



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019
(Reserved on 29.08.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.43 of 2018
and
CMP(MD)No.648 of 2018

M.Gnanasekaran ... Appellant/Respondent
vs.

1) S.Devakani
2) S.Silambarasan
3) S.Amutha
4) Lakshmanan
5) L.Amaravathi

... Respondents/Petitioners

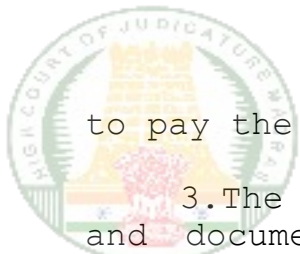
Appeal filed under Section 30 of the Workmen's Compensation Act, against the order dated 14.12.2017 made in W.C.No.55/2012 on the file of the Commissioner of Workmen's Compensation, Madurai.

For Appellant : Mr.R.Suriyanarayanan
For R1 to R3 & R5 : Mr.R.Senthil Kumar
For R4 : Died

JUDGMENT

This appeal has been filed against the order dated 14.12.2017 made in W.C.No.55/2012 on the file of the Commissioner of Workmen's Compensation, Madurai.

2.It is the case of the respondents/claimants that on 22.10.2011 about 09.00 a.m., one Santhanam, husband of the 1st respondent, father of the respondents 2 to 4 and son of the 5th respondent, who on the fateful day was working under the appellant as a driver in a Tractor bearing registration No.TN-59-C-5565, was ploughing the field of the appellant, the said Tractor stuck in the mud and sand and got capsized, in which, Santhanam sustained grievous injuries and died on the spot. For the death of Santhanam, the respondents/claimants filed W.C.No.55/2012 before the Deputy Commissioner of Labour, Madurai, claiming compensation of Rs.3,68,340/-. Resisting the claim, the appellant filed counter denying the employer-employee relationship between him and the deceased and contended that the accident had not occurred during the course of employment and the deceased after the work drove the Tractor negligently, resultantly, the Tractor got capsized thereby he invited the accident and therefore, the appellant is not liable



to pay the compensation.

3.The Deputy Commissioner of Labour after considering the oral and documentary evidence adduced on either side held that the deceased died during the course of employment under the appellant in his Tractor bearing registration No.TN-59-C-5565 and awarded compensation of Rs.5,76,257/-. Aggrieved by the above award, the appellant/employer has filed this appeal raising the following substantial questions of law:-

'a)Whether the learned Commissioner is right in holding that the deceased was an employee under the appellant when absolutely there is no material evidence to prove the same?

b)Whether the burden of proof relating to the relationship of the employer and employee on the part of the claimants is discharged by the claimants?

c)Whether the deceased was a workman under the definition of Section 2(n) of the Workmen's Compensation Act?

d)Whether the deceased as a farm worker exempted under the Workmen's Compensation Act?

e)Whether the accident has occurred during the course of employment?

f)When the deceased was negligent and violating the working condition, whether he is entitled to compensation under the Workmen's Compensation Act?

g)Is it correct to rely upon a G.O. for Government servant by the learned Commissioner for fixing the wages which is against Section 5 of the Act?

h)Is it correct to fix the monthly income at Rs.6,150/- when there is no proof of the same and in such a case, whether the Minimum Wages Act only applicable?

i)Is it correct to award compensation more than that of the claim amount?

4.Learned counsel for the appellant would submit that when there was no material evidence to prove that the deceased was an employee under the appellant, the Deputy Commissioner of Labour ought not to have held that the deceased was the employee of the appellant. He further contended that except the FIR, no other evidence was produced to prove the employer-employee relationship and therefore, when the claimants have not discharged the burden of proof on their part, the learned Commissioner ought not to have shifted the burden on the appellant solely relying upon the FIR. Further, the learned Commissioner has failed to note that the accident had not occurred during the course of employment. It is also contended that the deceased was working under the appellant only for one day, as such, being the casual employee, he will not come within the purview of workman as per Section 2(n) of the Workmen's Compensation Act and therefore, the appellant is not

that the

6. Heard both sides and perused the records.

<https://hcservices.ecourts.gov.in/hcservices/>



deceased died on the spot.

8. Though the appellant has contended that the deceased was not employed under him and he was sent by Poosari and Manikandan only for one day, he did not choose to examine the above said persons to prove the same. Whereas, on the side of the claimants, except the FIR, no other evidence was let in to prove that the deceased was an employee under the appellant and relying upon the FIR and the oral evidence of PW1, the Deputy Commissioner of Labour has held that the deceased was the employee under the appellant. It is well settled that FIR is not an encyclopedia. It can be relied on, for the purpose of setting the criminal law in motion, and all that is stated in the FIR, cannot be said to be the facts admitted, and if there is any omission in the FIR to state any fact, it does not mean that evidence cannot be adduced, either at the time of investigation by the Police for laying a charge against the accused or in the claim petition when compensation is claimed. Therefore, the case was listed on three occasions under the caption 'for clarification' to explore the possibility of any settlement between the parties. But, on 14.10.2019, learned counsel for the appellant would state that there is no possibility of settlement and therefore, the case has been again reserved for judgment.

9. Though the respondents/claimants claimed compensation of Rs.3,68,340/- stating that the deceased as a driver under the appellant, earned Rs.5,000/- per month, the Deputy Commissioner of Labour relying upon G.O.No.64, Labour and Employment Department, dated 23.07.2009, has fixed the monthly wages of the deceased at Rs.6,401/- and awarded the compensation of Rs.5,76,257/- more than the claim along with interest. It is stated by the claimants that the appellant has deposited the award amount of Rs.5,76,257/- and the appellant would state that to purchase peace, he is ready to part with the already deposited amount.

10. Though it is stated that the claimants did not prove the employer and employee relationship, it is an admitted fact that on the date of accident, the deceased was the driver of the Tractor. It is also true that if the Deputy Commissioner of Labour had quantified the compensation as per the admitted salary of the deceased by the claimants, the compensation would be less.

11. Taking into consideration the entire circumstances of the case, I am of the view that ends of justice would be met if the compensation amount is fixed at Rs.5,76,257/- as full quit. Accordingly, the total compensation is fixed at Rs.5,76,257/- as full quit and the respondents/claimants are directed to withdraw the award amount of Rs.5,76,257/- lying in the credit of the claim petition, without filing formal permission petition before the Deputy Commissioner of Labour, Madurai.



In the result, this Civil Miscellaneous Appeal is disposed of.
No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1)The Commissioner of Workmen's Compensation,
Madurai.

COPY TO
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1CC TO MR.R.SENTHIL KUMAR, Advocate Sr. No. 94694

Pre-Delivery Order made in
CMA(MD)No.43 of 2018
24.10.2019

DB(CO)
TR(13.11.2019) 5P 5C