

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.3977 of 2019
C.M.P.Nos.22490 & 22492 of 2019

1.Dr.Manokaran
2.K.S.Ramprasad

.. Appellants

vs.

1.K.Krishnaveni
2.N.Krishnamoorthy
3.N.Poongavanam
4.K.Preethi
5.Daniel

.. Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1948, to set aside the order dated 12.11.2018 received on 26.05.2019 made in W.C.No.562 of 2010 on the file of the Commissioner for Workmen Compensation, Deputy Commissioner of Labour, Chennai.

For Appellant : Mr.C.T.Mohan

For Respondent : Mr.Madhura G.Ramesh
for RR1, 2 & 4
No-appearance for RR3 & 5

J U D G M E N T

The award dated 12.11.2018 passed in W.C.No.562 of 2010 is under challenge in the present Civil Miscellaneous Appeal.

2. The employers are the appellants. The respondents/claimants filed an application under the Workmen Compensation Act seeking compensation on the ground that the first and the second respondent's son/deceased K.Jagan, who was aged about 21 years came over to Chennai during his college vacation in the month of May 2010 and he was engaged by the appellants for construction works, more specifically, renovation works in the building belongs to the first appellant/Dr.Manokaran who is the owner of the premises at No.5, Sankara Street, Perungalathur, Chennai-600 063 on 07.05.2010 at

about 9.30 a.m.. When the deceased was performing his duties, the 5th respondent/Daniel called the deceased and he came down from the building and while coming down through Sara Kattai, the wooden plank for construction work broken and he fell down and sustained grievous injuries in his head and multiple injuries all over the body. He was admitted in the Deepam Hospital at Tambaram(West) Chennai. Thereafter, he re-admitted to the Government General Hospital at Chennai on 11.05.2010. Unfortunately, the young person died on 18.05.2010 at about 6.45 p.m. at Government General Hospital. The respondents 1 and 2/parents of the deceased are illiterate. On guidance, they filed a claim petition seeking compensation. The Joint Commissioner of Labour adjudicated the issues with reference to the documents and evidences and passed an award granting compensation along with interest at the rate of 12% per annum.

3. The substantial question of law as raised in the appeal reads as under:

a) whether the Joint Commissioner was justified in giving finding and accepting the evidence of PW2 when there is no pleading to the evidence let in by the PW2?

b) whether the Joint Commissioner was justified in holding that the deceased to be an employee of the appellants 1 and 2 in the absence of any evidence to substantiate the same?

c) whether the Joint Commissioner was justified in relying upon the evidence of PW2 who is an interested witness and claims to be an eye-witness whereas no proof has been filed for the deceased having worked under the appellants?

d) whether the Joint Commissioner was justified in relying upon evidence of PW2 said to be a co-worker to prove the relationship of employer and employee between the appellants and the deceased?

4. The learned counsel appearing for the appellant mainly contended that the deceased was not an employee and the employer/employee relationship was not established. Thus the claim petition filed under the Workmen's Compensation Act is not entertainable.

5. Mr. Madhura G. Ramesh, learned counsel appearing for the respondents/claimants mainly contended that the claimants are poor family and the deceased was studying and during vacation, he used to come for work.

6. The other questions of law raised are relatable to the facts and circumstances which are already adjudicated by the Joint Commissioner of Labour. Regarding the employer/employee relationship, this Court has to consider the documents

adjudicated as well as the findings arrived by the Joint Commissioner of Labour.

7. The factum regarding the accident was established. The deceased fell down from the wooden plank and sustained grievous head injuries and thereafter, died in the Government General Hospital at Chennai. He was a Student in Thiruvannamalai Kumaran Polytechnic and studying second year Diploma in Information Technology and used to work during vacation on account of poverty in the family. During May vacation, the deceased was working with the 5th respondent who directed him to attend the renovation work in the premises belongs to the first appellant. When these factors are established and not disputed by the first appellant, the Joint Commissioner of Labour considered the deposition of one Manimaran/P.W.2 who has clearly stated that the deceased was residing in a Maraimalar Nagar site and was working. On 07.05.2010, he was working in the upstairs building belong to the first appellant and the 5th respondent/Mr.Daniel was the contractor through whom the deceased was engaged to work in the building belongs to the first appellant. It is pertinent to note that even the first appellant/Dr.Mahoharan during the cross-examination categorically admitted the fact regarding the accident and the injuries sustained by the deceased/Jagan and further he has deposed that he has given treatment to the boy soon after the occurrence. When the appellant is a practicing doctor and admitted the accident and further, treated the deceased, there is no reason to disbelieve the statement made by the claimants in their application. The F.I.R reveals that the deceased was studying in Thiruvannamalai Kumaran Polytechnic and he used to work during college vacation on account of poverty in his family and for his further education. Further, the F.I.R stated that he came to Chennai on 02.05.2010.

8. The learned counsel appearing for the appellant made an attempt to take advantage of the statement given in the F.I.R with reference to the statement by the witnesses Manimaran/P.W.2 to that the deceased/Jagan was working for about three months and as per the F.I.R, he came to Chennai on 02.05.2010. Such a discrepancy in the statement would not be of any avail to the appellant in view of the fact that on the date of accident on 07.05.2010, admittedly, the deceased was working in the building belongs to the first appellant. Therefore, discrepancy in this regard is irrelevant and deserves no merit consideration.

9. The Joint Commissioner of Labour considered the documents as well as the deposition of witnesses and formed an opinion that the deceased was employed by the 5th respondent to perform the building works in the premises belong to the first appellant/Doctor and the factum regarding the accident was also established and even the first appellant/Doctor treated the

deceased.

10. This being the factual matrix established beyond any pale of doubt, there is no reason to disbelieve the claim petition and the employer/employee relationship was also established. Further, the accident occurred during the course of employment. Thus, the Deputy Commissioner of Labour rightly awarded compensation and there is no perversity or infirmity as such. The substantial question of law raised regarding the employer/employee relationship is established and accordingly, answered against the appellant. Thus, the award dated 12.11.2018 passed in W.C.No.562 of 2010 stands confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs.

11. The respondents/claimants are permitted to withdraw the entire award amount with accrued interest by filing an appropriate application before the competent authority and the award amount is to be apportioned as detailed in the order passed in W.C.No.562 of 2010 and the payments are to be made through RTGS. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssb

To

The Commissioner for Workmen Compensation,
Deputy Commissioner of Labour, Chennai.

Copy To
The Section Officer,
VR Section,
High Court, Madras.

+2cc to Mr.C.T.Mohan, Advocate SR.No.19470

+1cc to M/s.Madhura G.Ramesh, Advocate SR.No.19004

C.M.A.No.3977 of 2019

PM(CO)
GMY(03/05/2021)