

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19-01-2021
CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

CMA No.1781 of 2011

And

MP No.1 of 2013

1.Tmt.Rani
2.M.Sekar
3.M.Revathi
4.M.Premavathy
5.M.Shobana

.. Appellants/Petitioner

vs.

1.M.Ganesan

2.The United India Insurance Company Ltd.,
4th Floor, Chilingi Building,
134, Greams Road,
Chennai-6.

.. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is preferred under Section 30 of the Workmen Compensation Act, against the Award dated 04.10.2010 made in W.C.No.338 of 2006 on the file of the Deputy Commissioner of Labour-I, Chennai.

For Appellants : Mr.F.Terry Chellaraja

For Respondent-1 : Mr.D.Ramkumar

For Respondent-2 : Mr.S.K.Krishnamurthy

J U D G M E N T

The Award dated 04.10.2010 passed in W.C.No.338 of 2006 by the Deputy Commissioner of Labour-I, Chennai, is under challenge in the present Civil Miscellaneous Appeal.

2. The claim petition was rejected. Thus, the claimants preferred the above Civil Miscellaneous Appeal.

3. The claim petition was filed by the appellants under Section 10 of the Workmen Compensation Act, 1923, claiming compensation.

4. The deceased Mani, who met with an accident on 26.03.2006 at about 05.30 hours at Gandhi Irwin Salai, near Egmore Railway Kalyana Mandapam, Chennai and died on 27.03.2006, was aged about 62 years.

5. The contention of the appellants/claimants was that the deceased Mani was employed as driver of the Auto Rickshaw owned by the first respondent for a period of 5 years with a monthly salary of Rs.4,500/-. When the deceased Mani had driven the Auto Rickshaw from Gandhi Irwin Salai, near Egmore Railway Kalyana Mandapam, he met with an accident and died on 27.03.2006. FIR was registered in Crime No.117/T2/2006 punishable under Section 304-A of IPC.

6. The Auto Rickshaw was owned by one Mr.Ganesan/first respondent, which was duly insured with the United India Insurance Company Limited, Chennai. The claim petition was adjudicated by the Deputy Commissioner of Labour, who in turn made a finding that the employer-employee relationship was not established as required under the provisions of the Workmen Compensation Act and therefore, the appellants are not entitled for any compensation.

7. The findings of the Deputy Commissioner of Labour reveal that the owner of the Auto Rickshaw is none other than the son of the deceased Mr.Mani. The Deputy Commissioner of Labour could be able to draw an inference that the father died while driving the Auto Rickshaw belongs to his son and therefore, the employer-employee relationship cannot be considered for the purpose of grant of compensation. The claim is made based on the Insurance Policy. The terms and conditions of the Insurance Policy is to be considered for the purpose of award of compensation.

8. In the present case, admittedly, the son is the owner of the Auto Rickshaw, which met with an accident and his father who had driven the said Auto Rickshaw met with an accident and died. This being the factum established, the Deputy Commissioner of Labour has rightly arrived a conclusion that the employer-employee relationship had not been established.

9. The learned counsel for the appellants made a submission that because the claimant is the son and the deceased is the father, the Deputy Commissioner of Labour ought not to have arrived a conclusion that the employer-employee relationship did not exist.

10. This Court is of the considered opinion that it is possible where the son may be an employee of his father. In such circumstances, employment is to be established by producing sufficient proof, which must be acceptable in the eye of law. Mere accident is insufficient to establish the employer-employee relationship. Therefore, in the absence of any clinching evidence to establish the employment, so as to arrive a conclusion that the employer-employee relationship exist between

the parties for the grant of compensation, the Deputy Commissioner of Labour is right in arriving a conclusion that the appellants had not established the employer-employee relationship.

11. For instance, in a Private College, if the father is the Correspondent of the College and the son is appointed as a Lecturer and his appointment is approved by the Competent Educational Authority, then such an appointment can be considered as an employer-employee relationship between the father and the son. Similarly, acceptable evidence and proof must be produced to establish the employer-employee relationship.

12. This being the principle to be followed, the Deputy Commissioner of Labour has rightly arrived a conclusion and there is no perversity, as such, in appreciating the facts and the circumstances as well as the evidences.

13. Accordingly, the Award dated 04.10.2010 passed in W.C. No.338 of 2006 by the Deputy Commissioner of Labour-I, Chennai, stands confirmed and consequently, Civil Miscellaneous Appeal No.1781 of 2011 stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Commissioner for Workmen's Compensation,
Deputy Commissioner of Labour-I,
Chennai.

Copy to : The Section Officer, V.R.Section,
High Court of Madras, Chennai.

+1cc to Mr.M.Malar, Advocate Sr.No.2719
+1cc to Mr.C.Paranthaman, Advocate Sr.No.2714

AKM/29.04.21 /3P-5C/

C.M.A.No.1781 of 2011
19-01-2021