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C.M.A.No.2698 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2022

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.M.A.No.2698 of 2016

and

C.M.P.No.19478 of 2016

Marimuthu

... Appellant

vs.

S.Mayilathal

... Respondent

Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, 1923 against the order dated 15.09.2015 passed in E.C.No.34 of 2013 on the file of the Workmen's Compensation-I (Deputy Commissioner Labour) Coimbatore).

For Appellant : Mr.M.Velmurugan

For Respondent : Mr.N.Ponraj

J U D G M E N T

This appeal is filed as against the order dated 15.09.2015 passed in E.C.No.34 of 2013 on the file of the Commissioner for Workmen's



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Compensation-I (Deputy Commissioner of Labour) at Coimbatore.

Appellant herein is the respondent in E.C.No.34 of 2013, who was directed to pay compensation of Rs.3,17,863/- to the claimant/mother of the deceased employee.

2. As per the averments in E.C.No.34 of 2013 filed by the respondent herein, her son Manian was employed in the garden of the appellant for the past 9 years for a daily wage of Rs.300/- per day. It is stated that the deceased used to water the coconut trees, maintain the garden as may be required and to sprinkle fertilizer to the plants and trees. While so, on the fateful day on 23.10.2012, the deceased went for his employment in the morning. At that time, the deceased informed the appellant that the electric motor is faulty and it warrants repair without which water cannot be pumped out from the electric motor. The appellant also agreed for the same and at about 1.00 pm the appellant said to have informed the deceased that the electric fault has been rectified. Believing the same, the victim went to the pump shed room at about 2.00 pm and switched on the electric motor. However, he was electrocuted and thrown off the pump set room. The neighbours have



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taken the victim to hospital but he was declared brought dead. It is in this context, the respondent has filed the above said E.C.No.34 of 2013 before the Commissioner for Workmen compensation praying to award appropriate compensation for the death of her son.

3. The appellant resisted the claim petition by mainly contending that the victim was not employed by him. There was no employer-employee relationship between him and the deceased. The allegation that the victim was paid Rs.300/- per day as daily wage has been stoutly refuted by the appellant. According to the appellant, the deceased Maniyan was employed on daily wage basis under the National Rural Employment Scheme and her son, the deceased was also employed thereof. Further, the deceased used to bring his cattle to the well belonged to the appellant and the appellant also permitted the deceased to feed the cattle with water from his well. While so, the claim for compensation payable by the appellant is not proper. The appellant is not liable to pay compensation to the respondent for the death of her son.



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4. Before the Commissioner, on behalf of the claimant, she examined herself as PW1 and marked Exs.P1 to P6. The appellant examined himself as RW1 along with another witness as RW2 and marked two documents under Exs. R1 and R2. The Commissioner, upon appreciation of the oral and documentary evidence held that the deceased was employed under the appellant and therefore, the claimant is entitled for compensation to be paid by the appellant. As regards quantum, a total sum of Rs.3,17,883/- was awarded by taking the sum of Rs.3,450/- as monthly wages and directed the appellant to pay the said amount with interest at the rate of 12% per annum. Aggrieved by the order dated 15.09.2015, the appellant has come up with this appeal.

5. The learned counsel for the appellant would vehemently contend that the deposition of PW2 has not been considered by the Commissioner while passing the order dated 15.09.2015. PW2 is an independent witness who has deposed that the deceased was not employed with the appellant, however, the Commissioner, without advertng to the deposition of RW2, has passed the order dated



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15.09.2015 which is legally not sustainable. The learned counsel further submitted that the allegation that there was some fault in the electric motor and after rectifying it the appellant alleged to have directed the deceased to switch on the motor has not been proved by any independent witness. There was no employer-employee relationship between the appellant and the deceased, but the Commissioner, on sympathy, passed the order directing the appellant to pay the compensation. In any event, the deposition of the appellant/RW1 and the independent witness RW2 has been grossly ignored by the Commissioner while passing the order dated 15.09.2015 and prayed for allowing this appeal.

6. The learned counsel for the respondent herein/claimant would support the order passed by the Commissioner. He would submit that the employer-employee relationship has been proved through the deposition of the respondent, as PW1. The averments made in the Claim Petition has been substantiated not only through oral evidence but also through documentary evidence. The Commissioner, on appreciation of the oral and documentary evidence, awarded a sum of Rs.3,17,863/- for the death of 41 year old son of the respondent and it does not call for interference



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by this Court. Therefore, the learned counsel for the respondent prayed for dismissal of this appeal.

7. Heard the counsel for both sides and perused the materials on record. It is not in dispute that the son of the claimant died due to electrocution, which is evident from the postmortem report under Ex.P5. It is also not in dispute that the deceased was lying motionless in the land belonging to the appellant. According to the claimant, during the course of his employment with the appellant, death occurred. But it is the case of the appellant that out of humanitarian gesture, he permitted the deceased to feed his cattle through the well water in his land. The deceased died in the land belonging to the appellant. PW1 in her deposition has stated that for about 9 years, the deceased was employed under the appellant. Such statement of the PW1 has not been proved to be false during her cross-examination. Even in the complaint given by one Sathish, based on which the First Information Report under Ex.P3 was registered, it was clearly stated that during the course of his employment, the victim died in the land owned by the appellant herein. In fact, when the appellant was cross-examined, he admitted that the



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deceased was under his employment and it was the deceased who was maintaining his garden. This piece of deposition of the appellant is sufficient to show that there was employer-employee relationship between the appellant and the deceased. On the basis of such deposition of the appellant himself in his cross-examination coupled with the deposition of PW1 and the documents marked on behalf of the respondent, the Commissioner for Workmen's Compensation has awarded a just and fair compensation for the death of the son of the respondent herein. However, the rate of interest awarded by the Commissioner of Workmen's Compensation appears to be on the higher side and therefore, the rate of interest is reduced from 12% p.a. to 9% p.a.

8. Therefore, the appellant is directed to deposit the entire award amount along with interest at the rate of 9% p.a. from the date of petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent is permitted to withdraw the entire award amount along with interest.



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J.NISHA BANU,J.
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9. The Civil Miscellaneous Appeal is partly allowed. No costs.

Consequently connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking : Non speaking order
kkd

To

The Workmen's Compensation-I
(Deputy Commissioner Labour) Coimbatore).

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