

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.02.2020
CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. Nos.3290 and 3351 of 2019 and
CMP.Nos.19172 and 19524 of 2019

M/s.Best Granites
Kadangode Post, Thippalassery
Trichur-680 584, Kerala State. ...Appellant in both C.M.A's

-vs-

A.Henry Robert ...Respondent in
C.M.A.No.3290 of
2019
A.Ananda Kumar ...Respondent in
C.M.A.No.3351 of
2019

Civil Miscellaneous Appeals filed under Section 30(1)(a) of the Workmen's Compensation Act, 1923 against the orders dated 26.04.2019 passed in W.C.Nos.58 and 57 of 2016 respectively on the file of the Deputy Commissioner of Labour, Coimbatore.

For Appellants : Mr.K.Bijai Sundar
For Respondents : Not ready notice

C O M M O N J U D G M E N T

Since the issues involved in both Appeals are one and the same, they are taken up together for disposal by a Common Judgment.

2. The present Appeals have been filed against the orders dated 26.04.2019 passed in W.C.Nos.58 and 57 of 2016 respectively on the file of the Deputy Commissioner of Labour, Coimbatore.

3. In the present appeals, the date of accident, injury, etc., are not disputed. According to the appellant, they are not the employer of the respondents on one hand and on the other hand, one Mr.Gopi who is an employer, which fact has been admitted by the victims / injured was not impleaded. Though it is not necessary that the Jurisdictional Commissioner has to hear and the matter can be tried by any Labour Commissioner under the Employees Compensation Act, 1923 (in short 'Act'), it is mandatory that the matter has to be filed initially where the accident had happened and thereafter on an application, the matter has got to be transferred to the other Commissioner in terms of Section 21 of the Act. But, no such application under Section 21 of the Act, within the jurisdiction where the incident had taken place was filed and

got it transferred to the convenient forum under Section 24 of the Act, which would be generally done by the Commissioner on a request made by a victim/injured. It is further stated that the adjudication in a different forum is not correct. Even assuming for the sake of argument that the case has been filed in a wrong forum, the authority ought to have informed the jurisdictional authority where the accident had taken place within its jurisdiction and after getting consent, it could have tried the same. On account of non compliance of Section 21 of the Act, the Authority has no jurisdiction and the present CMAs need to be allowed.

4. Sections 21 and 22 of the Workmen Compensation Act are extracted hereunder:

"21. Venue of proceedings and transfer.- (1)

Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before a Commissioner for the area in which-

(a) the accident took place which resulted in the injury: or

(b) the [employee] or in case of his death, the dependent claiming the compensation ordinarily resides; or

(c) the employer has his registered office.

Provided that no matter shall be processed before or by a Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, without his giving notice in the manner prescribed by the Central Government to the Commissioner having jurisdiction over the area and the State Government concerned:

Provided further that, where the employee, being the master of a ship or a seaman or the captain or a member of the crew of an aircraft or an employee in a motor vehicle or a company, meets with the accident outside India any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship, aircraft or motor vehicle resides or carries on business or the registered office of the company is situate, as the case may be.

(1A) If a Commissioner, other than the Commissioner with whom any money has been deposited under section 8, proceeds with a matter under this Act, the former may for the proper disposal of the matter call for transfer of any records or moneys remaining with the latter and on receipt of such a request, he shall comply with the same.

<https://hcservices.ecourts.gov.in/hcse/24s/> If a Commissioner is satisfied that any

matter arising out of any proceedings pending before him can be more conveniently dealt with by any other Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard.

[***]

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire therein and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

(5) The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

22. Form of application.-(1) Where an accident occurs in respect of which liability to pay compensation under this Act arises, a claim for such compensation may, subject to the provisions of this Act, be made before Commissioner.

(2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:-

(a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;

(b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due

time, the reason for such omission;

(c) the names and addresses of the parties; and

(d) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner."

5. Even assuming that the claim petition was filed before the wrong Commissioner, the said Commissioner will have to inform the Commissioner having jurisdiction over the area, in which the accident took place and after getting necessary orders from the Central Government with regard to the hearing of the matter by Commissioner, adjudication is permissible. The accident has taken place in Kerala and the matter has been filed at Coimbatore. But the provisions of Sections 21 and 22 has not been complied with.

6. I find much force in the argument made on behalf of the appellant that authority has no jurisdiction in the matter to entertain the same. Though it is not mandatory to go into the other aspects, when the accident itself is said to have taken place on 12.12.2015 and five years have gone by now, this Court feels that the issue raised by the appellant need not be considered viz., non joinder of parties, who is the employer / immediate employer or contractor and he could have been made as a party and thereafter, the Commissioner should have decided the issue, but no steps have been taken by the claimants to make Gopi as a party to the proceeding. Even assuming for the sake of argument that the authority has jurisdiction, this court is of the view that for non joinder of necessary parties, the claimants are not entitled to any relief. It is needless to mention that, it is open to the claimants to file a fresh case before the authority concerned, after complying with the necessary provisions under Sections 21 and 22 of the Employees Compensation Act and also including necessary parties to the proceedings, get it transferred, as per the provisions of Employees' Compensation Act.

7. During the course of hearing, this court suggested for compromise on the ground that the matter would take years together, in case this Court interferes with the order on the ground of maintainability and requested the counsel for the management to pay a sum of Rs.75,000/- as compensation so that the parties can give quietus to the issue by receiving a compensation under Section 28 of the Employees Compensation Act. However, adjournment has been sought by the appellant for getting instructions. This Court, having heard the matter in full and also taking into account the fact that there is a possibility for change of portfolio from 01.03.2020, has decided to pass orders in the CMAs, as giving adjournment

after elaborate argument is a waste of time.

8. Though the counsel for the appellant agreed to convince the parties to pay a sum of Rs.75,000/- and the matter was getting adjourned on that score, there is no appearance of behalf of the respondents. On account of non compliance of Sections 21 and 22 of the Act, the Appellant establishes prima facie case and as there is substantial question of law involved, both the Civil Miscellaneous Appeals are allowed only on the ground of lack of jurisdiction to the Authority to decide the claim. Since the amount is lying in deposit, the same is directed to be withdrawn by the appellant together with accrued interest within a period of one month from the date of receipt of a copy of this order.

9. Accordingly, both the Appeals are allowed to that extent, by setting aside the orders dated 26.04.2019 passed in W.C.Nos.58 and 57 of 2016 respectively on the file of the Deputy Commissioner of Labour, Coimbatore. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arr/ar

To:

The Deputy Commissioner of Labour,
Coimbatore.

+2ccs to Mr.K.Bijai Sundar , Advocate SR.No. 17116 & 17115

C.M.A. Nos.3290 and 3351 of 2019 and
CMP.Nos.17192 and 19524 of 2019

A.SK(01/10/2020)

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