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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

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THE HONOURABLE MS. JUSTICE P.T. ASHA

C.M.A.NO.4397 OF 2019

&

C.M.P.NOS.24990 & 23764 OF 2019

The Managing Director
Nature Mania Company
1/311, Padappai Village
Kanchipuram District

...Appellant

Vs

1.K.Kumar

2.Rajalakshmi

3.Jayalakshmi

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, against the Order dated 27.08.2011 in W.C.No.8 of 2011 on the file of the Hon'ble Commissioner for Employee's Compensation Act, 1923, (Deputy Commissioner of Labour - 2) Chennai.

For Appellant : Mr.T.Karunakaran

For Respondents 1 & 2 : Mr.M.Ramesh

For Respondent 3 : Mr.K.Venkateswaran

JUDGEMENT

The appeal arises from the proceedings under the Workmen's compensation Act. The 1st respondent management is the appellant herein. The petitioners before the Deputy Commissioner of Labour II, Chennai, were the parents of one Rajesh who had died on account of electrocution while he was fixing the roof of the shed belonging to the 1st respondent Management. The facts in



brief are as follows.

2. The petition was originally filed by the deceased Rajesh. It is the case of the petitioner before the Deputy Commissioner that he was employed with the 1st respondent as an helper. On 13.04.2010, he was asked to lay the roof by using metal sheet in the company's building at round 10 PM. When he was doing his work, he suffered a shock from High Tension over head Electric Cable passing through the roof of the building, as a result of which he had suffered severe injuries on his hand and legs.

3. It is the case of the petitioner that he had rushed to the Sayee Hospital, Wallajah Road, where he was given first aid and thereafter shifted to the Kilpauk Medical College Hospital, Chennai where in was an inpatient from 14.04.2010 to 13.05.2010. Thereafter, he was transferred to Apollo Hospital for further treatment on 15.05.2010. By reason of electrocution he suffered severe burn injuries on his right foot, left foot and right hand. He had undergone surgery on 17.05.2010 and 24.05.2010 and ultimately he had to amputate his right leg below the knee and he had to also undergo a left leg debridement and split skin grafting.

4. The petitioner was taking treatment for over 41 days in the Hospital and had spend Rs.5,00,000/- towards medical expenses and hospital charges. Despite the treatment, his leg had not fully recovered and once again he had to be admitted in the Best Hospital, Kodambakkam, where he took treatment from 04.06.2010 to 08.06.2010.

5. It is the case of the petitioner that he was being paid Rs.6,000/- by the appellant. Since the accident had occurred only on account of negligence of the appellant herein he had lodged a complaint with the Manimangalam Police Station, Kancheepuram District on 21.05.2010 and he approached the appellant herein to settle the claim amicably. However, the appellant who had initially promised to do so, finally went back on its word constraining the petitioner to file the claim before the Deputy Commissioner of Labour II, Chennai, under the Workmen's compensation Act.

6. The petitioner had claimed Rs.6,00,000/- as compensation and Rs.6,00,000/- towards medical expenses. Initially, the appellant had not entered appearance despite service of notice and an ex parte order came to be passed directing the appellant to pay a sum of Rs.9,20,333/- towards accident relief and Rs.1,93,095/- towards Medical expenses. Thereafter, the appellant had taken out an application to set aside the ex parte



decree and had entered appearance in the case.

7. After passing of the ex parte order, the petitioner Rajesh had died on 04.09.2012 and the application was filed to implead his parents and accordingly there were brought on records as petitioners. They are respondents 1 and 2 herein. Meanwhile, the application filed by the appellant to set aside the ex parte order was allowed and they had filed their counter on 25.11.2013 contending that on the date when the accident taken place, they have not moved into the premises since the shed had not been constructed and they had only entered into a lease agreement.

8. The appellant would therefore submit that since the accident occurred when the deceased was laying the metal asbestos sheet, the same could have been done only on behalf of the owner of the premises, the 3rd respondent herein. Therefore, it is the contention of the appellant that it is only the 3rd respondent who has to compensate the deceased petitioner. In the light of this defense and in order to get a binding order, the 3rd respondent was impleaded as a party to the proceedings.

9. The learned Deputy Commissioner on considering the evidence came to the conclusion that the deceased Rajesh had sustained the injuries in the course and out of his employment and that he was an employee of the appellant company. The Deputy Commissioner however directed both the appellant and the 3rd respondent to jointly and severally compensate the respondents 1 and 2.

10. Challenging the said order, only the appellant has filed the appeal. The 3rd respondent has not filed any appeal.

11. Mr.T.Karunakaran, learned counsel appearing on behalf of the appellant would submit that though they had entered into rental agreement on 01.04.2010 possession was taken only on 05.05.2013. The accident had occurred on 13.04.2010. Therefore, it was only the 3rd respondent who was liable since the appellant had not moved in as there was no building on that date.

12. The learned counsel would further submit that the Deputy Commissioner has come to an erroneous conclusion that the witness examined on the side of the appellant herein during his cross examination has admitted that the deceased Rajesh was an employee of the appellant.

13. The learned counsel would rely upon the following Judgements to set out the factors that has to be considered in order to establish an employer - employee relationship.



- (i) 2004 (3) SCC 514 - Workmen of Nilgiri Coop. Mkt. Society Ltd., Vs. State of T.N. and others.
(ii) 2014 (9) SCC 407 - Balwat Rai Saluja and another Vs. Air India Limited and others.

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14. The learned counsel would therefore submit that the instant case would not fall within the factors mentioned therein and therefore the Forum below has erred in fixing the liability on the appellant.

15. Per contra, Mr.M.Ramesh, learned counsel appearing on behalf of the respondents 1 and 2 at the outset would submit that the appeal does not contain any question of law much less a substantial question of law. He would submit that under Section 30 of the Workmen's Compensation Act, the appeal can be entertained only if there is a substantial question of law. In support of the above argument, he would rely upon the following Judgement:

2009 (1) SCC (L & S) 136 - Om Prakash Batish Vs. Ranjit Alias Ranbil Kaur and others

16. The learned counsel would rely upon the Judgement reported in 2017 (4) LLN 1 (SC) - Daya Kishan Joshi and others. Vs. Dynemech Systems Pvt. Ltd., to bring out the distinction between the terms "arising out of" and "in the course of the employment"

17. The learned counsel would submit that, from the manner in which the accident had taken place, it is clearly evident that the deceased was only executing the instructions given by the appellant herein, with whom he was working.

18. The learned counsel would submit that the deceased Rajesh had adduced evidence regarding his employment under the appellant and the manner in which he had sustained injuries prior to the ex parte order. He would further submit that the lease agreement which has been produced before this Court would clearly show that the shed was already in existence and the plea taken by the appellant that they had not moved into the premises is prima facie a false statement. He would therefore submit that the order of the Forum below be sustained.

19. The learned counsel appearing for the 3rd respondent would submit that there was absolutely no contract between the 3rd respondent and the deceased Rajesh since the 3rd respondent had handed over the building to the appellant on 01.04.2010 itself. The accident had taken place on 13.04.2010 much after the building was given to the appellant herein. The learned counsel would therefore pray that the appeal be dismissed.



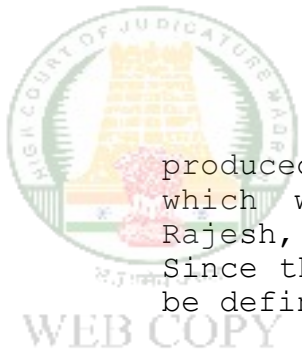
21. The appellant has put forward two contentions:

(b) The deceased Rajesh was not their employee and the findings of the Tribunal that R.W.1 had admitted that Rajesh is their employee is totally misconceived.

23. A mere perusal of these documents would show that the lease was to take effect on the very same day on which the agreement was signed. The recitals would also show that the property in respect of which the lease was entered into was the shed at 1/311, Vandalur Wallajah Road, Karsangel Padappai, Kanchipuram District with the build up area of 4000 Sq.ft. This would clearly show that the building was already in existence when the lease was entered into. The appellant is trying to create an impression that since the advance was paid later, it would indicate that the shed had not been put up. However, the appellant and the land lady / 3rd respondent are not strangers, since they have already entered into similar agreement on 16.09.2009 itself.

25. Since the appellant had entered possession of the premises on the date of the agreement, the fact that the accident had taken place at 10 PM in the night only shows that the deceased Rajesh was an employee of the appellant and had gone up to repair the roof only on the instructions of the appellant.

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produced the Employees' Register or the Attendance Register, which would immediately disprove the claim of the deceased Rajesh, if he was not an employee of the appellant company. Since this document has been kept away, adverse inference has to be definitely drawn against the appellant.

27. No doubt, the finding of the Deputy Commissioner that P.W.1 has accepted the fact that the deceased Rajesh was an employee of the appellant is not correct. However, de hors this admission the fact that the appellant has not produced the above referred documents clearly shows that the deceased Rajesh was an employee of the appellant company. The Deputy Commissioner has rightly held so and passed the award.

28. I do not see any reason to interfere with the order. Hence, the Civil Miscellaneous Appeal is dismissed. Consequently, connected Civil Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commissioner of Labour II,
Chennai.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.19352
+2ccs to Mr.T.Karunakaran, Advocate, S.R.No.19436
+1cc to Mr.K.Venkateswaran, Advocate, S.R.No.19336

C.M.A.No.4397 of 2019

SKM(CO)
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