



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29 .11.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No. 4151 of 2013 and

M.P(MD) .No.1 of 2013

WEB COPY

Mountain Spinning Mills,
No.91/1A, Kootudankadu,
Mangalagiri Post,
Pudukottai,
Tuticorin District - 628 103
rep. By its Managing Director

:Petitioner

.vs.

1. The Commissioner of Workmen Compensation,
Deputy Commissioner of Labour,
Tirunelveli.

2.P. Chandrasekaran

3.The Managing Director,
Tuticorin Spinning Mills Ltd.,
Palayamkottai Road,
Tuticorin - 628 008.

4.The Branch Manager,
The National Insurance Company Ltd.,
No.175-A, Great Cotton Road,
Tuticorin - 628 001.

5.The Deputy Director, ESI Corporation,
Sub Regional Office Bhavan,
ESIC Complex, Solai Street,
Vannarpettai,
Tirunelveli - 627 003.

6. The Deputy Director, ESI Corporation,
Sub Regional Office,
2nd West Street,
KK Nagar, Madurai - 625 020.
(R5 and R6 are suo mou impleaded vide Court
order dated 30.04.2021 in W.P(MD) .No.4151/2013)

: Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari calling for the records on the file of Commissioner for Workmen's Compensation, Tirunelveli, in WC(M). No.23/2009 in WC.No.111 of 2007, dated 05.10.2012 and quash the same.

For Petitioner : Mr. V.O.S. Kalaiselvan

For R1 : Mr. D.Sasikumar
Additional Government Pleader

For R2 : No appearance

For R3 : Mr. R. Saravanan

For R4 : Mr.A.S. Mathialagan

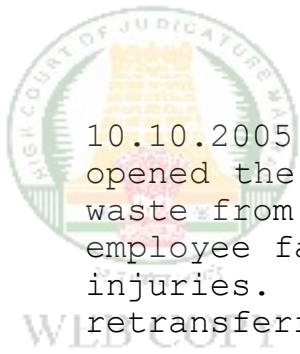
For R5 and R6 : Mr. N. Dilipkumar

O R D E R

This petition has been filed to quash the order passed by the Commissioner for Workmen's Compensation, Tirunelveli, in WC(M). No.23/2009 in WC.No.111 of 2007, dated 05.10.2012.

2. This Writ Petition is filed against the interim order passed in W.C.(M)No.23 of 2009 in W.C.No.111 of 2007, dated 05.10.2012. The Workmen Compensation petition was filed by one Chandrasekaran in W.C.No.111 of 2007 claiming compensation for the injuries suffered while he was working in the Mountain Spinning Mills Pudukottai, Tuticorin District. Pending workmen's compensation petition, the Managing Director, Tuticorin Spinning Mills Ltd., had filed a Miscellaneous Petition stating it is not a necessary party in the proceedings. The said issue was taken as a preliminary issue and an order was passed on 05.10.2012 exonerating the Tuticorin Spinning Mill as one of the respondents. Aggrieved over the interim order passed, the Mountain Spinning Mills has filed the present Writ Petition.

3. The brief facts as stated in the writ affidavit filed by the Mountain Spinning Mills are that the Tuticorin Spinning Mill is the parent Mill to the Mountain Spinning Mill. The Mountain Spinning Mills is one of the partners in the Tuticorin Spinning Mill and the proprietor of the petitioner mills. The employee Chandrasekaran was initially appointed in the Tuticorin Spinning Mill in the year 1984 and continued as an employee till June 2003, then transferred to Mountain Spinning Mill on deputation, when the Mill was started for imparting training to the new recruits. On

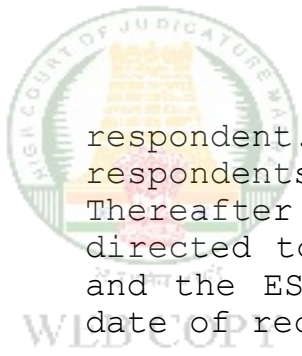


10.10.2005 in the third shift at about 2.25 a.m. the employee had opened the doors of Scutcher machine and tried to remove the cotton waste from the cage while in motion and sustained injuries. The said employee failed to standing safety instructions, therefore sustained injuries. After the accident the said Chandrasekaran was retransferred to the Tuticorin Spinning Mill.

4. The Tuticorin Spinning Mill is covered under the Employees State Insurance Act, 1948. Under Section 53 of the Employees State Insurance Act, 1948, there is a specific bar against receiving or recovery of compensation or damages under any other law, specifically not under the Workmen's Compensation Act, when the Employees State Insurance Act, 1948 is covered to the Tuticorin Spinning Mill. The Mountain Spinning Mill is already covered their employees under the Workmen Compensation Policy with the National Insurance Company Limited and the Insurance Company indemnify the principle employer and pay compensation. Apart from this the said Chandrasekaran is also eligible to get benefits under the Employees State Insurance Act, 1948 since the Tuticorin Spinning Mill is covered under the Employees State Insurance Act, 1948, then the Employees State Insurance Authority has to pay compensation. Therefore, the Tuticorin Spinning Mills is a necessary party and only after filing the documents and evidence let in before the Commissioner for Workmen's Compensation final order could be passed. Therefore, the order passed by the Commissioner is exonerating the Tuticorin Spinning Mill in the miscellaneous petition is illegal and unlawful.

5. Heard the learned counsels appearing for the parties and perused the materials available on record.

6. It is seen from the impugned order passed by the Deputy Commissioner of Labour that the Mountain Spinning Mills and the Tuticorin Spinning Mills are represented by the same Advocate Viz., Mr. Nagarajan. Since both the companies are represented by the same advocate, Tuticorin Spinning Mills is filing a petition to exonerate itself from the claim petition before the Commissioner and the Mountain Spinning Mills is objecting to it by filing this present Writ Petition before this Court cannot be appreciated. In short, the interim application to exonerate ought not to have been filed at all. This Court is of the opinion that both the companies are misusing the Court and wasting the time of the Court / Tribunal. Both the companies are driving the claim petitioner / employee to pillar to post and adopting delaying tactics by filing this Writ Petition. As stated by the Mountain Spinning Mills the issue of liability to pay compensation by whom and under which Act can be decided after perusing the documents and evidence and it cannot be decided as a preliminary issue. Therefore the impugned order is set aside and the Tuticorin Spinning Mills is added as one of



respondent. This Court has also added the ESI authorities as respondents and the hearing notice shall also be issued to the ESI. Thereafter the Commissioner, Workmen Compensation, Tirunelveli is directed to hear all the parties including Tuticorin Spinning Mills and the ESI and pass orders within a period three months from the date of receipt of a copy of this order.

7. The accident has occurred in the year 2005 and until today both the companies have not paid the amount. The Commissioner may consider of granting interim compensation. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The Commissioner of Workmen Compensation,
Deputy Commissioner of Labour,
Tirunelveli.

+1 CC to M/s.A.S.MATHIALAGAN, Advocate (SR-36672[F] dated
01/12/2021)

**W.P(MD) No. 4151 of 2013 and
M.P(MD) .No.1 of 2013
29.11.2021**

MGJ(15.12.2021) 4P 3C