



C.M.A(MD)No.1100 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.10.2022

Pronounced on : 23.12.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1100 of 2021

and

C.M.P.(MD)No.10530 of 2021

The Branch Manager,
Indian Bank,
Thachanallur, Tirunelveli.

: Appellants / 2nd Respondent

Vs.

1.Petchiammal

2.M.Esakkiammal

3.M.Ramya

4.Minor.Maanisha : Respondents 1 to 4/Applicants 1 to 4

5.Mariyappan :5th Respondent/ 1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, to set aside the order passed by the learned Deputy Commissioner of Labour, Tirunelveli, made in W.C.No. 62 of 2015, dated 02.08.2021.

For Appellant : Mr.S.Suresh,



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For Respondents : Mr.K.Kumaravel,
for Mr.S.Muthumalai raja,
for R1 to R3.

: No Appearance, for R5.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in W.C.No.62 of 2015, dated 02.08.2021, on the file of the learned Deputy Commissioner of Labour, Tirunelveli.

2. The appellant/second respondent, who was made jointly and severally liable with 5th respondent/1st respondent to pay compensation of Rs.5,17,010/- with interest to the respondents 1 to 4/claimants for the death of one Mani, consequent to an accident occurred on 18.02.2014, challenged the liability mulcted on it.

3.For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

4. The case of the claimants is that on 18.02.2014, the deceased Mani was doing work given by the respondents 1 and 2 in connection



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with the painting work for the second respondent and at the lunch time, when the deceased was taking water from the Well for the painting works as directed by the first respondent, fell into the Well and he died on the spot itself, that the accident was occurred during the course of the employment; that the deceased was aged 55 years and was hale and healthy at the time of accident; that the petitioner was earning Rs.15,000/- per month and that since the claimants being the legal heirs and the dependents of the deceased are entitled to claim compensation from the respondents 1 and 2.

5. The defence of the fifth respondent/ first respondent is that the fifth respondent himself is a Coolie and was working on daily wages; that the fifth respondent and the deceased Mani were belonging to the same village, Tharucal; that the deceased Mani was a chronic diabetic patient and his leg fingers were amputated; that he lost his balance and fell into the Well by accident; that the first respondent was not at all present at that time and that the above petition has been filed with an intention to extract money from him.



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6.The defence taken by the appellant/second respondent Bank is that there is no employer and employee relationship between the deceased Mani and the respondent/Bank, that the appellant did not engage the deceased Mani to paint work and hence, the appellant is not a necessary party to the above case and that therefore, the respondents are not at all liable to pay any compensation to the claimants.

7. During enquiry, the claimants have examined the first claimant Petchiammal as P.W.1 and exhibited five documents as Ex.P.1 to Ex.P.5. The fifth respondent/first respondent has examined his son Nagarajan as R.W.1 and examined himself as R.W.2 and adduced no documentary evidence. The appellant/Bank has examined its official Thiru.Subramaniasiva as R.W.3 and adduced no documentary evidence.

8. The learned Deputy Commissioner of Labour, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned award, dated 02.08.2021, holding that the appellant and the fifth respondent are jointly or severally liable to pay compensation of Rs.5,17,010/- with interest. Aggrieved by



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the said award, the Indian Bank has come forward with the present appeal.

9. The substantial questions of law framed by this Court are :

(i) Whether the learned Commissioner for Employees Compensation erred in rendering a finding that there existed an employer and employee relationship between the appellant and the deceased Mani, despite showing that there is no privity of contract between them and that the appellant has never engaged the said Mani and never paid any amount ?

(ii) Whether the impugned award, dated 02.08.2021 passed in W.C.No.62 of 2015 by the Deputy Commissioner of Labour, is liable to be set aside ?

10. It is not in dispute that the deceased Mani, R.W.1 Nagarajan, who is none other than the son of the first respondent and one Eswaran were involved in painting work for the second respondent Bank. It is also not in dispute that during the lunch time, when the said Mani had attempted to take water, he fell down in the Well and died.



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11. The main contention of the claimants is that the deceased Mani was working under the respondents 1 and 2 and as such, they are liable for the claim. But, on the other hand, it is the specific stand of the first respondent that he is neither employer nor contractor; that he is only a Coolie and used to go to work with other workers of his locality; that since the deceased Mani was not having eight fingers in his leg, he lost his balance and fell into the Well and that therefore, he is not liable for the claim.

12. It is the specific stand of the second respondent Bank that there is no privity of the contract between the bank and the deceased Mani; that there was no relationship of employer-employee between them; that the Well in which the said Mani fell down was in no way connected with the Bank building and that therefore, they are not liable for the claim.

13. It is pertinent to note that the second respondent Bank in their counter statement have denied the complaint averments that the first respondent had taken contract work of painting with the second respondent. But, R.W.3 staff attached to the second respondent bank in



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his chief examination affidavit would say that the deceased Mani was working under the first respondent Mariappan and the Bank has cross examined the other witnesses with the stand that the deceased Mani was working under the first respondent.

14. As rightly contended by the learned counsel for the appellant that the complaint was lodged by one Nagarajan, who is the son of the first respondent and on that basis, FIR came to be registered in Crime No.108 of 2014 under Section 174 Cr.P.C.

15. As rightly pointed out by the learned counsel for the appellant, it has been stated in the FIR, that the complainant Nagarajan, along with Eswaran and Mani were working in the Thachanallur Indian Bank for the past one week in the work undertaken by his father. R.W.1 Nagarajan in his chief examination would say that he was also working with the deceased Mani at that time. But, he would admit in the cross examination made on behalf of the second respondent that there was no connection between the Indian Bank and the deceased Mani.



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16. The first respondent in his chief examination affidavit has stated that on 18.02.2014, he had to visit his relative and his son accompanied the deceased Mani for painting work that was going on Thachanallur, Indian Bank.

17. The first claimant P.W.1 in her cross examination would admit that salary was given to her husband by the first respondent; that her husband was not a bank employee and that he was only doing the painting work to the bank buildings. She would further say that her husband was taken to the work by the first respondent on the occurrence day and that the first respondent used to take her husband whenever he proceeds for work.

18. No doubt, the appellant bank has produced the sanction letter, lease deed and renewal of lease deed along with typed set of papers before this Court. Admittedly, they have not chosen to file the above documents before the trial Court.



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19. By merely filing some documents along with the typed set of papers filed along with the appeal memorandum, it cannot be said that the said documents were presumed to be proved. It is pertinent to note that the documents are to be proved in the manner known to law and the other side must be given an opportunity to counter the same. Whatever it is, as already pointed out, there is absolutely no material available to show that the bank employed the deceased Mani. But, at the same time, it is evident from the records and even from the admission made by the second respondent during enquiry, the first respondent was given contract work of painting the bank building and that the deceased Mani was working under the first respondent contractor.

20. Section 12 of the Employees Compensation Act is intended to secure to an employee's right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor, but also against the person who had employed such contractor to execute the work, who is referred to, as the Principal.



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21. The main object of enacting Section 12 of the Employees Compensation Act is to secure compensation to the employees, who have been engaged by the principal employer through a contractor for the work, which the principal employer is supposed to carry out. The Employees Compensation Act is a piece of social security and welfare legislation and its provision have to be interpreted in a manner so as to subsense the employees of the benefit of the legislature.

22. In some cases, the contractor may not be a man of means or he may be merely a man of straw or it may be that wittingly or unwittingly he may possibly be part of an arrangement conceived by the principal to avoid confrontation directly with the employee engaged in the execution of the work.

23. A pragmatic method has thus been devised for fixing the liability of the principal employer and thereby affording speedy relief to the employee for payment of compensation on account of the accident, though the principal has been invested with the right of indemnifying himself from the contractor who may have employed the employee and may have been responsible for immediately taking work from him.



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24.As rightly contended by the learned counsel for the appellant, the Deputy Commissioner of Labour without considering the available materials on record in proper perspective, has mechanically rendered a finding that the respondents 1 and 2 are jointly liable.

25. It is evident from the records that the appellant has paid the amount. Since the first respondent is the contractor of the appellant and he had employed the deceased Mani to do work, the appellant is entitled to be indemnified by the first respondent as per Section 12 of the Employee's Compensation Act.

26. In *National Insurance Co. Ltd. Vs. Challa Bharathamma and Others* reported in *2005 1 L.W. 105*, the Hon'ble Supreme Court has held that the appellant need not file any separate suit for recovery of compensation amount paid by it to the employee and the appellant may initiate proceedings before the concerned Court.

27. Considering the materials available on record, the quantum of compensation awarded by the Deputy Commissioner of Labour cannot



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said to be excessive. Hence, this Court concludes that the appeal is liable to be allowed partly and the above points are answered accordingly.

28. In the result, this Civil Miscellaneous Appeal is partly allowed and the finding of the Tribunal that the appellant and fifth respondent are jointly and severally liable to pay the compensation is set aside. The appellant is entitled to be indemnified by the fifth respondent. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

23.12.2022

Index : Yes : No
Internet : Yes : No
das

To

- 1.The Deputy Commissioner of Labour,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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