



C.M.A(MD)No.413 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A(MD)No.413 of 2010

Lourdu Stalin

... Appellant

vs.

1.The Management of Indian Oil Corporation Ltd.,
L.P.G. Bottling Plant,
Inam Kulathur,
Thiruchirappalli.

2.Sri Devi Electricals,
No.15-11D, 3rd Cross Street,
Tata Batt,
Coimbatore.

3.Employees State Insurance Corporation,
Trichy.

... Respondents

(R-3 is suomotu impleaded vide Court order
dated 27.09.2018 in C.M.A(MD) No.413 of 2010)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the
Workmen's Compensation Act, to set aside the order dated 21.02.2008
made in W.C.No.411 of 2005 on the file of the Workmen's Compensation
Commissioner cum the Deputy Labour Commissioner, Thiruchirappalli



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and consequently, to remand the matter back to the Workmen's Compensation Commissioner cum the Deputy Labour Commissioner, Thiruchirappalli, for review of the order.

For Appellant	: Mr.M.Arjun Varman for Mr.T.Lajapathi Roy
For R-1	: M/s.P.Malini for Mr.T.S.Gopalan
For R2	: Mr.D.Venkatesh
For R3	: Mr.R.Ravindran

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the order dated 21.02.2008 made in W.C.No.411 of 2005 on the file of the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Thiruchirappalli and consequently, to remand the matter back to the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Thiruchirappalli, for review of the order.



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2.The appellant herein filed a claim petition before the Workmen's Compensation Commissioner-cum-Deputy Commissioner of Labour, Thiruchirappalli, claiming compensation for the injuries sustained by him in an accident during the course of employment with the first respondent.

3.The respondents 1 and 2 contested the claim petition on all the grounds available to them.

4.Before the Commissioner, on the side of the appellant, one witness was examined as P.W.1 and seven documents were marked as Exs.P.1 to P.7. On the side of the respondents, one witness was examined as R.W.1 and five documents were marked as Exs.P.1 to P.5.

5.The Deputy Commissioner of Labour, considering the pleadings both oral and documentary evidence let in by both the parties, dismissed the claim petition stating that the appellant's relief was covered under the E.S.I Act and not under the Workmen's Compensation Act. Challenging the said order, the present appeal is filed by the appellant.



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6. The learned counsel for the appellant submitted that the Commissioner of Workmen's Compensation-cum-Deputy Commissioner of Labour, Thiruchirappalli passed the impugned order without verifying with certainty, how the petitioner was covered under the ESI Act and without verifying whether the Inam Kulathur Area, in which, the first respondent's Corporation is situated, is an implemented area of ESI or not, since the Branch Manager vide proceedings dated 30.06.2008 stated that the Inam Kulathur Area is a non-implemented Area of ESI. Hence, he prayed that the matter may be remanded back to the Commissioner of Workmen's Compensation-cum-Deputy Commissioner of Labour, Thiruchirappalli for review the order.

7.The learned counsel for the third respondent submitted that the petitioner is stated to have been worker under the second respondent, on the date of accident i.e., on 30.12.2004, but the said Unit has been covered under the ESI Act with effect from 01.01.2010 only. Therefore, for any accident occurring prior to 01.01.2010, the ESI Corporation is not answerable. He further submitted that the fact whether the third respondent is liable to pay permanent Disablement Benefit under the ESI Act can be decided only after letting evidence in this regard by the ESI



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Corporation before the Trial Court. Therefore, he prayed that that matter may be remitted back to the trial Court to put forth his defence.

8. Heard the learned counsel appearing for the first respondent and the learned counsel for the second respondent. They have not raised any serious objection to remand back the matter.

9. Considering the facts and circumstances of the case and also considering the submissions made on either side, this Court is inclined to remit the matter back. Accordingly, the matter is remitted back to the file of the Commissioner of Workmen's Compensation-cum-Deputy Commissioner of Labour, Thiruchirappalli, for fresh consideration. After hearing both sides, the Commissioner of Workmen's Compensation-cum-Deputy Labour Commissioner, Thiruchirappalli, is directed to decide the case on merits and in accordance with law and pass orders within a period of three months from the date of receipt of a copy of this order. No costs.

14.09.2022

Index :Yes/No
Internet :Yes/No
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WEB COPY To

- 1.The Workmen's Compensation Commissioner cum
The Deputy Labour Commissioner,
Thiruchirappalli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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A.A.NAKKIRAN,J.

cp

JUDGMENT MADE IN
C.M.A(MD)No.413 of 2010

14.09.2022