

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.3207 of 2010

M/s.The New India Assurance Co. Ltd.,
Erode. .. Appellant/4th Respondent

Vs.

1.Sankar ... 1st Respondent/Applicant

2.The Chief Engineer, Managing Director,
Tamil Nadu Slum Clearance Board,
5, Kamarajar Salai, Triplicane,
Chennai-5. ...2nd Respondent/1st Respondent

3.The Executive Engineer,
Tamil Nadu Slum Clearance Board,
2/124-G, Thiyagarayar Salai, Tenampet,
Chennai - 600018.3rd Respondent/2nd Respondent

4.M/s.Ramalingam & Co. Contractor,
188-D, Poonamallee High Road,
Saktimalika Apartments,
Kilpauk, Chennai-600 010.4th Respondents/3rd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, pleaded to set aside the award dated 30.06.2009, in W.C.No.22 of 2004 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Salem.

For Appellant : Mr.G.Udayasankar
For Respondents

For R1 : No appearance

For R2 & R3: Mr.S.P.Prabhakar

For R4 : No appearance

WEB COPY

J U D G M E N T

The appellant herein is the 4th respondent in W.C.No.22 of 2004, filed by the 1st respondent for the injuries sustained by him, while he was employed as a painter under the 2nd and 3rd respondent. The 1st respondent met with an accident on 22.04.2003 and sustained grievous injuries, fractures all over the body, even after his treatment he was not able to do his work normally as he did before. So he prayed for compensation.

2. The respondents also contested the case.

3. After full trial, the Labour Commissioner awarded compensation. Aggrieved by the order, the appellant / Insurance company preferred this Appeal.

4. Point for consideration:

(i) whether the Labour Commissioner erroneously concluded that the contractor / the 4th respondent was the employer, accident was happened in the course of such employment?

5. Facts of the case reveals that the 1st respondent as a painter was doing the work for the 2nd and 3rd respondents herein, through his contractor / 4th respondent/ Ramalingam and Co. and doing the painting work for the construction in Sudhandra Nagar Housing Board project belongs to the 2nd and 3rd respondents herein. The 1st respondent sustained grievous injuries, even after the treatment he lost his earning capacity in view of the disability he is not able to do his work as he did before.

6. To support the case, the injured/1st respondent adduced documents and witnesses on his side along with the evidence of Doctor to prove his disability and directed the insurance Company to pay the award amount with interest.

7. The learned counsel for the appellant submitted that the injured / victim has not proved the employer and employee relationship between himself and the contractor, but only as a cooly for daily wages so he is not entitled to claim compensation under the Workmen's Compensation Act. Aggrieved by the order the appellant / Insurance Company preferred this appeal.

8. Per contra, the learned counsel for the 1st respondent/ injured submitted that through the evidence of P.W.3 he proved the accident as well as his employment under the contractor / 4th respondent herein.

9.A perusal of the evidence of P.W.3 clearly established that while doing the painting work in the building belongs to the 2nd and 3rd respondents, the victim was employed as a painter through his contractor Ramalingam and the said Ramalingam and other persons along with P.W.3 admitted the victim in the hospital immediately after the said accident. Though this fact is denied by the insurance Company, but there is no oral evidence on other side to disprove the said contention. Before the Labour Commissioner, the appellant has not proved that the victim was employed as a labour for daily wages. But on the side of the victim, P.W.3 adduced that at the direction of the contractor / the 4th respondent herein, the victim was employed as a painter in the construction site belongs to the 2nd and 3rd respondents. Further, as per the insurance policy Ex.P.6, the 3rd respondent herein / Slum clearance board availed policy for labour along with two painters and paid the premium, so considering that the Labour Commissioner rightly fixed the liability on the appellant and directed the appellant to pay a sum of Rs.82,349/- and the remaining sum of Rs.2,26,580/- was directed to pay by the contractor.

10.Considering the evidence between the parties the Labour Commissioner rightly awarded the respondents fixing liability among the appellant as well as Contractor, which does not warrant any interference by this Court.

11.Accordingly, this Civil Miscellaneous Appeal is dismissed, and the order of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour-I, Chennai, is confirmed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

rri
To:
The Deputy Commissioner of Labour, Salem.

+1cc to Mr.G.Udhayasankar, Advocate, sr no.11928

C.M.A.No.3207 of 2010

AAB (CO)
RMP (16/04/2021)