



C.M.A.(MD)No.717 of 2005

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD)No.717 of 2005

1.Commissioner,
Thottiam Panchayat Union,
Thottiam.

2.The President,
Alakkarai Panchayat Union,
Alakkarai, Trichy District.

... Appellants

vs.

1.Vellaiyan (Minor)
2.Subramanian (Minor)
R1 and R2 rep. by their grandfather and natural
guardian V.A.V.Karuppa Chettiar

3.R3 was transposed as second appellant, as per
the order of this Court, dated 13.09.2006,
made in M.P.(MD)No.1 of 2006

4.The Asst. Engineer (Works and Maintenance),
T.N.E.B., Musiri.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 30(1)(a) of the
Workmen's Compensation Act, 1923, against the order passed by the



C.M.A.(MD)No.717 of 2005

WEB COPY

Commissioner for Workmen's Compensation, Deputy Commissioner of Labour, Trichy-20, dated 19.03.2004, made in W.C.No.237 of 2001, received by the appellant on 19.05.2004.

For Appellants : Mr.C.Baskaran
Government Advocate

For Respondents 1 and 2: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed by the Deputy Commissioner of Labour, Trichy, in W.C.No.237 of 2001.

2. The brief facts of the case is that, on 31.01.2001, one Shanmugam, who was working as a temporary Electrician under the President of Alakkarai Panchayat Union, while attending the fault in the electrical post in the Village, was electrocuted and died. The First Information Report for the unnatural death was registered by the Police and investigated. Seeking Rs.5,00,000/- as compensation under the Workmen's Compensation Act, 1923, a petition was filed by the minor children of the deceased. As per the petition, the said Shanumugam at the time of death, was 35 years old, drawing salary of Rs.4,250/- per month and



C.M.A.(MD)No.717 of 2005

WEB COPY

perks of Rs.1,000/- per month. Therefore, the respondents 1 and 2, who are the minor children of the deceased Shanumugam, are entitled for compensation of Rs.5,00,000/-.

3. The Deputy Commissioner of Labour, Trichy, after considering the evidence let in by the respondents 1 and 2, both orally and through documents, rejected the plea of the second appellant that the deceased Shanmugam was not a workman under them. Relying upon the statement of witnesses given to the Police in the course of investigation and the content of the F.I.R., as well as the Postmortem Report, the Deputy Commissioner of Labour, Trichy, has held that the said Shanmugam was an employee under the second appellant. Though there is no proof for his salary or income, taking him as a daily wager, Rs.197.06 has been fixed as daily wage and Rs.2,46,325/- has been fixed as compensation for loss of income. In addition, Rs.2,500/- has been fixed for funeral expenses. The said award is challenged in this Civil Miscellaneous Appeal.

4. At the time of admission, this Court has formulated the following substantial questions of law:-



C.M.A.(MD)No.717 of 2005

WEB COPY

"1. Whether the deceased would come under the definition of employee under Section 2 of the Workmen's Compensation Act?

2. Whether the authority deciding that the deceased was employee of the third respondent and awarded compensation in respect of the appellant is maintainable in law?"

5. The deceased Shanmugam claimed to be a daily wager under the second appellant Panchayat Union and the First Information Report [Ex.W.1] indicates that the accident occurred when Shanmugam tried to mend the fault in the electrical post maintained by the local body, the second appellant. Being the daily wager and the respondents 1 and 2/claimants, being the minor children of the deceased employee, they were not in a position to produce any record for employment of the deceased employee. However, the First Information Report, which is a contemporaneous document and marked as Ex.W.1, indicates that the said Shanmugam died while climbing the electric post maintained by the local body to mend the fault with the authorization and permission of the second appellant. From Exs.W.1 to W.4, the respondents 1 and 2/claimants have proved that they are the legal heirs of Shanmugam [Ex.W.4]. The said Shanmugam died



C.M.A.(MD)No.717 of 2005

on 31.01.2001 due to electrocution. After registering the F.I.R. for unnatural death, statements have been recorded by the Investigation Officer and it forms part of Ex.W.1. The Deputy Commissioner of Labour, Trichy, taking note of the fact that the respondents 1 and 2/claimants are unable to produce any proof for salary, has taken into account the daily wage to fix the compensation. Accordingly, the amount has been arrived at as per the schedule under the Workmen's Compensation Act.

Loss of income:	$50/100 \times 2,500 \times 197.06 = \text{Rs.}2,46,325$
Funeral Expenses:	Rs. 2,500

Total	Rs.2,48,825

6. In the appeal, the question as to whether the deceased Shanmugam falls within the definition of 'workman' has been raised as one of the substantial questions of law. For the said purpose, it is relevant to extract below Section 2(1) (n) of the pre-amended Workmen's Compensation Act, 1923, which reads as under:-

*"2(1)(n) "workman" means any person any person
who is-*



C.M.A.(MD)No.717 of 2005

WEB COPY

(i) a railway servant as defined in 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

(i-a) (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 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 the Armed Forces of the Union; and any reference to a workman



C.M.A.(MD)No.717 of 2005

WEB COPY

who has been injured shall, where the workman is dead, include a reference to his dependants or any of them."

7. Schedule II of the Workmen's Compensation Act, 1923, listed out the persons, who are subjected to Section 2(1)(n) of the Act and it is an inclusive definition. On reading through the list of persons enumerated under Schedule II of the Act, this Court finds that entry (ix) includes the person 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. Thus, it is very clear that the said Shanmugam, who had been engaged by the second appellant herein to maintain electric post, has been electrocuted in the course of his employment and therefore, as an employer the second appellant and as a superior authority of the second appellant, the first appellant, both are liable to pay compensation under the Workmen's Compensation Act, 1923. The Deputy Commissioner of Labour, Trichy, in his award dated 19.03.2004, in W.C.No.237 of 2001, has considered all these facts and passed the award in favour of the respondents 1 and 2/claimants. This Court finds no error in appreciation of evidence or law. Hence, the substantial questions



C.M.A.(MD)No.717 of 2005

WEB COPY

of law (1) and (2) are answered in affirmative. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

Index : Yes / No
Internet : Yes
smn2

07.12.2022

To

- 1.The Deputy Commissioner of Labour,
Tiruchirappalli.
- 2.The Assistant Engineer (Works and Maintenance),
T.N.E.B., Musiri.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.717 of 2005

DR.G.JAYACHANDRAN, J.

smn2

JUDGMENT MADE IN
C.M.A.(MD)No.717 of 2005

DATED : 07.12.2022