



C.M.A.(MD).No.454 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.454 of 2022

The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Marthandapuram,
Pudukottai District.

... Appellant

Vs.

1.C.Singaram
2.Mohammed Sulthan (Govt. Contractor)
3.Napoleon

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 30 of Employees Compensation Act, against the order dated 20.10.2021 made in E.C.No.28 of 2008 on the file of Employees Compensation Commissioner and Joint Commissioner of Labour, Trichy.

For Appellant	: Mr.R.Satheesh
For R1	: Mr.R.Balakrishnan
For R2	: Mr.P.Ganapathi Subramanian

J U D G M E N T

Challenging the order of the Joint Commissioner of Labour,
Tiruchirapalli, passing an award directing the appellant to pay a sum of Rs.



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1,76,803/- as compensation with interest at the rate of 12% and recover the same from the contractor, the present appeal has been filed.

2. The brief facts leading to the filing of this appeal are as follows:

The claimant one Singaram was engaged by Nepoleon (Contractor) to construct a overhead tank. On 26.02.2007, while fixing the slab, he fell down from the overhead tank and sustained grievous injuries. Therefore, he filed an application originally impleading one Mohammed Sulthan as a respondent. Thereafter, in the year 2012, he has impleaded the contractor Nepolean, who was awarded a contract to construct a overhead tank. After impleading the second respondent, in the year 2013, the principal employer viz., the appellant was impleaded. The first respondent took a stand that he never engaged the claimant for construction of the overhead tank and disputed the case of the claimant. The second respondent remained exparte, whereas the third respondent viz., the appellant admitted that the contract was awarded to one Nepolean for construction of ten thousand liter capacity water tank. The claimant was worked under the said Nepolean. The only contract between the appellant and the said Nepolean is with regard to the construction of the building and there is no relationship between the claimant and the said Nepolean.



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3. On the side of the petitioner, P.Ws.1 to 5 were examined and Exs.P1 to P8 were marked and on the side of the respondents, no document was filed. Based on the evidence, the Joint Commissioner of Labour, Tiruchirapalli has awarded a sum of Rs.1,76,803/- as compensation and directed the appellant being the principal employer to pay the said amount and recover the same from the contractor.

4. The main contention of the learned counsel for the appellant is that though the accident said to have taken place on 26.02.2007, the F.I.R. has been registered only on 14.10.2007 and the said F.I.R. has been closed on the very next day by the Investigating Officer stating that since the said Singaram fell down from the overhead tank, no one is made liable. It is the further contention of the learned counsel for the appellant that originally the claim petition is filed against one Mohammed Sulthan in the year 2008 and thereafter, the second respondent was impleaded in the year 2012. Thereafter, the appellant was impleaded in the year 2013. It is the further contention that the conduct of the claimant filing an F.I.R. with an inordinate delay and impleading the second respondent as a contractor makes serious doubt about the accident. Therefore, his contention is that the entire claim application itself is doubtful and the Joint Commissioner of Labour has not properly appreciated the evidence.



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5. The learned counsel for the respondents would submit that the evidence of the witnesses clearly show that the claimant fell down from the overhead tank while fixing the slab. Hence, the Joint Commissioner of Labour, Trichy directed the appellant to pay the compensation amount and recover the same from the contractor.

6. In the light of the above submissions, now the point arise for consideration in this appeal is whether the Tribunal is right in fixing the compensation, in the absence of evidence to show that the employer and employee relationship between the parties and whether the Tribunal is correct in directing the appellant to pay the compensation as per Section 12(2) of the Employees Compensation Act.

7. This Court has perused the entire materials. Though the submission of the learned counsel for the appellant appears to be correct as far as the filing of F.I.R. with delay, on perusal of the documents and evidence adduced before the Joint Commissioner of Labour, this Court is of the view that mere delay in filing the F.I.R. will not go against the case of the claimant. The claimant is an ordinary employer and illiterate and he fell down from the overhead tank while



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working under the original contractor. To show that he fell down from the overhead tank, the oral evidence adduced on the side of the claimant and the same was not disputed by the respondent viz., the appellant herein. The eye witnesses P.Ws.3 and 4, who are also the Panchayat President and his wife. They clearly spoken about the construction in the village and at that time, the injured fell down from the overhead tank. It is to be noted that the discharge summary filed before the Joint Commissioner of Labour clearly show that he has been admitted in the Government Hospital immediately after he sustained injuries and he was treated as in-patient for several months and surgery also conducted. Therefore, this fact clearly establishes that the injury sustained only due to fall from the overhead tank. Therefore, merely on the basis of the delay in filing the F.I.R., it cannot be said that there was no such occurrence took place. Accordingly, this Court is unable to countenance the submission of the learned counsel for the appellant that the F.I.R. has been created only for the purpose of claiming compensation. It is also to be noted that though the appellant was impleaded at a later point of time, they have not made any attempt to cross examine the eye witness, who spoken about the accident.



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8. It is also to be noted that the appellant has also filed a counter. In the counter, they have not even denied the accident said to have taken place.

Further, in the counter, it is admitted by them that the claimant was working under Nepolean, who was the original contractor and he was awarded a contract to build the particular overhead tank. When the appellant has admitted this fact in his pleadings, now, cannot take a stand that there was no incident at all. Therefore, the submission of the learned counsel for the appellant that the occurrence has not been happened and the appellant has been impleaded at a later point of time only to claim a compensation cannot be countenanced.

9. The Tribunal, after assessing the disability certificate issued by the Medical Officer, awarded the compensation and the same appears to be reasonable and does not require any interference. The Tribunal also directed the appellant to pay the award amount and recover the same from the contractor. It is relevant to note that the appellant being the principal contractor should have ensured that the contractor has taken a proper insurance for the workman.



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10. In such a view of the matter, as a principal employer the appellant cannot be escaped from the liability in paying the compensation and recover the same from the contractor. On perusal of Section 12 of the Employee's Compensation Act makes it clear that the principal employer, who are in better position has to pay the compensation and then recover the same from the contractor. Hence, the order of the Joint Commissioner of Labour, Tiruchirapalli, directing the appellant Corporation to pay the compensation amount and recover the same from the contractor does not require any interference.

11. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

13.04.2023

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To

The Workmen's Compensation Commissioner Tribunal,
Dindigul.

N.SATHISH KUMAR,J.



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