



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2020

Delivered on : 20.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

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C.M.A. (MD)No.1387 of 2010

and

M.P. (MD)No.1 of 2010

Madura Steel Industries (P) Ltd,
Represented by its Managing Director,
R.Ganesa Perumal,
Cheetinayakanpatti,
Collectorate Post Office,
Dindigul, Dindigul District.

... Appellant /1st Respondent

Vs.

1.P.Chinnamani

... 1st Respondent / Petitioner

2.Selvam

... 2nd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the award in W.C.No.168 of 2007, dated 31.05.2010 on the file of the Commissioner of the Workmen Compensation, Dindigul and served to the appellant on 26.07.2010.

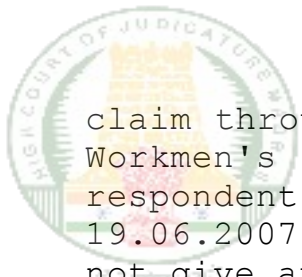
For Appellant	:	Mr.G.Manivannan
For R1	:	Mr.R.Maheswaran
For R2	:	No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award in W.C.No.168 of 2007, dated 31.05.2010, on the file of the Commissioner of the Workmen Compensation, Dindigul.

2. The case of the claimant, who is the first respondent herein, before the Tribunal is as follows:

The claimant was working under the first respondent / second respondent herein for six months prior to the date of accident for putting asbestos fittings and angles, for which, he was paid Rs.150/- per day. On 12.04.2007, in the course of employment, at about 03.30 p.m., the claimant was measuring the angle and at that time, it accidentally touched the live electric wire, as a result of which, the claimant fell down, due to electric shock and sustained injury. He was taken to Dindigul Rajarajeswari Hospital, where, he was admitted for 10 days for fracture on the right hand and grievous injury on the knee joint, apart from injury in the chest. The claimant made a



claim through his Advocate, on 12.06.2007, under Section 10 of the Workmen's Compensation Act and it was received by the first respondent / second respondent herein and gave a reply on 19.06.2007 containing false averments. The second respondent did not give any reply.

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3. The counter of the first respondent, who is the appellant herein, before the Tribunal is as follows:-

It is denied that the claimant was working under the first respondent / appellant herein in the premises, whereas, only the second respondent was the Contractor and the claimant was working under the second respondent only. The claimant suffered only a simple injury. Moreover, the second respondent paid Rs.10,744/- (Rupees Ten Thousand Seven Hundred and Forty Four only) towards the medical expenses apart from extra payment.

4. The case of the second respondent before the Tribunal is as follows :-

It is denied that the claimant was engaged for the purpose of putting up asbestos sheet and he was only employed for menial work for Rs.25/- as a daily wage. The claimant was not permitted to do any work inside the Campus between 03.00 p.m to 03.30 p.m., went to the place of occurrence without obtaining permission from any one and invited the accident. Moreover, the claimant suffered only a simple injury and as mentioned by the first respondent, he was paid Rs.10,700/- (Rupees Ten Thousand and Seven Hundred only) towards the medical expenses on the ground of humanity. Moreover, at the request made by the claimant, Rs.8,000/- (Rupees Eight Thousand only) was paid in cash. So, he wanted the petition to be dismissed.

5. On the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and 11 documents marked as Ex.P.1 to Ex.P.11. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and no document marked.

6. At the conclusion of the enquiry, the Commissioner of the Workmen's Compensation, Dindigul, came to the conclusion that the accident took place in the course and out of the employment and so, the first respondent / appellant herein was liable to pay the amount. Regarding the compensation, on the basis of the medical evidence, the Tribunal has assessed the same at Rs.95,538/- (Rupees Ninety Five Thousand Five Hundred and Thirty Eight Only). Challenging the award, the appellant herein, viz., first respondent before the Tribunal, has preferred this Civil Miscellaneous Appeal.

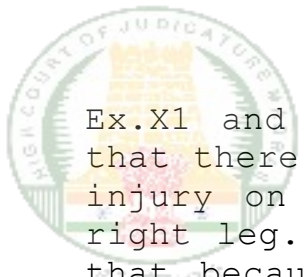
7. Regarding the liability, the Commissioner of the Workmen Compensation, Dindigul, has noted that the second respondent was



doing the Contractor work by engaging the claimant in the premises of the first respondent / appellant herein and the occurrence took place during and out of the employment, for that purpose, the Commissioner of the Workmen's Compensation, Dindigul, has relied upon the Judgment of the Kerala High Court reported in **Koodalingam V. Superintendent of Engineer [1994 (2) TAC 457]** and the judgment of the Mathya Pradesh High Court reported in **Assistant General Manager, S.B.I. v. Asha Chouhan [2005 (1) TAC 793 (MP)]**. So, as per these judgments, the following principles have been laid. The building ought to have been constructed for the purpose of the owner of the premises and the accident ought to have taken place within the premises, where the Contractor undertook to do the work. So, according to the Commissioner of the Workmen's Compensation, Dindigul, these two principles have been established in this case and so, the Commissioner came to the conclusion that the owner of the premises, viz., first respondent/ appellant is liable to pay the amount and he can recover the same from the Contractor.

8. Here, the only contention raised by the second respondent, who is the Contractor, is that the claimant without his permission went to the place of the occurrence and invited the accident and he was engaged only on daily wage basis as a menial. But, neither documentary nor oral evidence has been produced by the respondents, to prove this aspect. R.W.1, who is the second respondent, has stated that at the time of the occurrence, he was also present in the place of occurrence and the Supervisor of the first respondent was also present. When that is being so, the contention on the part of the second respondent that the claimant, without proper permission, went to the place of the occurrence and invited the accident, cannot be accepted. If really that was happened, how he was permitted to use the ladder for measuring the angle, was not explained by him. It is seen that to avoid the liability, the second respondent has given a wrong information to the Commissioner of the Workmen's Compensation, Dindigul. R.W.2 has been examined, whose evidence would show that the claimant was engaged on a daily wage as a manial. The evidence of R.W.1 runs contra to his evidence. So, the evidence of R.W.2 cannot be taken into account for any purpose much less showing that the claimant was engaged as a menial. So, going by the evidence of the claimant and as well as R.W.1, it stands established that the claimant was engaged by the second respondent for Contract work, to perform in the premises of the first respondent and the accident took place during and in the course of employment, as mentioned by the claimant. So, the twin and important conditions that have been stated above have been satisfied by the claimant.

9. Regarding the assessment of compensation, the
<https://hccservices.org/civil/cservices> into account the evidence of P.W.2 and P.W.3 and



Ex.X1 and X2, disability certificate, Ex.P10. P.W.2 would show that there was dislocation on the right fore arm and the lacerated injury on the right palm region, there was a fracture on the right leg. He was discharged after cure and he would further add that because of the accidental injuries, no disability would be caused to him, but, P.W.3, who is the orthopaedic surgeon would say that on his examination, he found that there was a scar on the right leg region and he was unable to fold his fingers and muscles were tight and there was restriction of 40% in the fore arm region and on the right knee region 30% restriction and so, it assessed as 31%. According to the appellant, the evidence of P.W.3 runs contra to the evidence of P.W.2. But, as mentioned earlier, P.W.3, Orthopaedic Surgeon, who is competent to assess the disability, which arose, due to fracture of bones. P.W.2 only treated the claimant, subsequent to the occurrence and according to him, the injuries were cured and he was discharged, but, whether the claimant went to P.W.2 for further treatment is not clear. P.W.3, has assessed the disability only subsequent to the treatment and discharge. So, the evidence of P.W.3 cannot be discarded for the reasons stated by the appellant. The Commissioner after taking into account, the age of the claimant and the unit by taking into account a monthly salary of Rs.4,000/- (Rupees Four Thousand only) assessed the compensation which is reasonable. I find no reason to interfere with the order of the Tribunal.

10. So, the Appeal is partly allowed and the award passed by the Commissioner is modified to the effect that the appellant is directed to pay the entire amount with interest and costs and on payment, the appellant is entitled to recover the same from the second respondent. The amount has been deposited by the appellant as per the memorandum of grounds of appeal. So, the claimant is entitled to withdraw the same with interest and costs, immediately, after filing proper petition before the Tribunal. The appellant is permitted to recover the same from the second respondent by following due process of law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Commissioner of the Workmen Compensation,
Dindigul.

2.The Section Officer-2 copies
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.MAHESWARAN, Advocate (SR-1513[F] dated 21/01/2021)

order made in
C.M.A. (MD) No.1387 of 2010
20.01.2021

KM (11.02.2021) 5P 5C