

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2852 of 2017

and

C.M.P.Nos.16307 of 2017 & 10533 of 2018

- 1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Nilgiris Electricity Distribution Circle,
Udhagamandalam, Nilgiris District.
 - 2.The Tamil Nadu Electricity Board,
Udhagamandalam, Nilgiris District.
- ..Appellants/Respondents

vs.

- 1.Smt.Indira
- 2.Smt.Mitchi
- 3.D.Subashini (Minor)
D/o.Late.N.Devan
- 4.D.Savithri (Minor)
D/o.Late.N.Devan

3 & 4 are rep.by their Legal Guardian Mother,
Indira,
1 to 4 are residing at
Door No.2/213, Peddhala, Farm Tea Estate Post,
Kotagiri Taluk, Nilgiris District.

..Respondents/Petitioners

PRAYER: This Civil Miscellaneous Appeal is filed under Section 30(1) of Workmen Compensation Act, to set aside the order passed in W.C.No.03 of 2011 dated 11.10.2012 by the Commissioner of Labour, Workmen Compensation / Deputy Commissioner of Labour, Coonoor, Nilgiris District.

For Appellant : Mr.V.Viswanathan

For Respondents : Mr.Sri Nath Sridevan
[For R1 to R4]

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the order passed by the 1st respondent dated 11.10.2012 passed in W.C.No.03 of 2011.

2. The respondents filed application under Section 22 of Workmen Compensation Act, 1923, claiming compensation on account of the death of late Mr.N.Devan, who is the husband of the 1st respondent and died on account of electrocution, while he was on duty and performing the duties on behalf of the Tamil Nadu Electricity Board.

3. It is contended by the respondents / petitioners that the deceased husband of the 1st respondent, Mr.N.Devan was engaged as electrical line man by the 1st respondent and he was working as a temporary employee for about six months under the appellant / respondent. The deceased was in verge of permanent absorption in the Tamil Nadu Electricity Board. While so, he was performing certain duties and responsibilities on 14.10.2009 at 2.30 p.m near M.G.R. Nagar, Gunddada Pirivi, Kotagiri, as per the instructions of the appellants and climbed up to the electrical post for connecting the disconnection wires of the electricity line. While performing his duties, due to wet condition of rainfall and shot circuit, the deceased was electrocuted and died on the spot instantly.

4. It is contended by the respondent / petitioners that the deceased husband of the 1st respondent was performing the duties and responsibilities of the Electricity Board at the instructions of the 1st respondent. Thus, the claim petition was filed, claiming a sum of Rs.8,64,000/- (Rupees Eight Lakhs and Sixty Four Thousand only) towards compensation under the Workmen Compensation Act, 1923.

5. The appellants filed a counter statement before the Deputy Commissioner of Labour for Workmen's Compensation, Coonoor, disputing the contentions by stating that the deceased Mr.N.Devan was not an employee of the Tamil Nadu Electricity Board at any point of time and in fact, the 1st petitioner had given a complaint before the Kothagiri Police Station. While denying the employment of Mr.N.Devan with the Tamil Nadu Electricity Board, the appellants disputed the contentions that they are liable to pay compensation under the Workmen Compensation Act, 1923. At the outset, it was contended that the deceased was not a workman and therefore, the Tamil Nadu Electricity Board is not liable to pay any compensation in favour of the respondents.

6. The competent authority under the Workmen's Compensation Act, conducted an adjudication by framing the issues, whether the accident occurred, when the deceased was on duty and whether

the petitioners are entitled for compensation, if so, for what amount.

7. The findings of the authority reveals that the death occurred on account of the electrocution and further, the facts established before the competent authority was that the deceased Mr.N.Devan was performing electrical works in the Electrical post. He fell down from electrical post on account of the electrocution, sustained injuries and died instantly on the spot. The electrocution occurred on account of shot circuit due to the bad weather condition at the relevant point of time. The fact regarding the accident is not disputed by the appellants. The fact regarding the electrocution is also not disputes by the appellants herein. However, they defended the case by stating that the deceased was not a workman during relevant point of time and he was not engaged by the appellants for the purpose of performing the duties and responsibilities of the Electricity Board. The competent authority examined the eyewitnesses and the eyewitnesses deposed that the deceased Mr.N.Devan climbed the electrical post and was performing the electrical works on 14.10.2009. Per contra, the appellant Electricity Board failed to establish that the deceased Mr.N.Devan climbed the electricity pole without the instructions or orders from the appellants authorities. Thus, the competent authority arrived a conclusion that the appellants had not established that Mr.N.Devan was performing the duties in the electricity pole without the permission or instructions from the authorities. Contrarily, the eyewitnesses deposed before the authority that on the particular day on 14.10.2009, Mr.N.Devan was performing certain duties in the electrical post and fell down and died. In the absence of any documents on the side of the appellants/respondent, the trial Court arrived a conclusion that the deceased Mr.N.Devan was performing certain works in the electrical pole and on account of shot circuit, he fell down and died instantly. This being the factum established, the trial Court arrived a conclusion that the respondents are entitled for compensation.

8. Workmen Compensation Act is a welfare legislation, pragmatic approach is to be adopted. In such circumstances, welfare and rehabilitation of the labourers and their family are also to be considered by the Court. In the present case on hand, the deceased employee died leaving behind his wife, two minor daughters and mother. Thus, the benefit of the welfare legislation undoubtedly is to be extended in order to rehabilitate the family and more specifically, when the breadwinner of the family died suddenly. When the factum regarding the death of an employee on electrocution is established without any pale of doubt, and the authorities of the Electricity Board is unable to prove that they had not given

any permission or instructions to such deceased employee, the benefit of Workmen Compensation Act by awarding compensation is to be granted.

9. In respect of the field workers and last grade servants including Scavengers and other labourers working in such a risky work atmosphere, there must be an assurance that in the event of any such untrue incident, the family is rehabilitate. In the event of not providing such welfare measures, the authorities as well as the State is failing in its duty to achieve constitutional Philosophies and Ethos. Equality in all respects includes rehabilitation of the families in distress. Thus, the equal opportunity and the equality class enshrined under the Constitution to be interpreted constructively, so as to ensure that the family in distress is saved through rehabilitation. In certain circumstances, Courts are also bound to mould the law in favour of such families of the deceased workers in the interest of the society at large and to minimize the inequality prevailing at large in our great Nation. Inequality in the society is a greatest concern and in the event of allowing such inequality to continue, then it may not be possible to achieve the constitutional goals. Therefore, inequality in any form is to be viewed seriously and the Courts are bound to mould the relief in such a manner to save the family in distress.

10. The very object of the award of compensation under the Workmen Compensation Act cannot be denied on certain hyper technical grounds. Once, the employment is established and the death occurred, while performing the duty, then the Courts must have a liberal approach in granting compensation in order to safeguard the family, who lost the breadwinner.

11. This being the factum, this Court is of the considered opinion that measures of rehabilitation being a constitutional mandate, the same is to be considered positively in such cases, where the employees died, while performing the duties and responsibilities, the only requirement is to be considered is that whether the employee was on duty or not and if so, the death occurred on account of the electrocution in the present case, then the Courts must be liberal in granting the compensation in order to rehabilitate the family and to safeguard the interest of the minor children, who have no other means to lead their livelihood.

12. Protection of the family and the employees in such circumstances are the constitutional perspectives and the Workmen Compensation Act being a welfare legislation, the purpose and object sought to be achieved is also to be considered by the Courts, while considering the cases for grant of compensation.

13. In the present case, the competent authority under the Workmen Compensation Act, fixed the salary as Rs.4,000/- (Rupees Four Thousand only) for the purpose of calculating compensation and this Court do not find any infirmity or perversity regarding the fixation of salary. Accordingly, the Workman Compensation is calculated as Rs.4,05,820/- (Rupees Four Lakhs Five Thousand Eight Hundred and Twenty only).

14. This being the factum, this Court is not inclined to interfere with the findings of the authority under the Workmen Compensation Act and consequently, the order passed by the 1st respondent in W.C.No.03 of 2011 dated 11.10.2012 is confirmed and the Civil Miscellaneous Appeal in C.M.A.No.2852 of 2017 stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Kak

To

The Commissioner of Labour,
Workmen Compensation / Deputy Commissioner
of Labour, Coonoor, Nilgiris District.

Copy To : The Section Officer,
V.R Section,
High Court, Madras.

सत्यमेव जयते

C.M.A.No.2852 of 2017

VG I (CO)
GMY (19/03/2020)

WEB COPY