



C.M.A.(MD)No.357 & 358 of 2009

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DATED : 08.02.2023

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

C.M.A.(MD)Nos.357 & 358 of 2009

C.M.A.(MD)Nos.357 of 2009:

The Manager,
Dindigul Parvathy Natarajan Hotel(P)Ltd.,
140, East Car Street,
Dindigul.

.. Appellant/1st Respondent

Vs.

1. Muthayee @ Mary

.. 1st Respondent /Petitioner

2. The Manager,
New India Assurance Co. Ltd.,
Unit 720900,
No.3, Main Road,
Dindigul.

.. 2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the fair and decreetal order dated 19.01.2009 made in W.C.No.362 of 2005 on the file of the Commissioner of Workmen Compensation cum Deputy Commissioner for Labour, Dindigul as



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against the appellant.
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For Appellant : No appearance

For Respondents : Mr.B.Vijaykarthikeyan
for R2
: No appearance for R1

C.M.A.(MD)Nos.358 of 2009:

The Manager,
Dindigul Parvathy Natarajan Hotel(P)Ltd.,
140, East Car Street,
Dindigul.

.. Appellant/1st Respondent

Vs.

1.K.Kaleeswari

2.K.Chitra Selvi

.. Respondents 1 & 2 /Petitioners1&2

3. The Manager,
New India Assurance Co. Ltd.,
Unit 720900,
No.3, Main Road,
Dindigul.

.. 3rd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the
Workmen's Compensation Act, to set aside the fair and decreetal order dated



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19.01.2009 made in W.C.No.372 of 2005 on the file of the Commissioner of Workmen Compensation cum Deputy Commissioner for Labour, Dindigul as against the appellant.

For Appellant : No appearance

For Respondents : Mr.B.Vijaykarthikeyan
for R3

: No appearance for R1 & R2

COMMON JUDGMENT

Since these appeals are arising out of the same occurrence in the appellant's construction site, these appeals are taken up together and disposed of by way of common judgment.

2. No representation on behalf of the appellants in these appeals inspite of the matter been pending for nearly 14 years and adjourned time to time.



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3. On perusing the appeal against the award passed by the Deputy Commissioner of Labour, Dindigul, this Court finds that on 06.05.2005 there was an accident in the construction site of Dindigul Parvathy Natarajan Hotel Pvt. Ltd., wherein two persons got injured Muthayee @ Mary and Magamayee in which Magamayee died. Claim petitions were filed by Muthayee, the injured and the legal representatives of Magamayee, deceased. When a compensation of Rs.6,00,000/- for the death of Magamayee was claimed by her legal heirs, Kaleeswari and Citiraiselvi in W.C.No.372 of 2005, Muthayee sought compensation of Rs.6,00,000/- for the injuries she sustained. The said claim petitions were resisted by the Employer on the ground that since his firm is covered under insurance. Only the second defendant, New India Assurance Company is liable to pay the compensation.

4. The Insurance Company had filed counter stating that the accident occurred while construction in the Dindigul Parvathy Natarajan Hotel premises. The contractor has engaged the deceased Magamayee and the injured Muthayee. They were not employed by the management of Dindigul Parvathy Natarajan Hotel, who has taken insurance under them.



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5. The Deputy Commissioner of Labour, on considering the fact and taking note of the insurance policy, wherein the said Dindigul Parvathy Natarajan Hotel has taken insurance policy for skilled and unskilled labours, held that the Insurance Company is liable to indemnify to the accident since the insurance coverage includes the deceased as well as the injured, who fall under the category of unskilled labour. It restricted the liability of the Insurance Company to the extent of coverage limit and for balance, held the employer, namely Dingidul Parvathy Natarajan Hotel has to pay.

6. These two appeals are filed by Dindigul Parvathy Natarajan Hotel Pvt. Ltd., claiming that the entire compensation amount ought to have been paid by the Insurance Company. However, on considering the provisions of Section 2 of the Workmen's Compensation Act, we find that the deceased Magamayee as well as the injured Muthayee @ Mary were found to be engaged by the appellant herein in their construction work. They fall under the definition of workmen. Hence, the petition seeking compensation under the Workmen's Compensation Act is sustainable. Similarly, the award passed based on the Minimum Wages Act though taken note of the wage fixed in the year 2009 for the accident occurred in the year 2005, there is no substantial monitory



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difference in fixation of the compensation. The award for death of Magamayee was restricted to Rs.2,94,900/- fixing the monthly income at Rs.4,000/- though the claimants made a claim of Rs.6,00,000/- stating that the deceased was earning Rs.6,000/- per month. The liability of the appellant/1st defendant was fixed as Rs.1,79,889/- and the liability of the Insurance Company was fixed as Rs.1,15,011/-.

7. Similarly, in the case of the injured Muthayee @ Mary, a total sum of Rs.1,64,555/- was awarded out of which the liability of the Insurance Company was fixed as Rs.64,176/- based on the premium amount paid towards the insurance and the balance Rs.1,00,379/- was ordered to be paid by the appellant herein. The factors taken into account for awarding compensation is fair at the relevant point of time and this Court finds no error in the quantum or the apportionment of the liability.

8. Hence, these Civil Miscellaneous Appeals are dismissed. No Costs.

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Index : Yes/No
Internet : Yes
PJJ



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To
The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Madurai.



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DR.G.JAYACHANDRAN, J.

PJL

**Judgment made in
C.M.A(MD)Nos.357 & 358 of 2009**

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