

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.2226 of 2015

M.Elango

.. Appellant

-vs-

1. The Commissioner for Workmen's Compensation
cum Deputy Commissioner of Labour
Salem

2. R.Janarthanan

... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 23.3.2015 passed by the Commissioner for Workmen's Compensation cum Deputy Commissioner of Labour, Salem in W.C.No.108 of 2009.

For Appellant :: Mr.N.Umapathi

For Respondents:: Mr.S.Jaganathan

Government Advocate (C.S.) for R1

Mr.C.Anbu for R2

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. This civil miscellaneous appeal has been directed against the order dated 23.3.2015 passed by the Commissioner for Workmen's Compensation cum Deputy Commissioner of Labour, Salem in W.C.No.108 of 2009.

3. Mr.N.Umapathi, learned counsel appearing for the appellant, assailing the impugned order, argued that on 14.1.2008, when the second respondent-Injured was working in Thangavel's house removing and dismantling the asbestos sheet and iron angles, all of a sudden, at about 11.00 A.M., one asbestos sheet got broken and the second respondent-Claimant fell down from the roof and sustained injuries on his back and also sustained fractures. When the accident has arisen only in

the course of employment in the building which was situated nearby the petrol bunk at Udayapatti Bye pass Road, Salem at about 9.00 A.M., on 14.1.2008 belonging to Mr.Thangavel and immediately he was also admittedly rushed to the Government Mohan Kumaramangalam Hospital, Salem, wherein the injured claimant was also paid with Rs.40,000/- by the said Thangavel, that clearly shows that the accident had taken place in the building belonging to Mr.Thangavel, the employer and the relationship of employer-employee between the injured and Mr.Thangavel should have been taken note of by the Deputy Commissioner of Labour, Salem. Contrary thereto, the Deputy Commissioner of Labour, accepting the claim petition filed by the second respondent herein, has wrongly allowed the claim petition directing the appellant to pay a sum of Rs.1,95,696/- fixing Rs.4,000/- as the monthly salary of the injured claimant, as though he was working with the appellant, which is not correct. Adding further, he submitted that when admittedly, the accident had occurred on 14.1.2008 in the building owned by Mr.Thangavel, more particularly, when the injured claimant and others were working in the building situated nearby the petrol bunk at Udayapatti Bye pass Road, Salem at about 9.00 A.M., to which the appellant was no way connected, the injured should have laid the claim petition only against the said Thangavel impleading him as one of the necessary parties. Whereas, without impleading the said Mr.Thangavel, who had paid a sum of Rs.40,000/- admitting the accident had occurred at his place and resultantly, the injured also sustained grievous injuries and was also taken to the hospital, the claim petition filed without impleading the main employer should have been rejected by the Deputy Commissioner of Labour, Salem for non-joinder of parties. He has also stated that wrongly the First Information Report was registered, without even showing the said Thangavel as one of the accused, and simply for the reason that the appellant had organized the workers to go and work in the premises of Thangavel, the appellant has been wrongly implicated as an accused in the First Information Report. Even in the claim petition filed by the second respondent-Claimant, the appellant was shown as the employer. Whereas there is no relationship of employer-employee between the appellant and the second respondent herein. All these vital aspects have been completely overlooked.

4. Continuing his arguments, Mr.N.Umapathi, learned counsel appearing for the appellant submitted that when there is a detailed counter affidavit filed by the appellant disputing the employer-employee relationship and also the alleged monthly salary said to have been received by the injured from the appellant at Rs.9,000/- per month, nowhere the second respondent-Claimant has established the factum of his employment. Secondly, he has committed a vital mistake in not

impleading the said Thangavel as one of the necessary parties. Therefore, the claim petition ought not to have been entertained. However, when there is a grave error committed by the Deputy Commissioner of Labour, Salem directing the appellant to pay the aforesaid amount, the same is liable to be set aside, as the loss of earning capacity has not been properly arrived at by the Deputy Commissioner of Labour, Salem. Moreover, in the present case, when one Dr.R.Rajamanickam was examined, he has deposed that the injured had sustained grievous injuries, as a result, he would not be able to continue his employment. Hence, he has certified 45% disability citing the following injuries:-

- "(1) Pain over back Thoraco-lumbar junction with knuckle deformity movements painful. Nil distal neurological deficit.
- (2) Pain swelling left heel with limitation of movements.
- (3) Pain swelling right heel with limitation of movements.
- (4) Lacerated wound right heel lateral aspect 10cmx0.5cm.
- (5) Comminuted burst fracture with posterior dislocation of L3 vertebral body compressing thecal sac.conus and nerve root. Bilateral facet disarticulation with rupture of longitudinal ligaments and intra and para spinal soft tissue haematoma. Lower dorsal cord and conus medullaris contusion and edema. Disc bulge seen of L4-L5 level compressing thecal sac and compromising neural foramens without nerve roots compression."

However, the Deputy Commissioner of Labour, reducing the disability from 45% to 40%, without any basis, has fixed Rs.4,000/- as the monthly salary, without there being any evidence or proof for receipt of the monthly salary from the appellant. All these infirmities committed by the Deputy Commissioner of Labour are liable to be set aside.

5. On the other hand, Mr.C.Anbu, learned counsel appearing for the second respondent-Claimant, refuting the above arguments, pleaded that it was only the appellant-Mr.M.Elango, who was all along giving the work to the injured claimant and other similarly placed workers. In a similar fashion, on 14.1.2008 also, he has instructed the second respondent along with other workers like Nagaraj, Venkatesan to go nearby the petrol bunk in Udayapatti Bye pass Road to remove and dismantle the asbestos sheets and iron angles in the building belonging to one Thangavel. On the instructions given by the appellant, the second respondent-Claimant along with other workers went and

worked at the building belonging to Mr.Thangavel. Unfortunately, at about 9.00 A.M., on 14.1.2008, while they were working, all of a sudden, at about 11.00 A.M., one asbestos sheet got broken, resultantly, the injured fell down from a height of 35 feet and sustained the aforesaid fracture and injuries on his back. Therefore, he was immediately rushed to the Government Mohan Kumaramangalam Hospital, Salem, where he was admitted as in-patient and subsequently shifted to Dharan Hospital, Salem for better treatment, wherein he was taking treatment for more than a month as inpatient. However, the First Information Report was also registered on the same date i.e., 14.1.2008 specifically mentioning that the appellant is the employer. Since the injured was always working along with other persons for the past six long years on a monthly salary of Rs.9,000/- paid by the appellant, the second respondent herein cannot implead Mr.Thangavel as the employer, because Thangavel never gave any work and only the appellant used to give work to them all along and on one occasion, namely, on 14.1.2008 also, asked the second respondent to go to the building belonging to Thangavel to remove and dismantle the asbestos sheet and the iron angles from the building situated nearby the petrol bunk at Udayapatti Bye pass Road, Salem. On such direction given by the appellant only, the the second respondent herein along with other persons went and worked, however, their salary used to be given only by the appellant. Therefore, it is not open to the appellant to say that he was not the employer. Secondly, when the First Information Report was registered only against him showing that he was the employer, he has not raised any objection to show the said Thangavel as one of the relevant persons. Moreover, when the claim petition was also filed before the Commissioner for Workmen's Compensation claiming compensation, again he did not even raise any objection for rejection of the claim petition for non-joinder of the said Thangavel. Therefore, all along, when it is not his case that he was not the employer, today, he cannot come and say before this Court that there is no relationship of employer-employee between them. In fact, the Deputy Commissioner of Labour, while considering the evidence placed by both parties, has rightly accepted the case of the second respondent-Claimant that he rightly not impleaded Thangavel, but chose to implicate the appellant as the accused in the First Information Report and also the only employer in the claim petition.

6. I also find merits on the submissions made by the learned counsel appearing for the second respondent. Additionally I wish to add that when the First Information Report was registered on 14.1.2008 showing the appellant as the employer, there was no objection raised by the appellant. Secondly, when the claim petition was filed before the Deputy Commissioner of Labour, Salem showing the appellant as the only employer and not showing

the said Thangavel as his employer, the appellant, in my considered opinion, should have raised objection or prayed for rejection of the claim petition on the ground of non-joinder of parties, which has not been done. Therefore, this Court finds no infirmity in the order passed by the Deputy Commissioner of Labour, Salem. Accordingly, the civil miscellaneous appeal fails and it is dismissed. Consequently, interim order stands vacated and the M.P.No.1 of 2015 is also dismissed. The second respondent-Claimant is entitled to withdraw the entire amount deposited. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner for Workmen's Compensation
cum Deputy Commissioner of Labour
Salem.

+1cc to Mr.M.R.Thangavel, Advocate SR.37116

+1cc to Mr.N.Umapathi, Advocate SR.36707

+1cc to the Government Pleader SR.36764 & 36905

C.M.A.No.2226 of 2015

MP(CO)
CB(09/03/2021)

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