



WEB COPY



C.M.A.No.3078 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3078 of 2005

Assistant Engineer,
Korattur Telephone Exchange,
B.S.N.L., Korattur, Chennai

... Appellant/Petitioner

Vs.

1. The Commissioner for workmen Commissioner-I
The Deputy Commissioner of Labour,
DMS Compound, Teynampet, Chennai -6

2. V. Kathirevelu

3. J. Shyam

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 30 of workment Compensation Act to set aside the order passed in W.C.No. 40 of 2003 dated 28.02.2005 and communicated on 07.04.2005 on the file of the first Respondent and pass orders.

For Appellant	:	Mr. S. Gopinathan
For R1	:	Mr.C. Jayaprakash
For R3	:	M/s.M. Gnanasekar



C.M.A.No.3078 of 2005

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Appellant to set

aside the order passed by the first respondent on 28.02.2003 in W.C.No. 40 of 2003.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal. The case in brief is as follows.

3. The workmen/petitioner herein is a contract labour through the second respondent/contractor and the first respondent is the principal employer. While the workmen was giving telephone connection at Kannagi Nagar, Korattur on 05.02.2002 at about 12.00 noon, due to sudden electrical shock he sustained severe injuries. He was admitted in K.M.C. Hospital and F.I.R was lodged by him relating to the occurrence. Thereafter, he approached the Commissioner of Workmen compensation for granting compensation for the injuries sustained by him during the course of his employment.



4. The claim was resisted by the first respondent/BSNL on the ground they have engaged contract workers for the purpose of laying pipe line on the ground and not engaged any workmen for the purpose of giving house connections as they are having permanent employees in the Department. The allegation of the workmen that he has been engaged by them for giving telephone connection on the date of occurrence is false and that there is no employer-employee relationship between the workmen and the first Respondent/BSNL. The contractor remained ex-parte and he has not appeared for the enquiry before the Commissioner of workmen.

5.Before the commissioner of workmen, the appellant has examined himself as P.W.1 and the Doctor who has given treatment was examined as P.W.2 and marked documents Ex.A1 to A4. On the side of the first respondent/BSNL no witness or no documents have been marked.

6.After considering the evidence placed on record the first respondent/Commissioner for workmen Commissioner-I has awarded Rs.1,87,076/- along with 17% interest from the date of injury till the date of realisation.

7.Aggrieved over the award passed by the first



C.M.A.No.3078 of 2005

respondent/Commissioner for workmen Commissioner-I, the Appellant/BSNL has approached this Court by way of this appeal, raising a substantial question of law that whether the finding of the commissioner that there is master and servant relationship between the deceased and the Appellant/ BSNL based on presumption is valid under law?

8. The learned counsel for the appellant would contend that there is no evidence to show that workmen was employed by contractors for the purpose of giving telephone connection to a customer and they have regular employees to do such work and the contractor was employed only for the purpose of giving pipe line through ground. The commissioner without proper evidence wrongly raised a presumption against the appellant and same is not justifiable under law.

9. I have perused the records and also heard the learned counsel for the appellant. On perusal of the award and records connected to the award it shows that the workmen has been examined as W.W.1 and he deposed that the second respondent is the contractor and first respondent/BSNL is the principal employer. The workmen herein was directed to give telephone connection for the house at Kannagi Nagar, Korattur, on 05.02.2002 around 12.00 noon he claimed over the terrace of the building for connecting the



wires, which resulted in fire accident and the workmen sustained grievous injuries. Immediately he was taken to K.M.C hospital and treated for 6 days as impatient. This accident was known to both the respondents but they have not come forward to assist him. Hence the workmen/second respondent has issued legal notice/Ex.A.1 on 03.09.2002 . On perusal of Ex.A.1 it shows that the workmen has categorically called both the respondents to pay compensation for the injuries sustained by him and claimed that the first respondent/BSNL is the principal employer. However, both the respondents have not given reply to his legal notice.

10. Ex.A.2-F.I.R shows that immediately after the occurrence, F.I.R has been registered in Crime No.56 on the file of E3 Korattur police Station and statement was recorded from him, wherein he has narrated the incident. According to him one month prior to the occurrence he was joined as a workmen with the contractor and on 05.02.2002 while he was engaged to provide telephone connection he sustained injuries. Ex.A1 and A2 corroborates the occurrence and it is admitted that BSNL has not given any reply to the legal notice issued to them denying the engagement of contract employee and also they have not raised any protest for the F.I.R filed by the workmen. In the said F.I.R it has been categorically stated that the workmen



was attending the work under the Appellant/BSNL.

WEB COPY

11. The Hon'ble Supreme Court in ***Bank of Baroda Vs Ghermarbhai Harijibhai Rebari 2005 (10) SCC 792*** held that when the workman has established prima facie case that he was workman and the management have not taken case even to rebut the same with any evidence, then evidence of workman shall be accepted, by following the Judgment of Apex Court cited supra, this Court in CMA (MD) 414/2013 Branch Manager, ***National Insurance Company Ltd., vs Rajammal and 3 others dated 14.11.2017*** has held that in Paragraph 16 held that if the evidence placed on record shows that there was employer-employee relationship and finding given regarding the same shall be considered only as a question of fact and same shall not be considered as substantial question of law for determination in this appeal as required under Section 30 of Workman Compensation Act.

12. Admittedly, the BSNL has not adduced any evidence before the Labour Commissioner to show that they have engaged contract workers only for the purpose of laying pipe line and not for providing telephone connections to the house. They have not even come forward to give reply to the legal notice issued to them to pay compensation. In Exhibit A2. F.I.R immediately after the accident the workman claimed that he was attending



C.M.A.No.3078 of 2005

the work assigned by the BSNL for the past one month through contractor.

It also shows that accident resulted in causing severe injuries on the workman. After discharge, the workman sent a legal notice called upon the respondents to pay compensation and same was also not replied. The oral and documentary evidences, prima facie supports the case of the workmen regarding the employer-employee relationship. In the absence of any contra evidence, placed on record, the Labour Commissioner has rightly concluded that the workmen was engaged by the contractor of the BSNL and as a principal employer, the appellant herein is liable to pay compensation and accordingly there is no infirmity in the order passed by the first respondent and there is no substantial question of law for determination of this appeal, Accordingly the award in W.C.No.40 of 2003, dated 28.02.2005 is hereby confirmed and this appeal is dismissed. No order as to costs.

30.06.2023

smn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



WEB COPY



C.M.A.No.3078 of 2005

To:

1. The Commissioner for workmen Commissioner-I
The Deputy Commissioner of Labour,
DMS Compound, Teynampet, Chennai -6

2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A.No.3078 of 2005

K.RAJASEKAR,J.

smn

Civil Miscellaneous

Appeal No.3078 of 2005

30.06.2023