



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.08.2021

Delivered on : 16.09.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) No.593 of 2013

and

M.P.(MD)No.2 of 2013

1.M/s.S.S.P.Farm,
Madurai Road - Kottaimedu,
Kamuthi Taluk,
Ramanathapuram District.

2.P.Kumar ... Petitioner/Petitioner

Vs.

1.Mallammal

2.Alagar

3.Ayyanar

4.Muthumari

... Respondents 1 to 4 / Respondent 1 to 4

5.Panchavarnam

... 5th Respondent / 5th Respondent

P.Chinna Thambi @ Chella Thambi (Died)

6.Meenakshi ... 6th Respondent / legal representative /
mother of the deceased second
respondent in W.C.No.81/2007

(cause title accepted (sixth respondent)
vide order dated 06.03.2013 and
made in M.P.(MD)No. 1 of 2013)

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Employees Compensation Act, to set aside the orders of the Commissioner for Employees' Compensation, Madurai, dated 28.02.2012, passed in W.C.No.81 of 2007 and to allow the appeal.

For Appellants : Mr.P.Chandra Bose
For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the orders of the Commissioner for Employees' Compensation, Madurai, dated 28.02.2012, passed in W.C.No.81 of 2007.

2.The appellants herein are the respondents 1 and 3, the respondents 1 to 5 herein are the claimants and the sixth respondent herein is the legal representative of the deceased second respondent in the original claim petition. The respondents 1 to 5 herein / claimants filed a petition in W.C.No.81 of 2007.



3. Brief substance of the petition in W.C.No.81 of 2007, is as follows:-

The deceased Arumugam was working in the first respondent concern as a watchman. The second and third respondents are the partners of the first respondent Company. On 21.09.2006, eight unknown persons entered into the premises of the first respondent Company and they tried to commit dacoity. When the deceased / Arumugam and another watchman / Rajkumar tried to prevent the same, Arumugam was murdered by the eight unknown persons. The deceased was aged about 65 years at the time of death and he was earning Rs.40/- as daily wages. The first claimant is the wife and the claimants 2 to 5 are the children of the deceased. Since the deceased died during the course of employment, a sum of Rs.3,00,000/- has to be awarded.

4. Brief substance of the counter in W.C.No.81 of 2007, is as follows:-

The petitioners have to prove the particulars mentioned in the petition. One Mr. Tamil Alagan was incharge of the agricultural land and the deceased was not an employee of the respondent. Only after the occurrence, a marriage hall was constructed in the place, before that, the place was an agricultural land with a Farm house. There was no necessity for engaging some one as a watchman for the agricultural land or for the guest house. A person engaged for agricultural purpose cannot be considered as an employee under Section 2(n)(ii) of the Workmen Compensation Act. It is wrong to mention that there was a godown containing goods worth Rupees Thirty Lakhs. No case was registered for theft. The death is due to some prior motive between the deceased and the murderers. The deceased is 70 years old and prayed the petition to be dismissed.

5. On the side of the petitioners, one witness was examined and thirteen documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. After considering both sides, the Commissioner for Employees' Compensation, Madurai, awarded a sum of Rs.2,01,240/- as compensation. Against that award, the present Appeal is filed by the appellants.

7. On the side of the appellants, it is stated that the Commissioner for Employees' Compensation, has erred in fixing Rs.4,000/- as the monthly salary of the deceased. The claimants themselves have claimed that the deceased earned only Rs.40/- per day. A judgment of the Hon'ble Supreme Court reported in **1999 (1) LLJ-1028 [Municipal Committee, Tauru V. Harpal Singh and another]** is cited, wherein, the Hon'ble Apex Court has held that "the Court could not turn a blind eye to the inconsistent stand taken by the respondent in his claim statement and his evidence." The deceased was not an employee of the appellants and the respondents 1 to 5



have not established that the deceased was an employee of the appellants Firm. There was no nexus between the death of the deceased and the alleged employment. The murder of the deceased did not take place during the course of the alleged employment. The award is excessive and the rate of interest is exorbitant.

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8.The learned counsel for the appellants has raised the following questions for consideration:-

1)Whether the findings of the Commissioner for Employees' Compensation that the deceased died in an accident arising out of and in the course of employment is sustainable in law in the absence of acceptable evidence on record?

2)Whether the default interest is payable from the date of accident or from the date of award?

3)Whether the Commissioner is justified to pay the compensation without any conclusion that the 1st appellant Firm is coming under the schedule of employment under the Employees' Compensation Act?

4)Whether the Commissioner for Employees' Compensation is justified in fixing the salary of the deceased as Rs.4,000/- per month without any materials and evidences and against the respondents 1 to 5 own version of Rs.40/- per day in their legal notice and claim petition filed before the Commissioner?

9.On the side of the appellants, it is stated that the second appellant was staying in Bangalore, he gave the house to a friend, by name, Tamil Alagan. The deceased was not employed by the appellants. In the legal notice, the salary of the deceased was mentioned only as Rs.40/- per day. But, in the proof affidavit, the monthly salary was mentioned as Rs.4,000/-. In the criminal proceedings, it was stated that the deceased worked as a day watchman. But, in the claim petition, it was stated that the deceased worked as a night watchman. The respondents failed to establish that the deceased worked as a watchman. There was no evidence for the relationship of employer and employee and hence, the order of the Commissioner is to be set aside.

10. The name of the respondents was printed and called upon. Though sufficient opportunity was given, none appeared for the respondents. Hence, no oral argument on the side of the respondents is recorded and the order is passed on merits.

11.Though in the oral arguments, the learned counsel for the appellants has raised various points, those points were not elicited in the grounds of appeal filed by him. The learned counsel for the appellants has raised four questions, under the caption "substantial questions of law". But, all the questions are only questions of facts and not questions of law.

13.In the above circumstances, there is nothing sufficient



enough to interfere in the orders of the Commissioner for Employees' Compensation, Madurai. Hence, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

Is

To

1.The Commissioner for Employees' Compensation,
Madurai.

2.The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD) No.593 of 2013
16.09.2021

PS (CO)
KB(28.10.2021) 4P 4C