



C.M.A(MD)No.1207 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.12.2022

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THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.1207 of 2022

and

CMP(MD)No.12299 of 2022

1.The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Sachidananda Moopanar Road,
Thanjavur.

2.The Assistant Manager,
Tamil Nadu Civil Supplies Corporation,
Punalkulam Village,
Thethuvasal Patti(PO),
Kandharvakottai (TK),
Pudukottai District.

... Appellants/Respondents 1 & 2.

Vs

1.S.Nallathambi

... 1st Respondent/Petitioner

2.R.Ravi

3.The Divisional Manager,
The New India Assurance Company Ltd.,
815/P, Market Road,
Thanjavur-1.

... Respondents 2 & 3/Respondents 3 & 4

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30(1) of the
WC Act, to set aside the award dated 15.11.2019 received on 20.12.2019



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made in W.C.No.86 of 2014 on the file of the Commissioner Workmen's Compensation (DCL), Trichy.

For Appellants : Mr.G.Mohankumar

For R3 : M/s.P.Malini

JUDGMENT

This is an appeal filed under the Workmen Compensation Act by the Tamil Nadu Civil Supplies Corporation, challenging the award of Rs.2,85,725/- passed by the Commissioner for Workmen's Compensation (DCL), Trichy, in W.C.No.86 of 2014 dated 15.11.2019.

2.The first respondent was engaged as a loadman in the godown of the appellants and was working as such from 2009 September onwards. Whiles, on 22.02.2013, while the claimant was loading some paddy bags in the lorry of the third respondent, at about 03.30 p.m, the paddy bags slipped and his right side hip was fractured, due to which, the claimant was admitted as an inpatient in the Ganga Multispeciality Hospital from 23.02.2013 to 28.02.2013.

3.The first respondent therefore filed an application before the Workmen's Compensation (DCL), Trichy, in W.C No.86 of 2014 seeking compensation for the above said accident for an amount of Rs.10 lakhs.



4.The first appellant filed a counter and contested the claim petition.

The main ground of defence in the counter affidavit was that the petitioner was not engaged by the appellants, but engaged by the Contractor (Maistry) and therefore, the liability was only that of the Contractor (Maistry). The appellants incidentally raised other issues also before the Workmen's Compensation (DCL), Trichy.

5.On the basis of the evidence on record and the pleadings of the parties, Workmen's Compensation (DCL), Trichy, allowed the claim petition and awarded Rs.2,85,725/- along with at 12% interest with a direction to the appellants herein to pay the same to the claimant.

6.Aggrieved by the order passed by the the Commissioner for Workmen's Compensation (DCL), Trichy, the appellant/Corporation has filed the present appeal.

7.The learned counsel for the appellants submitted that as the first respondent was engaged by the Contractor for doing loading and unloading of paddy bags in the godown of the appellants' Corporation the liability was only that of the Contractor. The learned counsel further submitted that the quantum of compensation awarded by the Commissioner of Labour was on the higher side and therefore, the same cannot be sustained.



8.I have heard the learned counsel for the appellants and the learned counsel for the third respondent and perused the materials placed before me.

9.I am of the opinion that the submission of both counsels that the liability is not of the Corporation but that of the Contractor (Maistry), who engaged the claimant is untenable in view of the provisions of Section 12 of the Workmen's Compensation Act. Section 12 of the Act reads as follows:-

“12. Contracting.- (1) *Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.*



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(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.”

10.It is seen from the above provision that the liability is of the principal and that the principal is entitled to be indemnified by the contractor. The legislation is a beneficial legislation aimed at benefitting the worker so that the worker is not made to suffer.

11.Further, in the judgment of this Hon'ble Court in the case of **the Management, ISRO, Tirunelveli Vs V.Arasi** under similar circumstances it was held by this Court that where the payment was made by the principal on failure to pay by the employer, the principal was entitled for indemnification. It was further held by relying on the judgment in **National Insurance**



Company Ltd., Vs Chella Bharathamma & others (2004 (8) SCC 517) that the principal employer need not file a suit for recovering the money but may initiate proceedings before the executing Court as if the amount payable by the contractor was decided in favour of the principal and if the contractor on notice failed to pay the principal would file EP as if the order was a decree in its favour against the contractor.

12.It is seen that the appellant/Corporation is entitled to reclaim the amount paid by it, from the contractor (Maistry), when the statute gives liberty to the workman to claim from the principal, it was the duty of the principal to implead the contractor and secure its interest. In the present case, no such steps were taken by the principal and so the workman cannot be deprived of the benefit conferred on him by the Act.

13.In the light of the pleadings, provisions of the Act and the judgment of this Hon'ble Court referred to above, I am of the view that the plea of no liability cannot be sustained and therefore, the same is rejected.

14.On the issue of quantum, the learned counsel for the appellant submits that a doubt arises on the genuineness of the injury as the evidence of the doctor P.W.2 was not consistent with the workman's case. According to the



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counsel whereas the claimant states that the hip injury was on the right side, the doctor as P.W.2 deposed that the injury was on the left side. It is seen that no such plea was taken in the counter. In the counter to the claim petition it was stated that there was a injury, but the same had healed. The plea now taken was not raised and hence, the same is rejected.

15. Therefore, I find no merit in this appeal.

16. Accordingly, the Civil Miscellaneous Petition is dismissed and the the award passed by the Workmen's Compensation (DCL), Trichy, in W.C.No. 86 of 2014 dated 15.11.2019, is hereby confirmed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

16.12.2022

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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N.MALA, J

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To

- 1.The Workmen's Compensation (DCL),
Trichy.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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