



C.M.A.No.24 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.24 of 2014

and

MP.No.1 of 2014

V.Perumal

...Appellant

Vs.

1. K.Sekar

2. Sundar

3. S.Mani

...Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, as against the order dated 14.11.2012 (Served on the appellant on 23.08.2013) made in W.C.Case.No.398 of 2010 by the Commissioner-II for Workman Compensation cum Deputy Commissioner of Labour-II, Teynampet, Chennai - 600 006.

For Appellant : Mr.S.Sathish Rajan

For Respondents : No Appearance



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JUDGEMENT

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This Civil Miscellaneous appeal has been filed, challenging the order dated 14.11.2012 made in W.C.Case.No.398 of 2010 by the Commissioner-II for Workman Compensation cum Deputy Commissioner of Labour-II.

2. For the sake of convenience, the claimant and the respondents will be referred to in the same order in which they were arrayed before the Workmen's compensation Court.

3. It is the case of the claimant that, on 09.07.2010 at about 3.30 pm, when the claimant was engaged in his work under the 1st respondent who was the Sub-contractor under the 2nd respondent who is the contractor under the 3rd respondent, in the course of his employment, the claimant fell down and sustained grievous injuries including fracture which resulted in the claimant being hospitalized and getting medical attention. Thereby, the claimant filed a claim petition claiming a compensation of Rs.5,00,000/- before the Commissioner for Workman's compensation, who in turn, passed the present impugned order awarding a compensation of Rs.2,60,157/- and fastened the



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entire liability as against the appellant. Aggrieved by the said order the appellant has preferred this appeal.

4. Learned counsel for the appellant/3rd respondent in the claim petition submitted that, the claimant was employed by the 1st respondent who is a Sub-contractor under the 2nd respondent to whom the 3rd respondent had given some contractual works. Towards the execution of the said contractual works, any person employed by the 1st respondent would have to be construed as an employee under the said respondent and the said person cannot be considered to be an employee of the 3rd respondent. However, erroneously, the Commissioner had considered the claimant to be the employee under the 3rd respondent which is not sustainable. Further, without admitting the status of the claimant being the employee under the 3rd respondent/appellant, it is the stand of the appellant that compensation awarded under various heads are excessive and the disability fixed at 40% is on higher side and the same requires to be interfered with.

5. Though notice was served on the respondents and their names were printed in the cause list, however, none appeared on their behalf. Considering



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the period of pendency of the appeal, this Court is inclined to dispose of the same based on the materials placed on record.

6. There is no dispute about the fact that the appellant/3rd respondent has employed the 2nd respondent as the contractor who has in turn appointed the 1st respondent as the sub-contractor under whom the claimant was employed. The charges towards all the works executed by the 1st respondent with the help of the claimant so employed are paid by the 3rd respondent/appellant. The said factum is not in dispute. However, there is no direct payment from the 3rd respondent/appellant to the claimant but it is rooted through the 1st and 2nd respondent. Merely because the amount has not been paid directly by the 3rd respondent/appellant to the claimant and it is only the 1st respondent who pays the amount to the claimant will not absolve the 3rd respondent/appellant from its legal obligation as the employer.

7. Though the appellant/3rd respondent claim that the claimant was employed by the 1st respondent, however, it is for the works which are to be executed for the 3rd respondent/appellant, who has employed the 1st respondent



through the 2nd respondent and who pays all the charges in the execution of the said works, and thereby, the 3rd respondent/appellant would partake the character of employer in relation to the work done by the claimant, and therefore the 3rd respondent/appellant cannot wriggle out of his liability to pay the compensation.

8. While the 3rd respondent/appellant would be the principal employer, the 1st and 2nd respondent in their respective positions would be the immediate employers of which, the 1st respondent would be the immediate employer of the claimant. But the 1st respondent being the immediate employer of the claimant would not absolve the 3rd respondent/appellant from being the principal employer of the claimant and definitely in such a scenario, the employer-employee relationship between the 3rd respondent/appellant and the claimant cannot be said to be non-existent. There definitely is an employer-employee relationship between the 3rd respondent/appellant and the claimant and on the basis of the said finding, the Commissioner has fixed the 3rd respondent/appellant as the employer who is liable to pay the compensation under the



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Workmen's compensation act, which finding is logical, reasonable and is liable to be sustained.

9. Insofar as the quantum of compensation awarded by the Commissioner under various heads are concerned, under the head disability, the claimant has relied upon the Ex.A7, disability certificate, which fixes the disability suffered by the claimant at 40% and the Commissioner has also adopted the disability at 40% fixed by the doctor. However, considering the nature of injury suffered by the claimant, this Court feels that fixation of disability at 40% is on the higher side and fixing the disability at 30% would be the just and reasonable fixation.

10. There is no dispute with regard to the monthly emoluments of the claimant. Accordingly, adopting the proper factor for the disability at 30% fixed by this Court, the Compensation is arrived at Rs.1,95,117/-

11. Accordingly, this Appeal is allowed in part by modifying the compensation awarded by the Commissioner from Rs.2,60,157/- to Rs.1,95,117/- and the appellant/3rd respondent is directed to deposit the above



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modified compensation amount, awarded by this Court, to the credit of W.C.Case.No.398 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Commissioner, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Commissioner for Workmen's compensation is directed to transfer the award amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

02.11.2023

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Commissioner-II for Workman Compensation cum
Deputy Commissioner of Labour-II, Teynampet, Chennai - 600 006.
2. The Section Officer, V.R.Section, High Court, Madras.

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M.DHANDAPANI, J.

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