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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.10.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)NO.922 OF 2022

and

C.M.P(MD)No.9059 of 2022

1.M/s.New Grand Hotel,
represented by its Proprietor,
H.Basheer,
No.310,GST Road,
Chrompet, Chennai-44.

2.The Manager,
M/s.New Grand Hotel,
No.310,GST Road,
Chrompet,
Chennai-44.

:Appellants/Respondents

.vs.

Shenbagam

: Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 30(1) of the Workmen Compensation Act, 1923 against the award made in W.C.No.63 of 2014, dated 28.08.2015, on the file of Deputy Commissioner of Labour, Thirunelveli.

For Appellants

:Mr.Siddharthan
for Mr.K.Veilmuthu

For Sole Respondent

:Mr.S.Saravanan

For E.S.I.Corporation

:Mr.N.Dilip Kumar



JUDGMENT

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This Civil Miscellaneous Appeal is filed challenging the award passed in W.C.No.63 of 2014, dated 28.08.2015, on the file of Deputy Commissioner of Labour, Thirunelveli.

2.It is the submission of the learned counsel for the appellants that the respondent has filed E.C.No.63 of 2014, on the file of the Deputy Commissioner of Labour, Thirunelveli, seeking compensation of Rs.3,72,637/-for the death of her husband while he was in employment with the appellants.

3.He further submitted that appellants filed a counter to the claim petition. There was no Presiding Officer for more than 1 ½ years.The appellants were not intimated about the hearing dates and only after receipt of Revenue Recovery Notice, the appellants came to know about the award passed by the Deputy Commissioner of Labour, Thirunelveli. It is his further submission that the respondent's husband deceased Gurusamy was working as a watchman under the appellants only upto 31.10.2012. Thereafter, he resigned his job and left the services on 31.07.2012. He came to Madras for treatment and stayed at the appellants' hotel on 25.02.2013 and on the very next day, he died of heart attack. On



the date of his death, the respondent's husband is not under the employment of the appellants. Therefore, the appellants are not liable to pay compensation to the respondent's husband. The appellants have not been given the opportunity of contesting the claim of the respondent and an award was passed exparte. They have every records to show that the deceased Gurusamy left the services of the appellants on 31.07.2012 and there was no contribution collected from him during the period from October 2012 to March 2013. Relevant records are submitted to the authorities to show that he left the services of the appellants. In such circumstances, he prays for setting aside the order passed in in W.C.No.63 of 2014, dated 28.08.2015, on the file of Deputy Commissioner of Labour, Thirunelveli to give an opportunity to decide the respondent's claim and for disposal on merits.

4.The learned counsel for the respondent opposes this appeal on the ground that the respondent is an uneducated person. So also the deceased. It is for the appellants to prove that the deceased Gurusamy left the services of the appellants from 31.10.2012 and he was not covered under the Scheme. However, the appellants have not produced any documents in support of the claim that Gurusamy left the services of the appellants on 31.07.2012.The



claim petition was filed only on 15.07.2014 and the award was passed on 28.08.2015. Therefore, it is not correct to claim that there was no Presiding Officer for more than 1 ½ years.

5.Mr.N.Dilip Kumar, learned counsel for the Employees State Insurance Corporation appeared before this Court and on instructions from the Corporation, submitted that the deceased has not paid contribution under the Employees State Insurance Act from 31.10.2012.

6.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the relevant records.

7.In the light of the submissions made by the learned counsel for the parties as narrated above, the award under challenge being an exparte award and the very question of coverage under Employees State Insurance Act is taken by the appellants, this Court is of the considered view that the appellants should be given an opportunity to produce the relevant documents to establish their case. At the same time, this Court is also aware of the fact that the claim petition was filed in the year 2014 and disposed on



28.08.2015. This appeal was also filed with a considerable delay.

Therefore this Court is of the view that while setting aside the order impugned herein, the Deputy Commissioner of Labour, Thirunelveli shall be directed to dispose of the claim petition within a stipulated time, preferably within a period of three months.

8. In this view of the matter, the award passed in W.C.No.63 of 2014, dated 28.08.2015, on the file of Deputy Commissioner of Labour, Thirunelveli is set aside and the matter is remitted back to the file of Deputy Commissioner of Labour, Thirunelveli with a direction to give opportunity to the parties to produce both oral and documentary evidence and to dispose of the claim petition on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

9. Accordingly, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

10. It is submitted by the learned counsel for the appellants that a sum of Rs.5,40,327/- has been deposited as per the order passed in W.P(MD)No.7078 of 2020, dated 07.08.2020. Out of this amount, the respondent was permitted to withdraw 50% of the



above said amount as per the order made in C.M.P(MD)No.4632 of 2020 in C.M.A(MD)SR.No.15873 of 2020, dated 15.09.2020 and the remaining 50% of the amount is in fixed deposit with Oriental Bank of Commerce, Thirunelveli Branch. The Deputy Commissioner of Labour, Thirunelveli shall pass appropriate orders with regard to the amount available in fixed deposit during the final disposal of the claim petition.

31.10.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn

To

- 1.The Deputy Commissioner of Labour,
Thirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
C.M.A(MD)NO.922 OF 2022
and
C.M.P(MD)No.9059 of 2022**

31.10.2023