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C.M.A. No.2511/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01.11.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 2511 OF 2018

1. Dr. Elango
2. Dr. Brinda Elango .. Appellants

- Vs -

1. Kalliammal
2. Priya
3. Minor Saranya
4. Minor Brinda
5. 5. Anthonysamy .. Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act against the order dated 28.05.2018 passed in W.C. No.286/2017 by the Commissioner for Workmen's Compensation, Coonoor.

For Appellants : Mr. R.Nalliyappan

For Respondents : No Appearance for RR-1 & 5
RR-2 to 4 – Not Ready in Notice

JUDGMENT



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Assailing the order passed by the Commissioner of Workmen's Compensation in directing payment of compensation in a sum of Rs.7,93,240/- along with 12% interest from the date of accident till the date of deposit, to the claimants/respondents 1 to 4, the appellants are before this Court by filing the present appeal.

2. The 1st respondent, the mother of the deceased, had filed the petition before the Commissioner for Workmen's Compensation, by averring that her son, Kumar, was employed by the 5th respondent herein, who was the contractor, for the purpose of doing industrial work entrusted to the contractor, viz., the 5th respondent, by the principal employer, viz., the appellants herein. It is the further averment of the 1st respondent herein that in the course of discharge of the said work, her son Kumar met with an accident on 18.2.2015, when he fell down and sustained grievous injuries for which he was admitted at the Government Hospital, Coonoor by the contractor, and succumbed to the said injuries on 22.2.2015. Therefore, the aforesaid petition in W.C. No.286 of 2017 was preferred for payment of compensation.



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3. The said petition was resisted by the appellants herein, who were respondents 2 and 3 in the said petition, by contending that it is for the claimant to prove that her son was under the employment of the appellants. It was further averred by the appellants that they had employed the 5th respondent for the purpose of construction through oral agreement and they were not aware of the persons, who were under the employ of the 5th respondent. It was the further averment of the appellants that towards the wages to the employees who were engaged in the construction activities, it was the 5th respondent, who had paid the wages and the appellants had not paid any wages to any of the workmen. Therefore, it was averred that no relief towards compensation could be claimed from the appellants and if at all, the claimant has to claim compensation only from the 5th respondent.

4. Before the Commissioner of Workmen's Compensation, the 1st respondent examined herself as P.W.1 besides marking Exs.P-1 to P-5. On the side of the appellants herein/respondents 2 and 3, the 1st appellant was examined as R.W.1 and Exs.R-1 to R-4 were marked. Considering the



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deposition of the witnesses and the documentary evidence and also the submissions advanced on behalf of the parties, the Commissioner for Workmen's Compensation held that the appellants herein have not adduced oral evidence by examining the contractor/5th respondent herein to establish the relationship and also have not marked the agreement, which had been entered into with the contractor, which has been done merely for the purpose of wriggling out from paying the compensation to the claimant for the death of her son and further there was no dispute with regard to the employment of the deceased with the 5th respondent and that the deceased had died during the course of the employment in terms of the agreement between the 5th respondent and the appellants herein and, therefore, the appellants herein, who were the principal employer, were jointly and severally liable to pay the compensation and, accordingly, quantified the compensation aforesaid and directed deposit of the same along with interest. Aggrieved by the said order, the present appeal has been filed by the appellants/respondents 2 and 3.



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5. The appeal had been filed by the appellants by raising the following substantial questions of law :-

- i) *Whether the award of the Commissioner of Labour is maintainable especially when the claimant/applicant has not established the fact that the deceased died while he was employed under the appellants.*
- ii) *Whether the order passed by the Commissioner of Labour by fixing liability on the appellants especially when the appellants have specifically pleaded that the deceased Kumar was an employee of the 5th respondent/1st Opposite Party as workman for industrial work and he died while he was on employment under the 5th respondent.*
- iii) *Whether the award of the Commissioner of Labour is maintainable on the application of wife and children of the deceased along with mother of deceased especially when the wife and children of the deceased had left the deceased before his death and their whereabouts are not known.*

6. Though the appeal was entertained by this Court in the year 2018, however service was effected only on the 1st respondent and service is yet to



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be completed on respondents 2 to 4 and still the matter is not ready in notice regarding respondents 2 to 4. Even after a lapse of five years, the appellant has not taken any effective steps to serve notice to respondents 2 to 4. Considering the above and also the fact that the matter relates to compensation for the death of the deceased, this Court is inclined to take up the case and dispose of the same on merits. Pending the appeal, C.M.P. No.19157 of 2018 was filed seeking stay and upon deposit of the amount along with interest before the Commissioner of Workmen's Compensation, which had been complied with by the appellants, interim stay of further proceedings were granted.

7. Learned counsel appearing for the appellants submitted that the claimants have not established the fact that the deceased died while he was engaged in construction work in the premises of the appellants and, therefore, fixing the liability on the appellants to pay the compensation is wholly in correct.



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It is the further submission of the learned counsel that even it is the case of the claimant that the deceased was employed by the 5th respondent and such being the case, fastening the liability on the appellants for the purpose of payment of compensation by rendering a finding that the contractor, viz., the 5th respondent herein was not examined by the appellants is wholly unsustainable.

8. It is the further submission of the learned counsel that the claimant has neither through oral nor documentary evidence proved the alleged accident and established that the deceased died while he was engaged in the construction activity in the premises of the appellants, which facts have not been properly appreciated while passing the impugned order.

9. It is the further submission of the learned counsel that when it is clearly specified in Ex.A-1, FIR that the deceased was working under the 5th respondent, the fixing of liability on the appellant to pay the amount of compensation to the deceased is wholly unsustainable considering the



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further fact that the deceased had not died in the premises, which belonged to the appellants.

10. It is the further submission of the learned counsel that it is the duty of the claimant to prove the alleged occurrence took place within the premises of the appellant and such being the case, fastening of liability on the appellants to pay the compensation by holding that the 5th respondent was doing the work entrusted to him under an agreement with the appellants is wholly a misconstrued application of law.

11. It is the further submission of the learned counsel that though the occurrence is alleged to have taken place on 18.2.2015, however the complaint had been made by the claimant and her daughter only on 20.02.2015, which is two days after the alleged occurrence, which creates suspicion on the genesis of the death of the deceased. Further, there is no employer-employee relationship between the deceased and the appellants and, therefore, the appellants are not liable to pay any compensation.



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12. It is the further submission of the learned counsel that when the wife of the deceased along with her children, who are arrayed as claimants 2 to 5 had left the matrimonial abode even before the death of the deceased, filing of claim petition by showing them as parties to the claim petition is wholly arbitrary and not maintainable and, therefore, the impugned order deserves to be set aside.

13. Though notice has been served on the 1st respondent, however, there is no appearance for the 1st respondent. Similarly, there is no representation on behalf of the 5th respondent as well. However, considering the fact that the determination of the case revolves around the oral and documentary evidence, which have been marked before the Court and its appreciation by the Court below, this Court is inclined to take up the same and dispose of the same on merits.

14. A perusal of the materials available on record, more particularly, the post mortem certificate, which has been marked as Ex.P-3 reveals that the deceased would appear to have died of multiple injuries and its



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complications. In this backdrop, a careful perusal of the deposition of P.W.1, the mother of the deceased/1st respondent herein, reveals that the deceased was working under the 5th respondent. It is further evidenced from her deposition as also the FIR, which is marked as Ex.P-1 that the deceased had fallen down while he was engaged in the work under the 5th respondent. Therefore, the claimant had made the claim for compensation. It is further evident from the FIR that the deceased had died while he fell from a height of six feet, while he was working under the 5th respondent. It is the case of the claimant that the 5th respondent was indulged in construction activity under the appellants. Therefore, the 5th respondent is the immediate employer of the deceased, while the appellants are the principal employer.

15. However, it is the case of the appellants that it is only the 5th respondent who is liable to pay the compensation, if at all, to the claimant and the appellants cannot be fastened with the liability.

16. It is evidenced from the order of the Commissioner that the immediate employer, viz., the contractor was arrayed as the 1st respondent in



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the petition and the appellants were arrayed as respondents 2 and 3 in the petition. In the adjudication before the Commissioner, the contractor, viz., the 5th respondent herein, inspite of notice, did not contest the case and, accordingly, the contractor, viz., the 5th respondent herein was set *ex parte*.

17. It is further evident from the deposition of R.W.1, the 1st appellant, that under an alleged oral agreement between the 5th respondent herein and the appellants herein, the work of construction activity for the appellants was undertaken by the 5th respondent and in the course of carrying out the said work, the deceased was employed by the 5th respondent. However, it is the case of the appellants that they were not paying the wages and rather it was only the 5th respondent, who was paying the wages and, therefore, they are not liable to pay the compensation.

18. Though such a stand has been canvassed by the appellants, however, a categorical finding has been rendered by the Commissioner that neither the agreement of contract between the appellants and the 5th respondent has been filed before the Court for reasons, which have been



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spelt out in the impugned order, nor the 5th respondent, who was the contractor for the appellants in the construction activity was examined by the appellants as a witness. It is the duty of the appellants to establish that they don't have any relationship with the deceased as no payments were made by them and that it was only the 5th respondent, who was paying the wages to the deceased, who alone is liable to pay the compensation, if at all. If the 5th respondent had not appeared and given his evidence, the appellants ought to have filed the agreement to establish that there was no privity of contract between the appellants and the deceased and the liability for any payment towards any work discharged by the deceased lies only on the 5th respondent. In the absence of any documentary evidence to establish that the appellants were not the principal employer and that the agreement had not provided for any obligation on the part of the appellants to pay the wages, but the dealings were only with the 5th respondent, the appellants cannot shirk their liability to pay compensation to the claimant for the death of her son, which was in the course of the discharge of work, which he was doing for the appellants, though through the 5th respondent. Therefore, the appellants, as the principal employer are jointly and severally liable to pay the compensation.



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19. Though the appellants have raised a plea that the death of the deceased was in the course of carrying out the work, which was entrusted by them to the 5th respondent, which is mandatory for the purpose of holding that the appellants had a liability to pay the amount, however, the said contention does not merit acceptance for the simple reason that neither the agreement of contract had been filed to speak about the terms of contract with the 5th respondent, nor the 5th respondent contractor had been examined as a witness by the appellants to speak about the terms of the contract, which is material for deciding the liability of the persons to make the payment. Further, when the appellants claim that the 1st respondent has not placed any material about the employment of the deceased with the 5th respondent, equally, the appellants, but for disputing the employment with the 5th respondent in their affidavit, have not placed any material, oral and documentary to establish that the deceased was not employed by the 5th respondent for the purpose of carrying on the construction activities in the site belonging to the appellants. In the absence of any material, the only inference that could be drawn is that the 5th respondent, as the contractor,



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was discharging the contractual obligations by employing the deceased and the appellants being the principal employer of the deceased and the deceased having met with the accident during the course of his employment with the appellants, necessarily, the appellants were bound to pay the compensation towards the loss suffered by the claimant and, therefore, the contention of the appellants that they are not liable to pay the compensation does not merit acceptance.

20. The further plea of the appellants that the FIR does not spell out that the deceased met with the accident, while he was discharging work at the site of construction for the appellants, it is to be pointed out that the accidental fall of the deceased during the course of work has been established and that the death was on account of the injuries sustained during the accidental fall. Such being the case, merely because the exact location where the deceased had the accidental fall had not been spelt out in the FIR cannot be the basis to reject the claim for compensation, as it has been the consistent view of the Court that the FIR is not an encyclopaedia, which is required to contain all the minutest details with regard to the alleged incident



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and an overall scenario of the incident would suffice to set the criminal law machinery in motion. In the case on hand, the FIR spells out that the deceased had an accidental fall in which he suffered injuries and coupled with the fact that P.W.1 in her evidence had spoken about the employment of the deceased and also taking into consideration the fact that R.W.1 in his evidence had accepted that the 5th respondent was entrusted with the construction activity in which the deceased was employed, necessarily, the liability stood transformed on the appellants to compensate for the loss of life of the deceased.

21. Insofar as the contention of the appellants that the wife and children of the deceased, having been added as a party, though they have deserted the deceased by leaving the matrimonial home and, therefore, in their absence, the petition filed by the sister of the deceased is not maintainable, however, the said contention cannot be accepted for the simple reason that as on date, the 2nd claimant is the wife of the deceased and claimants 3 and 4 are the children of the deceased. Merely because claimants 2 to 4 have left the matrimonial home cannot be the basis to reject the claim



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for compensation as the Workmen's Compensation Act is a benevolent piece of legislation, which had been enacted for safeguarding the interest of the workmen as also their family from any calamitous situation, which befalls at the work spot. Therefore, the inclusion of claimants 2 to 4 in the petition, though they are alleged to have left the matrimonial home would not render the petition not maintainable.

22. On a holistic consideration of the impugned order coupled with all the materials, both oral and documentary, this Court has to necessarily draw the inference that the deceased was employed by the contractor, viz., the 5th respondent, as the immediate employer for the construction activities performed for the appellants, who are the principal employer and, therefore, the appellants are liable to pay the compensation quantified by the Commissioner, with which there is no quarrel.

23. However, it is seen that the amount of compensation has not been apportioned between respondents 1 to 4, who are the mother, wife and children of the deceased. In the above circumstances, this Court apportions



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the amount in equal proportion to all the four respondents, viz., respondents 1 to 4 and respondents 1 and 2, who are major, are at liberty to withdraw their portion of the apportioned compensation by filing appropriate petition before the Commissioner of Workmen's Compensation, Coonoor and upon such petition being filed along with bank details, the Commissioner is directed to transfer the share of the respective respondent directly to the bank account through RTGS within a period of two weeks from the date of filing of the said petition. Insofar as the share payable in respect of respondents 3 and 4, the minor respondents are concerned, the same shall be kept in fixed deposit, initially for a period of three years, renewable periodically, till they attain majority and the interest that accrues on the said deposit shall be paid to the 2nd respondent, viz., the mother of respondents 3 and 4, once in every quarter, which shall be utilised for the benefit of respondents 3 and 4.

24. In the result, this appeal is dismissed confirming the order dated 28.05.2018 passed by the Commissioner of Workmen's Compensation, Coonoor, in W.C. No.286 of 2017.



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To

The Commissioner of Labour

Coonoor.



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M.DHANDAPANI, J.

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