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C.M.A.(MD)Nos.437 and 449 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.02.2020

Delivered On : 31.07.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

C.M.A. (MD) Nos.437 and 449 of 2019

C.M.A. (MD) No.437 of 2019 :

Murugan ... Appellant/Claimant

Vs.

Sripathi,
The Managing Director,
Mardhamalai Andavar Wind Energy Pvt. Limited,
Porur Road,
Telugupalayam,
Coimbatore. ... Respondent

PRAYER: Appeal filed under Section 30(a) of the Employees' Compensation Act, 1923, to set aside the award passed by the Court of Assistant Commissioner of Labour, Tirunelveli in E.C.No.34 of 2013 dated 05.04.2019.

For Appellant : Mr.R.Krishnan
For Respondent : Mr.S.Senthil

C.M.A. (MD) No.449 of 2019 :

Sripathi,
The Managing Director,
Mardhamalai Andavar Wind Energy Pvt. Limited,
Porur Road,
Telugupalayam,
Coimbatore. ... Appellant/Respondent

Vs.

Murugan ... Respondent/Petitioner

<https://hcservices.ecourts.gov.in/hcservices/>



PRAYER : Appeal filed under Section 30(a) of the Employees' Compensation Act, 1923, to set aside the award passed by the Court of Assistant Commissioner of Labour, Tirunelveli in E.C.No.34 of 2013 dated 05.04.2019.

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For Appellant : Mr.S.Senthil
For Respondent : Mr.R.Krishnan

COMMON JUDGMENT

This Civil Miscellaneous Appeals have been filed against the common order passed in E.C.No.34 of 2013 dated 05.04.2019 on the file of the Court of Assistant Commissioner of Labour, Tirunelveli.

2.Since both the appeals are filed against the same order, C.M.A.(MD)No.437 of 2019 is taken up as the lead case. The claimant is the appellant in C.M.A.(MD)No.437 of 2019. The word 'appellant' herein will denote the claimant. The word 'respondents' will denote the respondents in C.M.A.(MD)No.437 of 2019.

3.A brief substance of the petition in E.C.No.34 of 2013:

The claimant was an employee of the respondent and he was in charge of the maintenance of the wind mill from the year 1994 onwards. 19 years ago, the wind mill was established by a company, by name Monotona. In the year 2007, the respondent purchased the wind mill. He used to pay Rs.9,600/- (Rupees Nine Thousand and Six Hundred only) as salary and he used to pay daily batta. The salary was credited to the account of the appellant and batta and other miscellaneous expenses were given by way of cash.

4.On 01.09.2012 at about 01.30 p.m., when the employee was engaged in his work, there was an electric leakage in the structure post and the employee was thrown away and he lost his right eye sight and the right side of the body was affected by the electrocution, his left hand slipped from the shoulder socket and there was severe damage to the stomach and intestine. The employee was taken to galaxy hospital and his right hand was amputated and muscles in the pelvic area were removed in the surgery. Then he was admitted in Madurai Kennet foundation hospital from 09.09.2012 till 14.11.2012. He underwent surgeries on 25.09.2012 and on 20.10.2012. He took treatment in Madurai V.J.M.S. Hospital from 12.12.2012 to 21.12.2012. He took treatment for the eyes in Doctor Agarwal's eye hospital. The employee was permanently disabled. His digestive system was badly affected and he could not sit properly. He was forced to use his left hand for eating also. The employee



earth connection properly.

5.The employee had spent Rs.15,00,000/- (Rupees Fifteen Lakhs only) for medical expenses. Out of the medical expenses, the employer had paid Rs.2,00,000/- (Rupees Two Lakhs only) to the Madurai Hospital and Rs.90,000/- (Rupees Ninety Thousand only) to the Tirunelveli Galaxy Hospital. The employer failed to pay any compensation to the employee.

6.The brief substance of the counter filed by the respondent in E.C.No.34 of 2013 is as follows:

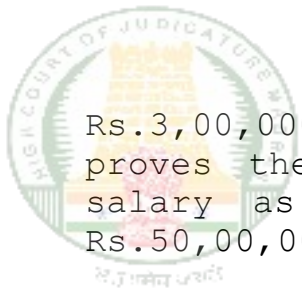
The respondent Firm is running four wind mills. Since all the four wind mills were installed recently, there was no necessity to maintain them. On contract basis, Victory Wind Firm Service Private Limited, Make Energy, Patela Boy Company and Diamond Wind Power were doing the maintenance. The contractual Firms are responsible for the maintenance of the wind mills.

The claimant was only engaged to take the metre reading and that gloves and safety robes are kept near every wind mill. The wind mills are inspected by the Electricity Board regularly. The employee was receiving only Rs.4,000/- (Rupees Four Thousand only) per month. The employee and two others securities were receiving the same cheque and this employee has to pay the salary for the two securities, out of the cheque amount. There was no practice of paying batta in cash. Instead of taking the reading, the employee out of his own interest without the order from the Superior, had climbed the structure and he invited the accident himself. Even then the respondent paid Rs.3,25,000/- to Madurai Kennett Hospital for special treatment and the employee was discharged from the hospital after treatment. There is no necessity to pay any compensation to the employee.

7.On the side of the employee, two witnesses were examined as P.W.1 and P.W.2 and fifteen documents were marked as Ex.P1 to Ex.P15. On the side of the respondent, one witness was examined as R.W.1 and four documents were marked as Ex.R1 to Ex.R4.

8.The Tribunal after considering both sides, awarded a sum of Rs.8,56,474/- (Rupees Eight Lakhs Fifty Six Thousand Four Hundred and Seventy Four only) as compensation and Rs.2,10,000/- towards medical expenses.

9.Against which, the claimant preferred an appeal in C.M.A. (MD)No.437 of 2019. In the grounds of C.M.A.(MD)No.437 of 2019, it is stated that the trial Court appreciated Ex.P8, the medical bills for Rs.10,25,811/- but had awarded only Rs.2,10,000/- towards medical expenses. The trial Court failed to appreciate that the claimant will be future medical expenses to the tune of



Rs.3,00,000/-. The Tribunal failed to appreciate Ex.P12, which proves the monthly wage was Rs.9,600/- but has calculated the salary as Rs.8,000/- without any basis and prayed a sum of Rs.50,00,000/- to be paid as compensation.

10. Against the award passed by the Tribunal, the employer preferred C.M.A.(MD)No.449 of 2019 for setting aside the award.

11. On the side of the claimant, it is stated that the claimant is an electrical Diploma holder and that he is an electrician. He was receiving Rs.9,600/- (Rupees Nine Thousand and Six Hundred only) as salary and his salary bank statement was marked as Ex.P12. On 01.09.2012, he met with the accident and he sustained burn injuries. He took treatment in four different hospitals and the medical bills were marked as Ex.P8. He lost his eye sight and his right hand was amputated and his vital inner organs were damaged. The Medical Board has certified his disability as 85%. But the Commissioner has fixed the salary only as Rs.8,000/- (Rupees Eight Thousand only) and that he fixed the medical expenses only as Rs.2,10,000/- (Rupees Two Lakhs and Ten Thousand only) and the actual medical expenses is to be reimbursed and a reasonable compensation has to be fixed.

12. On the side of the employer, it is stated that the fixation of liability on the respondent is erroneous. The accident was invited by the employee himself. The employee failed to adhere the precautionary measures. The Firm installed safety measures but the claimant failed to follow the safety measures. The claimant failed to explain the reason for getting in contact with the electric pole and the manner of electrocution. The Firm never instructed the claimant to climb the structure pole or to do any other duty except taking the reading of the metre. There was negligence only on the part of claimant and there was no liability as under Section 4(ii) and 4(iii) of the Employees Compensation Act, 1923.

13. On the side of the employer, it is stated that the Commissioner of Labour failed to consider Ex.R4 agreement entered between the respondent with two firms for maintenance of the poles and the for maintenance of the wind mills. The negligence was on the part of the claimant and there was a FIR against him.

14. On the side of the employer, it is stated that the salary was paid in the name of claimant and the claimant has to pay Rs.2,000/- (Rupees Two Thousand only) for one watchman and Rs.1,750/- (Rupees One Thousand Seven Hundred and Fifty only) for another new watchman. The Commissioner has failed to take note of the invoice to show that the claimant and two others were paid wages collectively. The claimant used to disburse the amount to others in the name of claimant. The quantum fixed is excessive. There was no



loss of vision. The doctor, who treated the claimant was not examined. There was no evidence as to the amputation of limb and hand. The final disablement has to be dealt in a different approach and prayed to set aside the award.

15. There is no dispute regarding the relationship of employee and employer. It is admitted that the claimant is an employee from the year 2007. The identity card was marked as Ex.P9. The salary of the claimant was credited to his account by the employer. Hence, it is decided that the claimant is an employee of the respondent/Mardhamalai Andavar Wind Energy Private Limited.

16. The contention of the employer is that there was no necessity for the claimant to climb the structure pole and there was an agreement with other Firms for the maintenance of the wind mills. The agreement was marked as Ex.R4. On the side of the employer, it is stated that safety measures were provided by the employer and the accident was only due to the negligence of the claimant.

17. On the side of the claimant, it is stated that whether the claimant was not instructed to climb the structure pole has to be proved by the employer. The designation of the claimant is Site Incharge and that the employer failed to prove that the employee was not instructed to climb the structure pole.

18. On the side of the claimant, it is stated that mere negligence of the worker cannot be recorded as wilful disobedience. The learned counsel for the claimant would rely upon the judgment passed by the High Court of Bombay in the case of **Ramrao Zingraji Shende v. Indian Yarn Manufacturing Co.**, reported in **1994 ACJ 916**, wherein it is stated as follows:

"Therefore, considering the facts and circumstances of the case, the question of wilful disobedience as laid down in provision (b)(ii) cannot exonerate the company from the liability as specified in the substantive part of section 3(1) of the Act. Further, as stated in item there of the elements specified above to come within Section 3(1)(b)(ii) of the Act, the workman must be in wilful disobedience is not sufficient. Disobedience may be the result of forgetfulness or the result of impulse of the moment. Such would not be sufficient as the statute exempts the employer from liability only when the disobedience is wilful that is deliberate and intended. A man does a thing wilfully when he does it intentionally because he expects some benefits to himself, either some convenience or an easy way of doing a piece of work and so forth. Mere negligence



of the worker cannot be regarded as wilful disobedience by the workman to an order expressly given. By the expression 'accident' it generally means some unexpected event happening without design even though there may be negligence. To decide whether an occurrence is an accident, it must be regarded from the point of view of the workman who suffers from it, and if it is unexpected and without design on his part, it may be an accident."

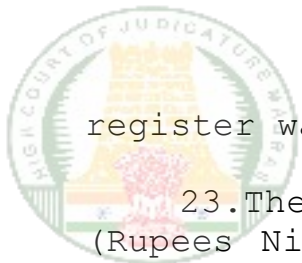
19.The learned counsel for the claimant would rely upon the judgment passed by this Court in the case of the Branch Manager v. Manivannan and others reported in 2019 (2) TLNJ 651, wherein it is stated as follows:

" The learned counsel by relying on the decision of the Honourable Supreme Court in 2018 SCC Online 2736 (State v. Manimaran) would contend that the duplicate bill is a primary evidence under Section 63 of the Indian Evidence Act, 1872 and hence, the finding is liable to be set aside and the cross appeal may be allowed."

20.It is the duty of the employee to prove the nature of the work allotted to the claimant. No document to prove the nature of work allotted to the claimant was filed by the employer. The employer failed to prove that the employee was not instructed to climb the structure pole. The claimant is not the employee of the companies engaged for maintenance. The claimant is the employee of the respondent. Hence, it is decided that the respondent is liable to pay compensation to the claimant.

21.On the side of the employer, a letter was marked instructing the claimant to pay Rs.2,000/- (Rupees Two Thousand only) to the old watchmen and Rs.1,750/- (Rupees One Thousand Seven Hundred and Fifty only) to the new watchman from out of cheque of Rs.7,000/- (Rupees Seven Thousand only). In the counter, the employer has stated that the salary for the claimant is Rs.4,000/- (Rupees Four Thousand only) per month but in the letter, the salary of the claimant is stated as Rs.7,000/- (Rupees Seven Thousand only) in the year 2008.

22.There is no proof that the claimant has to pay for the day watchman and night watchman from out of the salary cheque issued to him during the year 2012. Admittedly, the salary in the year 2008 is Rs.7,000/- (Rupees Seven Thousand only) and the accident took place in the year 2012. There is no evidence to show there was payment of batta in cash. The statement of accounts of the claimant reveals that he was receiving Rs.9,600/- (Rupees Nine Thousand and Six Hundred only) during August 2012. The salary



register was not produced by the respondent.

23.The Tribunal has admitted the monthly salary as Rs.9,600/- (Rupees Nine Thousand and Six Hundred only). But as per Act, the Tribunal has fixed the salary as Rs.8,000/- (Rupees Eight Thousand only). When the actual salary is clearly proved, there is no necessity restrict the salary. Hence, it is decided that the salary of the claimant was Rs.9,600/- (Rupees Nine Thousand and Six Hundred only) per month.

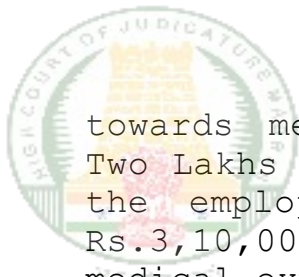
24.The disability certificate, Ex.P15 reveals that the employee sustained 85 % disability. P.W.2, Doctor Elango has deposed regarding the disability. P.W.2 has deposed that there is loss of limb on the right hand. Photograph of the claimant was also filed. The amputation of the hand is proved by the claimant. Identity card for disabled person reveals that the disability of the claimant is 85 %. Hence, the disability is fixed as 85 %.

25.The age of the claimant is 29 years. At the time of the accident, the disability is 85 %. Since the right hand of the claimant is amputated, there will be loss of income. It is decided that there will be 85 % of loss in the income. The salary of the claimant is Rs.9,600/- (Rupees Nine Thousand Six Hundred only). 85 % of the income is Rs.8,160/- (Rupees Eight Thousand One Hundred and Sixty only). Out of the same, 60% is to be taken into consideration for calculating the loss of income under Section 4 (b) of the Employee's Compensation Act, 1923. Then the total loss of income is calculated as Rs.10,27,768/-(4896 x 209.92).

26.On the side of the claimant, it is stated that the claimant spent Rs.10,84,811/- (Rupees Ten Lakhs Eighty Four Thousand Eight Hundred and Eleven only) towards medical expenses. Ex.P8 is the medical bills. It is admitted that the employer spent Rs.2,90,000/- (Rupees Two Lakhs and Ninety Thousand only) towards the medical expenses. Ex.R2 was admitted by the claimant. The Tribunal has awarded Rs.5,00,000/- (Rupees Five Lakhs only) towards the medical expenses. The Tribunal has not given any reason for coming to the conclusion.

27.It is clear that the claimant undergone surgery and took treatment as 'in patient' in two hospitals. Most of the bills issued by Kennet Foundation is for payment of advance medical bills. The final bill issued by the Kennet Foundation was not filed by the claimant. In some of the bills, the rubber stamp was affixed as cash paid. In other bills, there is no such rubber stamp or signature for receipt payment.

28.A perusal of the medical bills reveals that the claimant
<https://hcservicerecord.mca.gov.in/hcservicerecord> at least Rs.6,00,000/- (Rupees Six Lakhs only)



towards medical expenses. After deducting Rs.2,90,000/- (Rupees Two Lakhs Ninety Thousand only) towards the amount already paid by the employer, the claimant is entitled to receive a sum of Rs.3,10,000/- (Rupees Three Lakhs Ten Thousand only) towards medical expenses.

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29. In the above circumstances, after calculating the loss of income and medical expenses and after deducting the amount Rs.2,90,000/- (Rupees Two Lakhs Ninety Thousand only) already paid by the employer, it is decided that the compensation awarded by the Assistant Commissioner of Labour is to be modified. This Court came to the conclusion that the claimant is entitled for a total sum of Rs.13,37,768/- (Rupees Thirteen Lakhs Thirty Seven Thousand Seven Hundred and Sixty Eight only) towards compensation apart from the amount of Rs.2,90,000/- (Rupees Two Lakhs and Ninety Thousand only) already paid by the employer.

30. In view of the above decision made by this Court, C.M.A. (MD)No.449 of 2019 filed by the employer is dismissed and C.M.A. (MD)No.437 of 2019 filed by the claimant is partly allowed.

31. The appellant is directed to deposit the award amount of Rs.13,37,768/- (Rupees Thirteen Lakhs Thirty Seven Thousand Seven Hundred and Sixty Eight only) along with interest at the rate of 12% per annum from the date of petition till the date of realization and with costs. The appellant is directed to deposit the above said amount if not deposited earlier, within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the claimant is permitted to withdraw the share after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount if any deposited shall be refunded to the employer. No Costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

MRN

Note : 1. With the consent of both side counsels, this judgment is pronounced in the open Court through video conference system on 31.07.2020.



2. In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Assistant Commissioner of Labour,
Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai (2 copies).

+1 CC to M/s.R. KRISHNAN, Advocate (SR-13500[F] dated
03/08/2020)

C.M.A. (MD)Nos.437 and 449 of 2019
31.07.2020

kmk (CO)
TR(13.08.2020) 9P 5C