

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2627 of 2009

Chief Regional Manager,
M/s.Hindustan Petroleum Corporation Limited,
III Floor, Thalamuthu Natarajan Maligai,
No.8, Gandhi Irwin Road, Egmore,
Chennai 600 008.

.. Appellant

Vs.

1.Gopal

2.A.Mahendran,
M/s.Priyadarshini Agncies,
No.1, Janakiraman Nagar,
1st Cross Street,
Villivakkam,
Chennai - 600 049.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen's Compensation Act, 1923, praying to set aside the order dated 11.02.2009 and made in W.C.No.425 of 2007, on the file of the Commissioner for Workmen's Compensation -II/ Deputy Commissioner of Labour - II, Chennai - 6.

For Appellant : Mr.M.Vijayan
For Respondents: No Appearance

J U D G M E N T

The appellant herein is the 2nd respondent in W.C.No.425 of 2007 filed by the petitioner for the fatal death of his son Viz., Madhan, who died due to an Electric Shock in the petrol bunk, belonging to the first respondent, while he was employed in the petrol bunk. The first respondent is the dealer of the second respondent. Hence, he sought compensation from both respondents and preferred Workmen Compensation, before the Deputy Commissioner of Labour - II, Chennai 600 006.

2. The first respondent remained ex-parte. The second respondent contested the case. After full trial, the Commissioner of Labour - II awarded compensation and directed

the second respondent to pay the same. Aggrieved by the order, the second respondent/Hindustan Petroleum Corporation Limited, filed this appeal.

3. Point for consideration:

Whether the Commissioner of Labour - II was erroneously hold that the second respondent is liable to pay compensation to the deceased for the reason, the petrol bunk was under their control as a principal employer.

4. Facts of the case reveals that the deceased was employee in the petrol bunk belonging to the second respondent, who is the dealer under first respondent. While so, on 28.10.2006, in the course of the employment inside the petrol bunk premises, the deceased met with an electric shock and died. So, the deceased father preferred the claim.

5. Contending that his son was employed under 1st and 2nd respondents, but after full trial, the Commissioner of Labour - II awarded compensation in favour of the petitioner directing the second respondent/petrol corporation to pay the same with interest. Aggrieved by the order, the second respondent/petrol corporation preferred this appeal.

6. The learned counsel appearing for the appellant submits that the Petroleum Corporation is not liable to pay any compensation to the employees, who were employed under its dealer. For the reason, that the dealership agreement does not confers any responsibility upon the Petroleum Corporation to pay labourers, who are working under its dealer. For that he relied upon the memorandum of dealership agreement marked as Ex.R1. which read as follows:

The retail outlet to be Corporation's property (page No.5 Sl.No.6)

The Corporation both hereby agree to grant to the dealer, permission for the duration of this agreement to enter on the Corporation's property mentioned in the Schedule - I and II hereto and use the Corporation's property provided by the Corporation for the sole and exclusive purpose of storing, selling and handling of petrol/Diesel/Motor Oils/Greases etc.,

The Corporation shall arrange for all electrical and water connections and shall pay the deposits, if any, required to be paid in connection with the Corporation's property mentioned in the Schedule-I and II. The dealer shall, however, pay

all bills for electricity and water consumed at the said Corporation's property as shown in the bills issued by the authorities concerned and such other expenses incurred by the dealer in running the dealership.

No repairs to the Corporation's property shall be done by the dealer unless previously authorized by the Corporation in writing. The dealer shall not interfere with the or attempt to appropriate the Corporation's property or any part thereof, but shall notify the Corporation immediately of the necessity of any repair or alteration or modification and thereby ensure that the Corporation's property are in proper order at all times;

The Corporation shall have the right at any time to freely and without or hindrance by the dealer , their servants or agents, enter upon the said corporation's property to inspect the same and affix the corporation's name plates, etc., thereto;

The dealer shall indemnify and save harmless the Corporation from all losses, damages, claims, suits or actions which may arise out of or result from any injury to any person or property or from violation of any statutory enactments, rules and regulations or other written orders or other laws or caused by or resulting from non-observance by the dealer of the provisions of this agreement;

The dealer shall at their own cost maintain an adequate and competent staff to attend the work of filling the corporation's supplied products into the customers' vehicle and for providing certain free service to the customers in accordance with the general instructions given or laid down by the corporation from time to time"

7. On perusal of the terms and conditions reveals that the second respondent was a dealer under Petroleum Corporation and lot of conditions imposed between themselves with regard to usage of retail outlet. The terms enumerated in the said agreement reveals that the dealer shall at their own cost maintain an adequate and competent staff to attend the work of filling the corporation's supplied products into the customers' vehicle and for providing certain free service to the customers in accordance with the general instructions given or laid down by the corporation from time to time. So, the dealer has to maintain adequate staff at his own cost, but Corporation

was nothing to do with the employers of the dealer, as per the terms of the agreement as Ex.R1. The entire terms of the agreement reveals that Petroleum Corporation having only supervising power, the dealer has to maintain the bunk with its own staffs. The second respondent herein also not denied that the deceased was employed under him in the said petrol bunk at the time of accident.

8. It is an admitted fact that due to electric shock happened in the petrol bunk premises, the deceased was died. This fact was also not denied by the second respondent herein. On the other hand, this appellant respondent owned the petrol bunk and only supplied the petrol to its dealer to the 2nd respondent herein and the Corporation was not having any employer-employee relationship with staffs of the petrol bunk concerned. Therefore, the objection raised by the Appellant Corporation is sustainable one.

9. Accordingly, this Civil Miscellaneous Appeal is allowed and the order passed by the Commissioner of Labour - II is set aside. The 2nd respondent is liable to pay the compensation to the injured. The award amount was deposited already by the appellant Corporation is ordered to be withdrawn by 1st respondent herein and the appellant is permitted to recover the same from 2nd respondent herein. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commissioner for Workmen's
Compensation II/Deputy Commissioner of
Labour II, Chennai-6.

+1cc to M/s.King & Partridge, Advocate SR.10144

C.M.A.No.2627 of 2009

JP(CO)
CB(19/03/2021)