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CMA(MD)No.115 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA (MD)No.115 of 2020

and

C.M.P. (MD) .No.1987 of 2020

Saravanan .. Appellant/2nd Respondent

Vs.

1.Arumugam ...1st Respondent/Claimant

2.The Chief Engineer,
Tuticorin Port Trust,
Presently Known as
V.O.Chidambaranar Port Trust,
Tuticorin. ... 2nd Respondent/1st Respondent

Prayer:Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1998, to set aside the order passed by the Joint Commissioner of Labour Court, Tirunelveli in W.C.No.07 of 2007 dated 11.12.2019 and dismiss the same as against the appellant.

For Appellant : Mr.G.Venugopal

For R1 : Mr.K.Vadivel

For R2 : No appearance

JUDGMENT

The appellant is the contractor in the Port Trust. The first respondent is the claimant and the second respondent is the Chief Engineer, Tuticorin Port Trust.

2.The case of the claimant is that the first respondent/claimant was working under the appellant herein for removing of old asbestos sheets and fixing new asbestos sheets at No.1 Warehouse Godown, inside Green Gate, New Harbour, Port Trust Area, Tuticorin, which is within the premises of the second respondent herein and met with an accident and sustained grievous injuries in the course of employment. Therefore, he made a claim before the Joint Commissioner of Labour. The Joint Commissioner of Labour, after elaborate hearing, found that the appellant herein is the responsible for the injury sustained by the first respondent/claimant and awarded compensation of



Rs.2,20,158/-. Challenging the said order, the appellant herein has filed the present Civil Miscellaneous Petition.

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3.The learned counsel for the appellant submitted that there is no evidence either documentary or oral to prove that the claimant was working under the appellant and even though, the learned counsel fairly conceded that the accident has occurred in the course of employment and within the premises of the second respondent, he denied that the first respondent/claimant is working under him. He further submitted that once those who are entered into the Port premises, they should have taken entry pass/token and without getting any permission or token, they cannot enter into the premises. Therefore, in the absence of any proof, the Joint Commissioner of Labour has wrongly fixed the liability on the appellant, which warrants interference by this Court.

4.The learned counsel appearing for the first respondent would submit that P.W.1, who is the co-worker of the claimant, clearly deposed that P.W.1 and the claimant were working under the appellant and in the course of employment, the claimant had sustained injuries. He also reiterated that the accident was arising out of in the course of employment and due to that accident, the claimant has sustained grievous injuries.

5.The second respondent herein has filed a counter affidavit, wherein he has clearly admitted the accident and also the claimant has sustained injuries and for taking first aid treatment, the claimant was taken to the Port Trust hospital and subsequently, he was shifted to the Tuticorin Government Hospital. Therefore, the order passed by the Commissioner of Labour is fair and just.

6.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

7.On a careful perusal of the counter affidavit filed by the second respondent, it is seen that the second respondent/Chief Engineer, Port Trust, himself admitted the said accident and also that the accident was arising out of in the course of employment and during the employment, the claimant sustained injuries and also in the counter affidavit itself, he admitted the injury and admitted the claimant in the Port Trust Hospital for first aid treatment and subsequently, he was sent to Tuticorin Government



Hospital by the Port Trust ambulance belonging to the second respondent. Therefore, he admitted the accident, which occurred during in the course of employment and only the question is who is the immediate employer and who is liable to pay the compensation. Even, the second respondent/Chief Engineer Port Trust has stated that the appellant herein is the immediate employer of the claimant and therefore, the appellant, who had engaged the claimant for changing the asbestos roof, at that time the claimant sustained injuries and due to which, he has given first aid treatment in the Port Trust Hospital. Therefore, it clearly shows that the accident had occurred in the course of employment and due to the accident, the claimant had sustained injuries and the second respondent herein engaged the appellant to carry out the work situated in the premises of the Port Trust. Under these circumstances, this Court cannot accept the said submission and to produce all the documents to raise the claim against the second respondent and the first respondent being employed with contractor and they can maintain the document and they can produce the document. Neither the appellant nor the second respondent has produced any document to show that the claimant was not working under the appellant at the time of accident.

8. Under these circumstances, this Court does not find any merit in the appeal and the Commissioner of Labour has appreciated the oral and documentary evidence and rightly gave a finding that the appellant is liable to pay the compensation. Therefore, this Court does not find any merit in the appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. It is informed that the appellant had already deposited the entire award amount passed by the Commissioner of Labour and the first respondent/claimant is entitled to withdraw the entire award amount with accrued interest and costs, without filing any formal petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy //

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Sub Assistant Registrar(CS)



CMA(MD)No.115 of 2020

To

The Joint Commissioner of Labour Court,
Tirunelveli.

Copy to : The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Vadivelu, Advocate Sr.No.12188

+1cc to Mr.G.Venugopal, Advocate Sr.No.12203

AKM/08.05.2020 /4P-5C/

CMA(MD)No.115 of 2020