



C.M.A.(MD)No.79 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.11.2022

Delivered On : 21.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.79 of 2020

S.A.Krishnaraj

.. Appellant /2nd Respondent

Vs.

1.Chinnakalai

2.Vellaiammal

... Respondents 1 & 2 / petitioners

3.Balasubramanian (Late)

Partner, Amirtha Textiles

... 3rd respondent / 1st respondent

4.B.Jeyanthi

5.B.Latha

... respondents 4&5 /respondents 3&4

Prayer: This Civil Miscellaneous Appeal is filed under Section 30 of Employee's Compensation Act, against the order, dated 16.10.2019, made in E.C.No.92 of 2016, on the file of the Commissioner for Employee's Compensation, Dindigul.

For Appellant

: Mr.M.E.Ilango

For Respondents

: Mr.T.Thirumurugan for R1



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 16.10.2019, made in E.C.No.92 of 2016, on the file of the Commissioner for Employee's Compensation, Dindigul. The appellant herein is the second respondent, the respondents 1 & 2 herein are the claimants, the third respondent herein is the first respondent and the respondents 4 & 5 herein are the respondents 3 & 4 in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in E.C.No.92 of 2016, is as follows:

The deceased – Nagendran was working as a car driver in Amirtha Textiles. On 11.03.2008, the second respondent proposed to go for travel and hence, he instructed the deceased, to stay at the Textile office. At about 11.00 pm., there was a fire accident in the institution and Nagendran died due to the burnt injuries. The age of the deceased was 20 years, he was earning Rs.5,000/- per month as a driver. The accident took place during the course of employment. The petitioners are his dependents and they claimed a sum of Rs.8,00,000/- as compensation.



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3. A brief substance of the counter filed by the respondents 2 to 4, in

WEB E.C.No.92 of 2016, is as follows:

The petition is not maintainable. It is wrong to stated that the deceased-Nagendran was working as a driver. The age and profession are all to be proved. The first respondent-Balasubramanian died during the pendency of the case and the respondents 3 and 4 are his LR's. It is wrong to state that the second respondent is a partner in the Amirtha Textiles Firm. The second respondent was running a Firm under the name and style of “Haritha Tex”. Due to heavy loss, he closed the business. A security in his residence, by name, Kalimuthu, was the brother of the deceased-Nagendran. Negendran was working as a car driver in Haritha Tex. The first respondent was no way connected with the firm by name Amirtha Textiles. The first respondent was running a textiles firm under the name and style “Sri Malathi Corporation” and he closed the firm on 2006. The building belonged to the first respondent. Since the second respondent's building, by name, Balaji house was undergoing painting work, the deceased-Nagendran and the security Kalimuthu got the permission of the first respondent to stay at the Amirtha Textile buildings. The southern side of the ground floor was rented to one Senthilkumar, there was a fire broken out from that area. The deceased-Nagendran and another person-Nagaraj were sleeping on the second floor. They died of burn injuries and the



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suffocations. Both of them were working under the first respondent Nagendran was a driver under the second respondent. The accident did not take place during the course of employment.

4. 2 witnesses were examined and 8 documents were marked, on the side of the claimants. 1 witness was examined and 6 documents were marked, on the side of the second respondent. No witness was examined and 2 documents were marked, on the side of the respondents 3 and 4. After considering both sides, the Tribunal awarded a sum of Rs.4,50,500/- as compensation to be paid by the second respondent.

5. Against the award, the second respondent / appellant has filed an appeal on the following grounds:-

5.1. The Labour Commissioner failed to consider that the Labour Commissioner has no territorial jurisdiction to pass the award as the entire cause of action has taken place at Coimbatore. The Labour Commissioner failed to consider that the appellant was only a tenant in Balaji's house, Coimbatore. There were 4 houses and 1 shop in the premises. The appellant has occupied one flat and one shop. The appellant was running a small shop under the name and style of Haritha Tex. Nagendran was employed as the



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driver by the appellant only 5 months prior to the accident. Nagendran and another person, by name, Nagaraj did not have any shelter and they stayed along with watchman-Kalimuthu at Balaji's house. Since painting work was carried out at the Balaji's house, on humanitarian grounds, the appellant requested his friend, the third respondent to accommodate them and hence, Nagendran and Nagaraj were permitted to stay at the second floor of the premises of the third respondent.

5.2. It is wrong to state that Nagendran and Nagaraj were asked by the appellant to wait at the office for unloading the goods. The appellant and the third respondent were no way connected with the Amritha textiles. One Senthilkumar was the owner of the Amritha textiles, he took the building for rent from the third respondent. The claimants have admitted that Nagendran and Nagaraj were employed in Amritha textiles. The Labour Commissioner has wrongly fixed the liability on the appellant. The claimants failed to prove that there was employer and employee relationship between the deceased and the appellant. The Labour Commissioner dismissed the claim made by Nagaraj on the same ground, but, wrongly admitted the case of Nagendran. The accident was not during the course of employment. The claimants failed to implead necessary parties. No accident has occurred in the course of



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employment. The Labour Commissioner is wrong in fixing the monthly income as Rs.4,000/-. The award is excessive.

6. This appeal was admitted on the following substantial question of law:-

“(1) Whether the Lower Authority was justified in awarding the compensation in the absence of employer, employee relationship between the appellant and the deceased?

(2) Whether the Lower authority was justified in awarding the compensation without deciding the nature of injury and whether the same was caused in and out of the course of employment?

(3) Whether the Lower Authority was justified in determining the age and salary of the deceased notionally without any materials to substantiate the same?

(4) Whether the owner of M/c.Amirtha Textiles, the employer as claimed by the claimants is a necessary party to the dispute?”

Issue No.I:

7. On the side of the appellant, it is stated that there is no employer and employee relationship between the deceased and the appellant. The appellant is running a textile unit under the name and style of Haritha text,



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which was closed before the accident. One Kalimuthu was working as a security in his residence. Nagendran used to stay with the said Kalimuthu. Since painting work was going on in the building, on request of the appellant, on humanitarian ground, the third respondent permitted the said Nagaraj and Nagendran to stay at the second floor of the building that belonged to the third respondent.

8. On the side of the appellant, it is stated that the accident was not during the course of employment. A judgment of the Hon'ble Supreme Court reported in **2009-2-ACC-738 (Malikarjuna G.Hiremath V. The Branch Manager, the Oriental Insurance Co.Ltd.,)** is cited.

9. The contention of the appellant is that the appellant has nothing to do with Amirtha Textiles. The petition filed by the said Nagaraj in E.C.No.93 of 2016 was dismissed by the Labour commissioner, but, the Labour Commissioner failed to follow the same yardstick in this case. Amirtha tex belonged to one Senthilkumar, he was not impleaded as party in the case. Unless Senthilkumar is impleaded as a party, the employer and employee relationship cannot be proved. The company that belonged to the appellant, by name, Haritha Tex was closed in the year 2005. The appellant is not a



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partner or owner of Amirtha Textiles. Without considering the ownership, the Labour Commissioner has passed the order against the appellant, which is not reasonable. The order was passed against Haritha tex, which is not justifiable.

10. On the side of the appellant, it is stated that the deceased has worked only for a period of 5 months prior to the date of accident and that the claimants are not entitled to claim compensation. A judgment of the Madhya Pradesh High Court reported in **2013-AAC-3232 (Ghansu Dongre V. Gulab Rao)** is cited, wherein, it is stated as follows:

“6. In the present case, no document has been produced by the claimant to show that the deceased was paid on the monthly basis. On the other hand, the evidence produced by the claimant himself shows that payment was made on daily basis whenever persons were engaged in the work of decoration. Further, the deceased died while running from the spot to save himself from the stones thrown from the persons and due to darkness, fell in the well. Thus, the death of deceased cannot be said to be due to his participation in the said employment with the appellant but it may be the death due to situation created on the spot, therefore, the employer cannot be held liable to pay the compensation considering the judgment of the Hon'ble Apex Court passed in the matter of Mallikarjuna G. Hiermath (supra). Since, it has not been



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proved that the deceased was receiving monthly salary, the judgment cited by the learned counsel for the respondents is not applicable to the present case. Therefore, the learned Commissioner is not justified in passing the impugned order overlooking the fact that the deceased was only a casual employee in the absence of any evidence with regard to his employment. Even, there is no evidence of contract between the deceased and also even there is no evidence that the deceased was employed with the appellant for a continuous period of 6 months. Therefore, the substantial question of law is answered in favour of the appellant and against the respondents. Consequently, the appeal is allowed and the impugned award passed by the learned Commissioner is set aside.”

11. It is stated that the deceased was working under the third respondent-Amirtha Textiles that belonged to one Balasubramanian, who was the father of the appellant. Since Balasubramanian died, the appellant and the second respondent were impleaded as the LR's of the first respondent-Balasubramanian. Registration certificate for Haritha Textile was marked as Ex.R3.



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12. The appellant had filed a counter, wherein, he has admitted that the deceased - Nagendran was working as a driver in his Firm, by name, Haritha Tex. Ex.R3 was the registration certificate for Haritha Tex. The relationship of employer and employee between the appellant and the deceased was admitted by the appellant.

13. On the side of the appellant, it is stated that the appellant got the permission of the owner of Amirtha textile to accomodate Nagendran and one Nagaraj in the building that belonged to the Amirtha textiles. The contention of the claimant is that the owner of the textile asked them to stay in the office so that he can travel to some other place in the early morning. Even in the counter, the appellant has admitted that Nagendran was working as a driver with the appellant. The appellant admitted that the deceased was his employee, it is decided that the employer and employee relationship between the appellant and the deceased was proved.

Issue No.2:

14. The claim of the appellant is that he was no way connected with the Amirtha tex, but, the accident took place in Amirtha textiles building. The appellant himself has admitted that he was the person, who got permission



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from the owner of Amirtha Textiles to accommodate the deceased, to stay there. The contention of the claimants is that the deceased was asked to stay at the premises to drive the car of the owner to attend a meeting in the morning, which is reasonable.

15. Hence, it is clear that it was the appellant, who asked the deceased to stay in Amirtha textiles. Hence, it is decided that the deceased... met with an accident in the course of employment.

Issue No.3:

16. On the side of the appellant, it is stated that the Labour Commissioner was not correct in fixing the age and salary of the deceased.

17. The age of the deceased was mentioned as 20 years in the claim petition. In the post mortem certificate-Ex.P2, the age of the deceased was mentioned as 20 years. There was no rebuttal evidence on the side of the appellant. Hence, the Labour Commissioner fixed the age of the deceased as 20 years, which is reasonable.



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18. Considering the G.O.(2D) No.47, Labour and Employment Department, dated 01.08.2003, the Labour Commissioner fixed the notional income as Rs.4,000/-. The fact that the deceased was working as a driver was not denied by the appellant and hence, it is decided that the salary as calculated by the Labour Commissioner is reasonable.

Issue No.4:

19. On the side of the appellant, it is stated that the owner of the Amirtha Textile is to be impleaded as a necessary party. Since the owner of the Amirtha textile, died during the course of the proceedings, the appellant and the respondents 4 and 5 were impleaded as the LR's of the deceased-Balasubramanian. Since the appellant is one of the LR of the deceased-Balasubramanian and since the appellant has admitted that the deceased was his employer, there is no necessity to implead any other owner of the Amirtha textile. This question raised by the appellant is not sustainable.

20. For the reasons stated above, it is decided that there was a relationship of employer and employee between the deceased and the appellant. The accident has taken place in the course of employment and hence. it is decided that the order of the Labour Commissioner is reasonable.



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21. The Labour Commissioner has fixed the monthly income as Rs.4,000/-. After deducting 50% (Rs.2,000/-) towards the own expenses of the deceased and considering the age of the deceased, the Labour Commissioner applied factor 1224.00 and calculated the loss of income at Rs. 4,48,000/- (Rs.2000/- X 224.00) and after adding Rs.2,500/- towards funeral expenses and has fixed the total compensation as Rs.4,50,500/-, which is reasonable.

23. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Appeal is dismissed. No costs.

21.12.2022

Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

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To

- 1.The Commissioner for Employee's Compensation,
Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
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