

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.1801 of 2016
and C.M.P.No.13322 of 2016

The Management,
Vetri Vikas Girls Higher Secondary School,
Keeranur, Mallur, Salem District. ... Appellant/Respondent

-vs-

Mrs.V.Chandra
W/o.Viswanathan,
9/310, Ramanayagan Patti,
Pachal Post, Namakkal District. ... Respondent / Claimant

PRAYER: Appeal is filed under Section 30 of Workmen Compensation Act, 1923 to set aside the order dated 04.12.2015 made in W.C.No.151 of 2012 on the file of the learned Deputy Commissioner of Labour, Workman Compensation, Salem and thus render justice.

For Appellant : No Appearance

For Respondent : Mr.R.Mohammed Nasarulla
For Mr.K.V.Shanmuganathan

J U D G M E N T

This Appeal has been filed to set aside the order of the Deputy Commissioner of Labour, Salem dated 04.12.2015 made in W.C.No.151 of 2012, directing the appellant herein to deposit a sum of Rs.4,91,854/- within 30 days in the name of the Deputy Commissioner of Labour, Salem, failing which, the amount is payable with interest @ 12% from the date of accident till the date of deposit.

Facts in brief:

2. The claimant / respondent herein, while working as Warden in the hostel of the appellant herein, was electrocuted through tenterhook on 02.07.2011 at about 05.30am, on account of which, there was a total lack of sensation of her hands. It was stated by the claimant that she was paid a salary of Rs.6000/- per month and her age at the time of accident was 39. Contending

that she worked under the appellant during mishap, the claimant had filed a petition before the Authority under Workmen Compensation Act, 1923, Salem seeking a compensation of Rs.5,00,000/- from the appellant herein.

3. The Authority, on appreciation of oral and documentary evidence, had directed the appellant to pay the amount as stated supra. Aggrieved by the said order, the appellant / Management is before this Court.

4. There is no representation for the Appellant. Heard the learned counsel for the respondent.

5. It is averred in the affidavit filed by the Appellant / Management that there was no direct employer and employee relationship between the appellant and the respondent and there was no single piece of documentary evidence to corroborate the case of the respondent. The entire finding rendered by the Authority is based upon mere presumption and assumption. It is further averred that except the evidence of an interested witness (P.W.1), no other independent witnesses were examined on the side of the respondent to establish her employment with the appellant herein. It is also averred that the Authority erred in holding that since the accident had occurred in the premises of the appellant, the onus of proof lies on the part of the appellant and not the respondent. Therefore, in the petition, it was prayed that the compensation granted by the Authority, Salem is not just and reasonable and the order of the Deputy Commissioner of Labour, Salem is liable to be set aside by this Court.

6. Learned counsel for the respondent has contended that the order of the Deputy Commissioner of Labour, Salem is purely on the basis of the oral and material documents placed before it and therefore, the order of the Labour Authority does not warrant any interference by this Court and the present appeal is to be dismissed in limine.

7. The main plea taken by the appellant before the Authority was that the injured / respondent was a vegetable vendor and she was not a direct employee of the appellant. It is really astonishing to note as to what necessitated a vegetable vendor to enter the premises of a hostel, wake up its inmates and attempt to dry the cloths hanging on the bar, thereby landing herself in a big trouble by way of electrocution. The appellant has not produced any records much less attendance register of all employees of the appellant and therefore, the Authority had disbelieved the version of the appellant's witness that the injured was a vegetable vendor, who used to enter the premises of the hostel at 5:00am for the afore-stated purposes. As the appellant did not establish that there was no accident at

all on the particular date and that there is no employer and employee relationship, the Authority had rightly come to the conclusion that the injured sustained injuries out of and in the course of employment.

8. Taking note of the fact that the injured, who was aged about 39, underwent a major surgery, the Authority had fixed the loss of earning capacity at 55%, based on which, compensation was arrived at. Since the order of the Authority is a finding of fact, this Court is not inclined to interfere with the order of the Authority and the present Civil Miscellaneous Appeal is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed and the amount deposited shall be released to the respondent herein, within a period of fifteen days from the date of receipt of a copy of this order, after conducting enquiry, if required. The Authority, while releasing the amount, shall insist that a separate bank account will have to be opened for the purpose of deposit of the amount alone and no ATM card shall be issued by the Bank in respect of the said account. It is open to the injured / respondent to withdraw the amount by way of cheque only and not otherwise. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The Deputy Commissioner of Labour,
(Workmen Compensation)
Salem.

Copy to:

The Section Officer,
VR Section, High Court,
Madras-104.

Civil Miscellaneous Appeal No.1801 of 2016

SV(CO)
CB(28/09/2020)