



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3273 of 2019

S.Shankarapandian

.. Appellant

Vs.

1. SARASWATHI

2. V.LOGANATHAN

3. JAYALAKSHMI(DIED)

4. THE COMMISSIONER
CORPORATION OF COIMBATORE,
COIMBATORE-642001.

5. V.Shanmugam

6. V.Poongodi

7. V.Anandan

(Respondents 5 to 8 brought on record
as legal heirs of the deceased of R3
vide order dated 11.03.2021 in WMP.No.
3407 of 2021 in CMA.No.3273 of 2019)

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.04.2019 made



in E.C.No.15 of 2014 on the file of the Commissioner of Workmen's Compensation/Deputy Commissioner of Labour, Coimbatore.

For Appellant : Mr.A.Saravanan

For Respondents : Mr. K.Vasanthanayagan RR1 & 2
R6 and R7 No appearance
R5 and R8 – No ready notice
Mr.K.Magesh R4
R3 – died (steps taken)

J U D G M E N T

This appellant/claimant has come forward with this appeal against the judgment and decree dated 12.04.2019 made in E.C.No.15 of 2014 on the file of the Commissioner of Workmen's Compensation/Deputy Commissioner of Labour, Coimbatore.

2. It is the case of the appellant is that the appellant is the Corporation contractor under the 4th respondent and doing electrical maintenance work. The respondents 1 to 3 have filed a claim petition before the Workmen's compensation Court claiming compensation of Rs.5,00,000/- alleging that the first respondent's husband as well as the father of the respondents 2 & 3 died in the course of his employment in the electricity board on 14.03.2012.



3. Before the Tribunal, during trial, in order to prove the case, on the side of the claimants, two witnesses were examined viz., PW1 and PW2 and marked 13 documents viz., Exs.P1 to P13, On the side of the respondent/Insurance company, two witnesses were examined and no document was marked. The Tribunal, considering oral and documentary evidence, allowed the petition and awarded a sum of Rs.5,000/- towards funeral expenses and also to pay a sum of Rs.6,12,360/- as compensation to the claimants. Aggrieved by the said award, the appellant has filed this appeal before this Court for enhancement of the compensation.

4. The learned counsel for the appellant submitted that the appellant herein is the contractor under the 4th respondent and he is doing electrical contract work of maintaining the street lights in the Corporation of Coimbatore, the deceased was not working as employee under the appellant. The learned Commissioner has not considered the attendance register and wages register, which were produced before the Tribunal by the appellant, during trial and passed the award in favour of the claimants, which is erroneous. There is no name of the deceased available in those registers. The findings of the learned Commissioner in fixing the liability is totally



against law and on facts. Therefore, the appellant is not responsible for the incident and he is not liable to pay the compensation to the deceased and his legal heirs. However, during pendency of the appeal, the appellant has deposited entire award amount with interest before the Tribunal as the 4th respondent has not taken any steps to deposit the compensation. Hence, The appellant is not liable to compensate the claimants and this Court may direct the 4th respondent to repay the award amount to the appellant with interest within the stipulated time as fixed by this Court.

5. Per contra, learned counsel appearing for the 4th respondent submitted that admittedly, there was a contract between the appellant and the 4th respondent for maintaining the electrical work and lamb post. As per the terms of the contract, if any untoward accident happens, the appellant is liable to compensate. In the present case, the learned Commissioner has fastened the liability as against the 4th respondent, which is not sustainable one and the appellant is liable to pay the compensation. Accordingly, the learned counsel prays for dismissing the appeal.

6. This Court gave its careful consideration to the submissions



advanced by the learned counsel appearing on either side and perused the materials available on record.

7. The factum of the accident and the nature of death are not disputed by the parties. Admittedly, the 4th respondent entered into agreement with the appellant for maintaining the lamb post work. In that process, during the employment, the contractor's employee has fell down from the lamb post and lost his life. The only grievance of the 4th respondent is that as per the agreement, if any untoward incident happens during the agreement period, the appellant is responsible for the same. During trial, the 4th respondent has explained such contention through the written statement.

8. To prove the same, the 4th respondent has to produce a copy of the agreement, but he has not produced the said contract before the learned Commissioner. Further the Corporation has not adduced any oral or documentary evidence before the Tribunal to disprove the facts of the case. Hence, fastening the liability as against the appellant is not sustainable one in the absence of any oral and documentary evidence. Fastening the liability as against the appellant is alone set aside and other findings awarded by the



learned Commissioner is confirmed. The 4th respondent is liable to compensate the victim.

9. Accordingly, the Civil Miscellaneous Appeal is allowed. The appellant has already deposited the award amount including interest for a sum of Rs.11,68,484/- before the Tribunal. Therefore, the 4th respondent Corporation is directed to pay a sum of Rs.11,68,484/- to the appellant within a period of four weeks from the date of receipt of a copy of this judgment, failing which, the 4th respondent is directed to pay the above said amount with interest at the rate of 6% per annum from 26.06.2019 to till the date of payment. The claimants are permitted to withdraw the same, as per the ratio of apportionment fixed by the Tribunal, on making proper application before the Tribunal. No costs.

17.11.2023

Index : Yes

Speaking Order : Yes

rli

To

The Commissioner of Workmen's Compensation/
Deputy Commissioner of Labour, Coimbatore.



WEB COPY



7

M.DHANDAPANI,J.

Rli

C.M.A.No.3273 of 2019

17.11.2023