



C.M.A.No.52 of 2022
and C.M.P.No.353 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.52 of 2022
and C.M.P.No.353 of 2022

Jerald

... Appellant

Versus

S.Janaki

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, seeking to set aside the order dated 29.10.2021 passed in W.C.No.78 of 2014, by the Joint Commissioner of Labour 1, Chennai.

For Appellant : Mr.P.M.Bakthavatsalam
for Mr.K.Perumal

For Respondent : Mr.S.Ravi

JUDGMENT

This appeal has been filed by the appellant/respondent challenging the compensation awarded by the Joint Commissioner in W.C.No.78 of 2014, dated 29.10.2021.



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2.The claim petition was filed stating that the deceased-husband of the respondent was working as mason in the building belonging to the appellant. On 29.09.2006 at about 11.30 a.m., while the deceased was working in the second floor of the building, he met with an accident and fell down from the second floor; that due to the said accident, he sustained compound fracture in both legs and admitted in the hospital; that thereafter, he was unable to move anywhere and bedridden till his death on 02.10.2011 and that thus, she was entitled for compensation.

3.The appellant filed a counter denying all the averments made in the claim petition and stated that the deceased was not working under him and that he entered into a contract to construct appellant's building; that as per the agreed contract, money was paid then and there; that while so, on 29.09.2006, he accidentally fell down in the construction site and thereafter he recovered from his illness and was working normally in another site; that therefore, there was no disability caused due to the accident that took place on 29.09.2006 and thus, he prayed for dismissal of the claim petition.



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4.Before the Joint Commissioner, the respondent examined herself as P.W.1 and marked Ex.P.1 to Ex.P.10 on her side. The appellant examined himself as R.W.1 but no document was marked by him.

5.The Joint Commissioner after considering the oral and documentary evidence has held that the accident occurred when the deceased was under the employment with the appellant, and hence, directed the appellant to pay a sum of Rs.3,94,120/- to the respondent as compensation.

6.Aggrieved over the award passed by the Joint Commissioner, the appellant filed the present appeal challenging the order passed by the Joint Commissioner.

7.Learned counsel for the appellant submitted that the appellant has not employed the deceased; that he was employed through a contractor; that the contractor was not made as a party to the proceedings; that hence, the appellant cannot said to be liable for paying compensation. The learned counsel for the appellant further submitted



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that the alleged accident took place on 29.09.2006 and the deceased was treated for fracture in the leg and discharged on 09.10.2006. Thereafter, he was gainfully employed and subsequently died in the year 2011 due to the renal failure and metabolic de-arrangement. Therefore, the death was not due to the accident took place on 29.09.2006. Further, the Joint Commissioner had erroneously determined the compensation by holding that the death was due to the accident, which is said to have taken place in the premises belonging to the appellant. In any case, even assuming that the appellant is liable to pay the compensation, the Joint Commissioner ought to have assessed functional disability on account of the injury suffered by him and awarded compensation on that basis since the respondent has not established the nexus between the death and the accident.

8.Learned counsel appearing for the respondent submitted that the Joint Commissioner had factually found that the deceased died due to the injuries sustained by him in the accident that took place on 29.09.2006. The said factual finding is not erroneous and hence, the same cannot be interfered in the instant appeal. Further, the Commissioner had also



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found that the deceased died during the course of the employment with the appellant. The said finding which is factual cannot be interfere with in the absence of any substantial question of law raised in the instant appeal, and hence submitted that the appeal may be dismissed.

9.Heard the learned counsel for the appellant as well as the respondent and perused the materials available on record.

10.This Court finds that on facts that the Joint Commissioner found that the appellant was liable to pay compensation by holding that the deceased was in employment with the appellant at the time of accident. This Court is not inclined to interfere with the said factual finding, as there is no infirmity in the said finding.

11.As regards the question as to whether the respondent has established the nexus between the death and the accident, this Court finds that the following facts are admitted:



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11 (a).The accident took place on 29.09.2006. Since the deceased suffered fracture in the left leg, he was admitted in the hospital and discharge on 09.10.2006 after treatment. Thereafter, the deceased died on 02.10.2011. The death certificate issued by the hospital reveals the cause of death as stated below:

“Cause of Death : Septic Arthritis / Lt.Elbow EM / Renal failure / Metabolic de-arrangement”

12.The above admitted fact shows that the respondent had not established that there was nexus between the death and the accident. The deceased had suffered renal failure and metabolic de-arrangement. Therefore, this Court is of the view that the Joint Commissioner had erroneously held that the death of the deceased was due to the accident. However, it is seen that the injury occurred during the course of employment and the compound fracture on the left leg was found to be grievous in nature. Though the respondent has not produced any document to establish the functional disability, considering the fact that the deceased was a mason, this Court is of the view that the deceased would have suffered functional disability to the extent of 40%. The



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respondent had not established the income of the deceased. Hence, the Tribunal fixed Rs.4,000/- as income under the Employees Compensation Act. There is no challenge to this finding. In respect of an injury, 60% of the income has to be taken into consideration along with the factor mentioned in the schedule. Thus, the compensation has to be as follows:

$$\text{Rs.2400 (60\% of Rs.4,000) X 197.06 (the deceased was aged 35 years) X 40/100 = Rs.1,89,177.60/-}$$

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Joint Commissioner at Rs.3,94,120/- is hereby reduced to Rs.1,89,177.60/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. It is stated that the appellant had already deposited the compensation amount along with accrued interest amounting to Rs.11,17,859/-. Hence, the respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs. The appellant is permitted to withdraw the excess amount



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lying in the deposit to the credit of W.C.No.78 of 2014. Consequently,
connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To:

- 1.The Joint Commissioner of Labour 1, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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