



C.M.A.(MD)No.1425 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.09.2022

Delivered On : 14.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1425 of 2009

K.Indhra Gandhi @ Indirani

.. Appellant / Petitioner

Vs.

1.Thangasamy
2.Jayaraman
Respondents

.. Respondents /

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Workman Compensation Act, against the order, dated 24.03.2004, made in W.C.No.85 of 1999, by the Commissioner of Workmen Compensation and Deputy Commissioner of Labour, Trichy, dismissing the claim petition.

For Appellant

: Mr.S.Jeyasingh

For Respondents

: Mr.G.Mohan Kumar for R1

: No appearance for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 24.03.2004, made in W.C.No.85 of 1999, by the Commissioner of Workmen Compensation and Deputy Commissioner of Labour, Trichy. The appellant herein is the petitioner and the respondents herein are the respondents before the Workmen's Compensation Tribunal.

2. Brief substance of the petition filed by the petitioner, in W.C.No. 85 of 1999, is as follows:

The petitioner was working as a Labourer under the first respondent and she was doing construction work, on 24.03.1998, when she was carrying motor, the high tensity wire touched iron container, the petitioner hick electricity and she fell down. She sustained injury, after surgery her right leg little toe and the left leg fourth finger were removed. Her eye sight was affected and there was disfigurement of face. After treatment, the eye sight of the left eye was regained to a certain limit. The petitioner took treatment in Arun Priya Hospital and she claimed Rs.1,55,985/- as compensation.



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3. Brief substance of the first respondent, in W.C.No.85 of 1999, is

as follows:

There is no employer and employee relationship between the first respondent and the petitioner. He was working as a casual labourer. She cannot be named as a Labourer under the W.C Act. Though the first respondent has instructed the petitioner to take care of the electric wire, due to the negligence of the petitioner, she met with the accident. The petitioner was doing centring work, which is just 10 feet from the ground level. She was working under the second respondent, who is doing the construction work, contractual basis. Though the first respondent was not liable to pay any compensation, on humanitarian ground, the first respondent paid Rs.15,000/- towards the medical expenses and he paid Rs.10,000/- towards compensation. At the time of receiving Rs.10,000/-, the petitioner has given in writing that she won't claim any other compensation either from the first respondent or from the E.B department. The accident has happened only due to the negligence of the petitioner herself and the first respondent is not liable to pay compensation.

4. Brief substance of the second respondent, in W.C.No.85 of 1999,

is as follows:



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There is no relationship of employer and employee between the petitioner and the second respondent. The petitioner never worked as a temporary or permanent employee of the second respondent. The petitioner and her husband were engaged as a casual labourer for the centring work. There is no contract between the second respondent and the petitioner and her husband. The husband of the petitioner, by name, Kaliamoorthy, is also a necessary party to the case. The nature of the work of the petitioner is not within the definition of “Labour” under the W.C.Act. Initially there was a construction contract between the first respondent and the second respondent. But, subsequently, the contract was cancelled. The first respondent was engaging casual labourers on daily basis. The second respondent is not liable to pay compensation.

5. On the side of the petitioner, 3 witnesses were examined and 6 documents were marked. On the side of the respondent, 2 witnesses were examined and 3 documents were marked. The Labour Commissioner, decided that the petitioner is not a labourer under Section 2(1)(n) of W.C. Act and has dismissed the claim petition.



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6. Against the dismissal of the claim petition, the claimant in the claim petition has filed this Appeal on the following grounds:-

The Labour Commissioner failed to consider that the petitioner lost her eye sight. The Labour Commissioner failed to consider that the petitioner lost her toe fingers. The Labour Commissioner is wrong in holding that the appellant is not a Workmen under Section 7(1)(N) of Workmen Compensation Act. The Labour Commissioner failed to consider that the height of the construction is above 10 feet from the earth and that the appellant is entitled to get compensation. The injury is permanent in nature and the appellant was unable to earn as much as she was did before.

7. The following questions of law were framed by the appellant:-

1) Whether the injured appellant is a Workmen or not defined under the Workman's Compensation Act, 1923?

2) Whether the finding of the Labour Court that the appellant is not a workman under Section 2(1)(N) of the Act and dismissed the claim petition is legally acceptable?

8. This Court, by order, dated 23.12.2009, has admitted the appeal on the following question of law:-



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“Whether the claimant is a Workman under the second respondent” ?

9. On the side of the appellant, it is stated that the first respondent is the owner of the building and the second respondent is the Contractor of the building. The height of the building in question is above 10 feet from the earth level. Only after laying the foundation centring work is done. Including the foundation, the height is above 10 feet and hence under Schedule – 2 item No.(ix), the appellant is an employee.

10. Schedule – II, item No.(ix), of the Workmen's Compensation Act, 1923, reads as follows:-

(ix) employed in setting up, maintaining, repairing or taking down any telegraph or telephone line or post or any overhead electric line or cable or post or standard or fittings and fixtures for the same

11. Section 2(1)(n) of the Workmen's Compensation Act, 1923, reads as follows:-



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2(1)(n):- “workman” means any person 2 [***] who is— (i) a railway servant as defined in 3 [clause (34) of section 2 of the Railways Act, 1989 (24 of 1989)] not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or 4 [(ia) (a) a master, seaman or other member of the crew of a ship, (b) a captain or other member of the crew of an aircraft, (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, (d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;] (ii) employed 5 [***] 6 [***] in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of 7 [the Armed Forces of the Union] 1 [***]; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.



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WEB COPY 2020-ACJ-801 (Secretary, Kerala State Electricity Board V.

M.N.Kunjappan and others) is cited, wherein, it is stated as follows:-

“Under Section 12 (2) of the Workmen's Compensation Act, liability of stranger to contract and worker engaged by contractor during the course of his employment lifted an iron rod which came in contact with 11 KV line passing overhead and was electrocuted. The Commissioner awarded compensation and directed the Electricity Board to pay the amount. The contention that Board had no contractual relationship with the workman and in absence of the same the Board cannot be made liable; and the provision under Section 12(2) does not include strangers even if they are tortfeasors. Whether a stranger to the contractual relationship between the victim of an accident arising out of his employment and his employer could be made liable to pay compensation under the Workmen's Compensation Act.”

13. Another judgment of the High Court of Gujarat at Ahmedabad reported in 2020-ACJ-1723 (Taluka Panchayat, Mendarda and another V. Maliben Rukhadbhai and others) is cited, wherein, it is stated as follows:-

“Under Section 12 of the Workmen's



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Compensation Act, Contracting work, the liability of principal and contractor of death of workman due to collapsing of wall of school during repair work. Gram Panchayat was carrying out construction work as contractor independently of its status as Gram Panchayat and the deceased was engaged by the Contractor. Taluka Panchayat and District Primary Education Officer dispute their liability on the ground that the deceased was not their workmen. The Activity carried on by the School authorities and Gram Panchayat is covered by the terms 'trade' and 'business', under Section 12, Whether the Commissioner was justified in holding the school authorities and Gram Panchayat jointly and severally liable for the death of the workman.”

14. On the side of the respondents, it is stated that the appellant cannot be named as a Labourer under Section 2(i)(n) of W.C.Act. He is working only as a casual labourer only for 2 or 3 days. Schedule 2 is applicable to employment under Trade and Business and not applicable to a construction work. The first respondent is only an owner of the building, he is not doing any trade or business in construction. The height of the building is below 10 feet. P.W.1 and P.W.2 have deposed that the work was going on in the ground floor.



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15. On the side of the respondents, it is further stated that on humanitarian ground, the first respondent paid all the medical expenses. In the present of the construction labour association, the appellant has received a sum of Rs.10,000/- as full settlement and has promised not to proceed further. Ex.B1 was marked on the side of the respondent.

16. From the evidence of P.W.1 and P.W.2, it is seen that the appellant was engaged only by the second respondent, who was a Contractor, doing construction work for the first respondent and that there is no relationship of employer and employee between the appellant and the first respondent. It is seen that the appellant was engaged only as a casual labourer and hence, it is decided that there is no employer and employee relationship between the appellant and second the respondent. Hence, it is decided that the appellant is not an employee under Section 2(1)(N) of the W.C. Act.

17. In view of the above, it is decided that there is nothing sufficient enough to interfere in the orders of the Labour Commissioner and this Appeal is dismissed. No costs.

14.10.2022

Internet : Yes/No
Index : Yes/No
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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 Deputy Commissioner of Labour,
Workmen's Compensation Tribunal,
Dindigul
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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