD)No.1 of 2014

M.Selvam ... Petitioner

Vs.

1) T.S.Balaiyan
2) Sathiyamoorthy ... Respondents

Prayer : Application filed under Order 47 Rule 1 of the Civil Procedure Code, against the order dated 12.04.2011 passed in CMA.No.1539 of 2010 on the file of the Hon'ble High Court, Madurai Bench.

For Petitioner : Mr.G.Gomathi Shankar
For R1 : No appearance
For R2 : Mr.S.Deenadhayalan

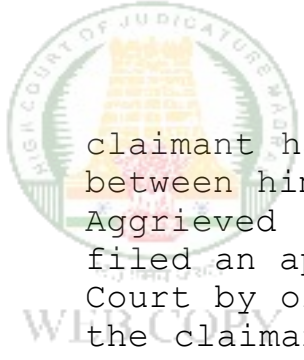
O R D E R

The petitioner laid a petition before the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Tiruchirappalli, in W.C.No.364/2003, claiming compensation for the injury said to have been sustained by him in the course of employment under the 1st respondent.

2. The case of the petitioner/claimant is that when he was working in the paddy crushing machine belonging to the 1st respondent as an operator of the machine, on 02.03.2003 his right hand was sucked and thereby he sustained injuries. Subsequently, his right hand was also amputated.

3. The owner of the crushing machine, 1st respondent did not choose to contest the petition, but however the 2nd respondent had contended that he was only the owner of the land and there was no relationship of employer and employee between him and the claimant.

4. The Deputy Commissioner for Workmen Compensation after considering the evidence adduced by the parties, held that the



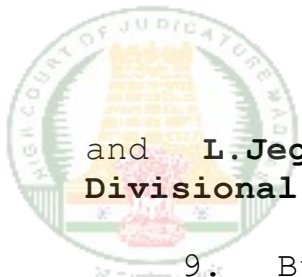
claimant has not proved the relationship of employer and employee between him and the 1st respondent and rejected the claim petition. Aggrieved by the rejection of the claim petition, the petitioner filed an appeal before this Court in CMA(MD)No.1539 of 2010. This Court by order dated 12.04.2011 dismissed the appeal, holding that the claimant had failed to prove the relationship of employer and employee. Aggrieved by such order, the present review application has been filed.

5. Heard Mr.G.Gomathi Shankar, learned counsel for the petitioner and Mr.S.Deenadhayalan, learned counsel for the 2nd respondent. Despite service of notice on the 1st respondent, he has not chosen to appear and contest the application.

6. The petitioner has filed M.P(MD)No.1 of 2014 to receive additional documents. The petitioner has stated that the 2nd respondent in his counter before the Commissioner for Workmen Compensation has denied the operation of the crushing machine on the date of accident in his land, but later when he was examined by the Revenue Divisional Officer, Pattukottai, on 29.01.2008, he has given a statement specifically admitting that on 02.03.2003 he engaged a crushing machine belonging to the 1st respondent and the claimant had sustained injury. The 2nd respondent has further stated that the injured was taken to Government Hospital, Pattukottai. The claimant has also filed M.P(MD)No.1 of 2014, to receive the Wound Certificate as additional document. The Wound Certificate shows that the petitioner sustained grievous injury in the accident on 02.03.2003 in a crushing machine. The additional documents (1)Statement of the 2nd respondent and (2)Wound Certificate, sought to be marked by the petitioners are certainly vital documents to establish the case of the claimants.

7. The Wound Certificate could have been produced before the Commissioner, but however he has not done that. In the statement given to the Revenue Divisional Officer, the 2nd respondent has taken a contrary stand from the counter affidavit, admitting that on the date of accident, he had engaged the claimant in the crushing machine as an operator and the injury sustained by him in the accident.

8. The learned counsel for the respondents vehemently opposed M.P(MD)No.1 of 2014, contending that the claimant should have produced the additional evidence even before the final decision is taken in C.M.A(MD)No.1539 of 2010 and on the ground of reception of additional documents, the order passed in the main appeal can not be reviewed. The learned counsel further submitted that he was not aware under what circumstance such statement was given by the 2nd respondent before the RDO. In support of his contention, the learned counsel has relied upon the judgments in **N.Anantha Reddy vs. Anshu Kathuria and others, 2014 SAR (Civil) 1**



and **L.Jegannath vs. Land Acquisition Officer and Revenue Divisional Officer, 2006 (3) MLJ 196.**

9. By way of reply, the learned counsel for the petitioner submitted that the claimant is an illiterate person and the statement given by the 2nd respondent before the Revenue Divisional Officer is dated 11.04.2008 and therefore, it could not have been produced by the claimant before the Deputy Commissioner of Labour and as per Order 47 Rule 1 CPC, in the interest of justice, the order could be reviewed.

10. Considering the nature of additional documents sought to be marked, wherein the 2nd respondent has taken a different stand from that of the stand taken before the Deputy Commissioner, admitting the engagement of the petitioner in the crushing machine on the date of the accident and the injury sustained by him, I am of the view that interest of justice would be met, by allowing this application. Accordingly, the Review Application is allowed. The orders passed in W.C.No.364/2003 and C.M.A(MD)No.1539 of 2010 are set aside and the case is remanded to the Deputy Commissioner of Labour, Tiruchirappalli, who shall afford opportunity to both the claimant as well as the respondents to adduce evidence and dispose of the case on merits and in accordance with law, without being influenced by any of the observations made in this order or C.M.A(MD)No.1539 of 2010. The Deputy Commissioner shall dispose of the case within a period of six months from the date of receipt of the order copy. Consequently, M.P(MD)No.1 of 2014 is allowed. No costs.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

The Commissioner for Workmen Compensation,
Deputy Commissioner of Labour, Tiruchirappalli.

+1cc to Special Government Pleader, in SR No.21036/14.

+1cc to Mr.S.Deenadhayalan, Advocate, in SR. No.34332/14.

+1cc to Mr.G.Gomathi Sankar, Advocate, in SR. No.34400/14.

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