

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. No.1171 of 2016

S.Vijayakumar

... Appellant

vs.

1.Dr.K.A.S. Amanulla

2.Babu @ S.A. Sheik Davood

3.Mani

... Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, to fix the liability against the respondents 1 and 2 in the award dated 16.12.2015 made in W.C. No.80 of 2015 on the file of the Deputy Commissioner of Labour/Commissioner of Workmen Compensation Act, Coonoor (Erode Camp).

For Appellant : Mr.N.Manokaran

For Respondents: Mr.M.Guruprasad for R1 and R2

J U D G M E N T

Challenging the order of the Deputy Commissioner of Labour/Commissioner under Workmen's Compensation Act, Coonoor (Erode Camp), the appellant herein/claimant has come up with the present appeal, to fix the liability against the respondents 1 and 2 herein.

2. The Authority under the Workmen's Compensation Act, has rejected the claim of the appellant on the ground that, he is not at all an employee, employed under the respondents 1 and 2 and that there is an agreement between respondents 2 and 3. This agreement was not at all marked, though the same been referred to in the pleadings of the respondent. The rejection on the ground that there is an agreement, may not be justified. In any event, the employee was employed to construct a room, two bath-rooms and a handrail; that on 15.4.2011, there was an accident; that while the work was in progress, a scaffolding was broken and that the building was collapsed, the appellant and another employee got into the debris and the applicant suffered fracture and other injuries, for which he has taken treatment.

3. According to the applicant, the injury has arisen out of and in the course of employment and he was 59 years old at the time of accident and was earning a sum of Rs.6,000/- per month.

4. The first respondent has not filed a counter, the second respondent has filed a counter. There was an alleged agreement entered into between the respondents 2 and 3. Admittedly, the said document has not been produced.

5. The Workmen's Compensation Act, 1923 defines who is an employee. Employee is a person which is defined under Section 2(1)(dd) of the Employees Compensation Act and it specifically states that the employee referred to in Schedule II. Schedule II does not include a person employed in domestic premises. There is no employer - employee relationship between the landlord/flat owner and the person, who is employed was engaged by the contractor for carrying out the job. Those persons are not included in the schedule.

6. Though the word used is 'in the course and out of employment', though an employee is entitled to compensation for the injuries sustained in the course of and out of employment, it cannot be dealt with independently, without referring to the definition 'employee' as mentioned in Schedule II. In this case, the applicant was employed in a domestic premises and not in any commercial building, as contemplated under the Act or any other place mentioned in Schedule II. Hence the authority was right in foisting the liability on the contractor, namely the third respondent herein and not on the house owners. If this is allowed, those claims will be made against the house owners, who may not be termed as an employer within the definition of 2(1)(e) of the Workmen's Compensation Act, 1923. For example, a person may be asked to come and do the electrical work at the house and the person, who is working may face an injury on account of shock, which may not be serious, but of course there will be an injury, it cannot be construed that there is a employer and employee relationship.

7. In Lakshminarayana Shetty vs. Shantha and Ors. reported in MANU/SC/1308/2001, the Hon'ble Apex Court has held as under:

"1. Leave granted.

We have heard the counsel for the parties.

2. The respondents are the daughter and wife of the deceased Ramu who was engaged by the appellant to paint the house. While he was doing the work, he unfortunately fell down and died. The claim for compensation under the Workmen's Compensation Act was denied, but on a

writ petition being filed the High Court has allowed the same claim.

3. No reasons have been given by the High Court for coming to the conclusion that this was a case which fell within the domain of the Workmen's Compensation Act.

4. There was apparently a contract between the appellant and Ramu whereby Ramu had undertaken the work of painting the house. Whether the action of the appellant by engaging a person in this manner makes him employee or a workman of the appellant was a question to be decided. The case did not fall within the four corners of the said Act and, therefore, the decision of the High Court was incorrect. We, therefore, allow the appeal and set aside the decision of the High Court."

8. A person, who is claiming compensation, should establish that he is an employee working under an employer/principal employer/immediate employer/contractor and that the accident has arisen out of and in the course of employment, all the three ingredients have got to be satisfied, to claim compensation under the Workmen's Compensation Act, 1923.

9. In the present case on hand, the employment is established and the injury is also established. It is also established that it is out of and in the course of employment, but the first and second opposite parties are not employer and it is only the third opposite party is the employer and he alone is liable to pay compensation. Hence, I find no error, apparent on the face of the record and the order of the authority does not call for any interference.

In the result, the civil miscellaneous appeal is dismissed. The order dated 16.12.2015 made in W.C. No.80 of 2015 by the Deputy Commissioner of Labour/Commissioner of Workmen Compensation Act, Coonoor (Erode Camp), is confirmed. No costs.

Sd/-

Assistant Registrar (CS-V)

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Sub Assistant Registrar

Asr

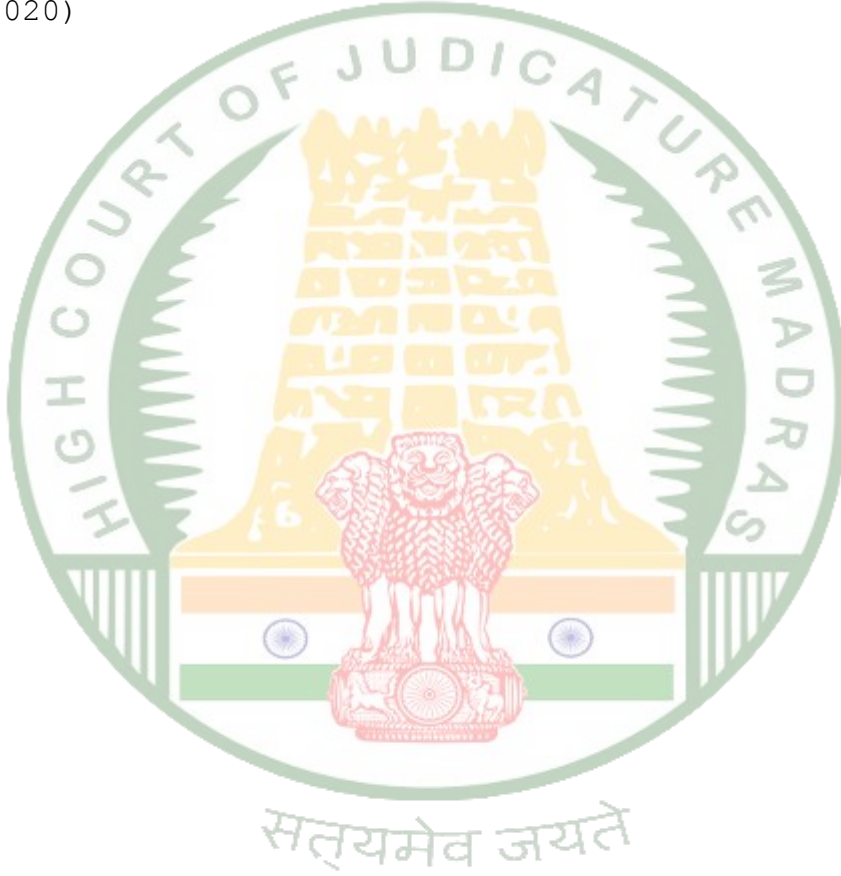
To

The Deputy Commissioner of Labour/
Commissioner of Workmen Compensation Court
Coonoor (Erode Camp)

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 15516
+1cc to Mr.M.Guruprasad, Advocate, S.R.No. 15512

C.M.A. No.1171 of 2016

SPD (CO)
GN (26/05/2020)



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