



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.M.A(MD) No.61 of 2020

and

C.M.P(MD)No.1032 of 2020

WEB COPY

The Director,
Shriram Transport Finance Co.,
Mylapore,
Chennai.

... Appellant/Respondent

Vs.

1.Kulandhai Theres

2.Delphil Pushpalatha

3.Mercy Sahayamary

4.Amar Selvanavis

...Respondents 1 to 4/Claimants

5.A.Kosalram

6.Manager,
Battaibai Enexco Private Limited,
Aralvaimozhi,
Kanyakumari District.

...Respondents 5 & 6/
Respondents 1 & 2

PRAYER: The Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act against the fair and decreetal order passed by the Workmen Compensation Commissioner's Tribunal (Commissioner of Labour), Tirunelveli in W.C.No.75 of 2009 dated 26.11.2019.

For Appellant : Mr. M.P.Senthil

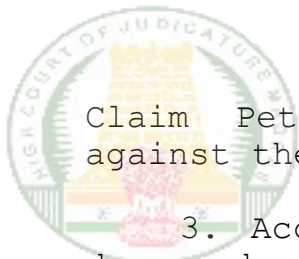
For R1 - R4 : Mr.V.H.S.Prathap

For R5 & R6 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the fair and decreetal order passed by the Workmen Compensation Commissioner's Tribunal (Commissioner of Labour), Tirunelveli in W.C.No.75 of 2009 dated 26.11.2019.

2.The claimants/the respondents 1 to 4 herein have filed a
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Claim Petition before the Workmen's Compensation Commissioner against the appellant herein and the respondents 5 and 6.

3. According to the claimants/respondents 1 to 4 herein, the deceased was working as a Security in the Windmill situated in the premises belongs to the appellant, who was arrayed as the third respondent in the Claim Petition. The fifth respondent herein was running Shri Ram Security Services. The sixth respondent was appointed as a Security on behalf of the fifth respondent on contract basis. It is alleged that when the deceased was in service, he met with an accident and got grievous injuries and died on 25.02.2009. During employment, he received Rs.2,500/- per month as salary and also he spent a sum of Rs.45,000/- towards medical expenses. Therefore, it was claimed that the appellant and the respondents 5 and 6 herein are liable to pay compensation.

4. The learned Deputy Commissioner of Workmen's Compensation, Tirunelveli, held that since there is employer-employee relationship between the appellant and the deceased, the appellant is liable to pay compensation to the claimants/the respondents 1 to 4.

5. Challenging the said order passed by the Tribunal, the third respondent in the Claim Petition has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that the appellant is only the owner of the premises in which the Windmill is situated and he is no way connected with the employment and there is no employer and employee relationship between the appellant herein and the respondents 1 to 4. The respondents 1 to 4 were really engaged by the sixth respondent. The fifth respondent is the owner of Windmill. If at all any compensation should be paid, it is for the respondents 5 and 6 have to pay. Further he would submit that the sixth respondent should indemnify any loss caused to the petitioner. Even as per indemnity clause, there should be contract between the appellant and the sixth respondent. As per the contract between the appellant and the six respondent, the sixth respondent has to compensate the loss caused during the course of employment and he has to compensate the loss as per the indemnity clause. In view of Section 12 of Workmen's Compensation Rules, 1924, the claimants are entitled to compensation and the sixth respondent is liable to pay the same. The learned Commissioner of Workmen's Compensation Tribunal has failed to consider all these facts.

7. As per the indemnity clause, the petitioner is entitled to recover money from the sixth respondent herein and therefore, the learned counsel for the appellant seeks a direction to indemnify the award passed by the Commissioner by ordering pay and recovery and his interest should be protected as per the indemnity clause provided in the contract between the appellant and the sixth



8. I have heard the submissions made on behalf of the appellant and perused the materials available on record.

9. Though the respondents 5 and 6 were served and their names were printed in the cause list, none appeared on behalf of them.

10. Though the appellant denied the accident itself and denied the relationship between the appellant and the respondents 1 to 4, the Tribunal has passed the award. Now the appellant wants to indemnify the award by ordering pay and recovery.

11. Considering the facts and circumstances of the case and since the sixth respondent has not appeared before this Court and as contended by the learned counsel for the appellant, the appellant has got right to indemnify the loss caused to him, the award of the Tribunal is modified to the extent that the appellant is liable to pay compensation to the respondents 1 to 4/claimants and the appellant is at liberty to recover the same from the sixth respondent as per indemnity clause. The respondents 1 to 4/claimants are entitled to withdraw the award amount.

12. With the above modification, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

CM

To,

The Workmen Compensation Commissioner's Tribunal,
Commissioner of Labour,
Tirunelveli

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-10118[F] dated 05/03/2020)

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AP(18.03.2020) 3P 3C

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