

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-01-2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1651 of 2017
and
C.M.P.No.8760 of 2017

M/s.United India Insurance
Company Limited,
No.70, N.S.C.Bose Road,
Chennai - 6.

...Appellant/II Opp. Party

Vs.

1.Thirumathi.Saraswathi

2.Thiru. Sivasankaran

3.Thiru.Saravanan

4.Thiru.Sampath

...1 to 4 Respondents/1 to 4 Applicants

5.Thirumathi.Santha

...Vth Respondent/I Opp. Party

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923, against the final award dated 28th October, 2016, (received on 20.03.2017) passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour - I), Chennai in E.C.No.27 of 2015.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.P.Ravichandran for R1 to R4
R5-no such person

J U D G M E N T

The civil miscellaneous appeal is filed against the final award dated 28th October, 2016, (received on 20.03.2017) passed by the Commissioner for Employees Compensation (Deputy Commissioner of Labour - I), Chennai in E.C.No.27 of 2015.

2. The substantial question of law raised in the present civil miscellaneous appeal is that whether the Deputy Commissioner of Labour is right in passing the award in favour

of the married daughter and major sons which is directly in violation of Section 2(d) of the Employees Compensation Act. The second question of law raised is that the deceased cleaner is none other than the husband of the owner of the vehicle which met with an accident. While so, the claimants could not able to establish that their father was working as a cleaner with their mother in a vehicle owned by their mother. In view of the relationship, it is contended that the case itself is concocted for the purpose of unjust enrichment by getting compensation.

3. The claim petition was filed by the respondents 1 to 4 under Section 10(1) and 4-A of Workmen Compensation Act on the ground that the deceased Mr.Chandrasekaran @ Chandrasekar was working as a cleaner cum coolie for about five years under the fifth respondent and the fifth respondent is none other than the wife of the deceased Chandrasekaran.

4. It is contended that the fifth respondent paid monthly salary of Rs.10,000/- to the deceased cleaner. On 08.01.2015, at about 11.00 hours, when the deceased Chandrasekaran was working as a cleaner cum coolie in the mini lorry bearing Registration No.TN 37 M 9689, met with an accident and the said chandrasekaran sustained grievous injury and died on 12.01.2015. The case was registered in Crime No.23 of 2015.

5. The appellant Insurance Company filed their objections mainly on the ground that the deceased Chandrasekaran was aged about 62 years and therefore, there is no probability of serving as cleaner in the mini lorry, more specifically, the vehicle is owned by his wife. Therefore, the application itself is filed for unlawful enrichment and is to be dismissed.

6. The Deputy Commissioner of Labour adjudicated the issue with reference to the documents and evidence filed by the respective parties. The relationship between the owner of the vehicle as well as the deceased was not disputed by the parties before the Deputy Commissioner of Labour. Further, it is not disputed that the first respondent is the married daughter of the deceased and the fifth respondent and the respondents 2 to 4 are the major sons of the deceased and the fifth respondent. The Deputy Commissioner of Labour proceeded on the basis that the factum regarding the accident was established and therefore, the deceased is to be construed as an employee.

7. This Court is of the considered opinion that undoubtedly the husband may be an employee with his own wife.

However, such factum ought to be established through some evidence or documents. For example, in a private college, wife may be a Correspondent of the College and husband may be working as a Lecturer and if the appointment of Lecturer is proved by the competent Educational Authority, then it is a valid employment and certainly the husband in that case would be the employee of the wife who was holding the management. Thus, a mere relationship is no ground to deny compensation. However, the factum regarding employment ought to be established through acceptable evidence. Merely saying that the husband was working as a cleaner in a lorry owned by his wife and the husband at the time of accident was aged about 62 years and no proof has been filed, then it is very difficult to arrive at the conclusion that the employee employer relationship exist for the purpose of grant of compensation under the Workmen Compensation Act.

8. Learned counsel for respondents Ms.R.Radhika strenuously contended that the relationship of husband and wife between the owner and the cleaner would not preclude for grant of compensation. In support of the said contention, learned counsel for the respondents cited the judgment of the Karnataka High Court in the case of Oriental Insurance Company Ltd vs. Hanumant and Another [2006 ACJ 251], wherein the Karnataka High Court made the following observations with reference to the facts of that case:-

"2. The contention of the insurer that there exists no relationship of employer and employee since the respondent No. 1 (driver) happens to be the son of the owner of the jeep, respondent No. 2, therefore, there cannot be a relationship of employer and employee is an untenable argument. It is not uncommon amongst the business family to engage their own kith and kin on employment for doing the business or commercial activity. Merely because in such a situation no wages are paid in cash is also not a ground to infer absence of a legal relationship of employer and employee, since there would always be consideration in kind computable in terms of money for the services rendered. The parties would not go for documentation of the contract nor create any documentary material to prove payment of wages in view of the peculiar family relationship. Therefore, the fact that the respondent No. 1 and respondent No. 2 are father and son, is not a ground in law to

infer the absence of the relationship of employer and employee under Workmen's Compensation Act."

9. This Court has no other opinion with reference to the principles dealt with by the Karnataka High Court. The husband and wife may be an employer-employee in certain cases. However, the said factum is to be established with some principles and evidence. Mere statement that the husband aged about 62 years is working as a Lorry Cleaner with his wife is insufficient to arrive a conclusion that the employer-employee relationship exist between the husband and the wife.

10. Undoubtedly, a Welfare Legislation and its provisions are to be interpreted liberally and constructively. While interpreting the Welfare Legislation, the Courts are expected to be cautious mainly on the ground whether mandatory requirements are established beyond any pale of doubt. If the mandatory requirements are not established, then the Courts are not expected to show any misplaced sympathy and grant compensation in favour of the claimant. Thus, a fine distinction is to be drawn in a case where there is no evidence and cases where evidences are available. If the employer-employee relationship exist between the spouses, then it is necessary that some acceptable evidence is to be produced for grant of compensation.

11. The above observations of this Court is recognised by the Hon'ble Supreme Court of India in the case of Gottumukkala Appala Narasimha Raju vs. National Insurance Co. Ltd [(2007) 13 SCC 446]. The Apex Court of India in unequivocal terms held that documentary proof is required for the purpose of accepting the employer-employee relationship between the spouses and the relevant paragraphs 23 and 24 of the said judgment is extracted hereunder:-

"23. Technically, it may be possible that the husband is employed under the wife, but, while arriving at a conclusion that when a dispute has been raised by other side, the overall situation should have been taken into consideration. The fact, which speaks for itself shows that the owner of the tractor joined hands with the claimant for laying a claim only against the insurer. The claim was not bona fide.

24. No documentary proof to establish the contract of employment was produced. No independent witness was examined. Even as to for what purpose the tractor was being used had not been disclosed. How the accident had taken place is also known (sic not) borne out

from the records of the case. If the deceased, with all intent and purport, was the owner of the tractor, the claim petition under the 1988 Act might not have been maintainable. A petition under the 1923 Act certainly would not lie. Only because Sections 143 and 167 of the 1988 Act refer to the provisions of the 1923 Act, the same by itself would not mean that the provisions of the 1988 Act, proprio vigore would apply in regard to a proceeding for payment under the 1923 Act. The limited applicability of the provisions of the 1988 Act, in relation to the proceedings under the 1923 Act has been discussed by this Court in the aforementioned judgments. It is, thus, not possible to extend the scope and ambit of the provisions of the 1988 Act to the provisions of the 1923 Act save and except to the extent noticed hereinbefore."

12. Therefore, the contention of the appellant that the relationship is to be taken into account cannot be considered as general rule, even between the husband and wife. It is possible to establish the employee employer relationship, but such relationship is to be established through the acceptable evidence and by establishing the fact beyond any pale of doubt.

13. In the present case, though the owner of the vehicle admittedly is the wife of the deceased and the deceased was aged about 62 years and the claimants who are all the legal heirs of the deceased, could not able to produce any document establishing the employee employer relationship . There is no reason whatsoever to grant award in favour of the claimants. Beyond this point, the first respondent/first claimant is the married daughter of the deceased and the fifth respondent wife and the other three claimants, the respondents 2 to 4 are the major sons of the deceased as well as the fifth respondent.

14. This being the factum, the Deputy Commissioner of Labour has committed an error by violating the mandatory provisions of Section 2(d) of the Employees Compensation Act, 1923. As far as the employee employer relationship is concerned, the respondents had not established the same by producing evidence and documents. In view of the facts and circumstances, this Court is of the opinion that the Deputy Commissioner of Labour committed a perversity and consequently, the award dated

28.10.2016 in E.C.No.27 of 2015 is set aside and the C.M.A.No.1651 of 2017 stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15. The appellant United India Insurance Company is permitted to withdraw the entire deposited amount with accrued interest by filing appropriate petition before the competent authority.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsk/Svn
To

The Deputy Commissioner of Labour - I,
Chennai.

Copy to

The Section Officer,
VR section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.3497

C.M.A.No.1651 of 2017
and
C.M.P.No.8760 of 2017

sra[co]
srg 05/03/2021

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