



CMA(MD).No.1192 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.04.2023

PRONOUNCED ON : 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1192 of 2016

1.K.Grace Aruna

2.Minor.K.David Rajan

3.Minor.Kethysial Jebakline

... Appellants

(Minors 2 and 3 are represented
by their mother as natural guardian
through the 1st appellant)

vs.

1.The Management
M/s.Subam Rubber Industries
D.No.4/70, Velalar Street
Vilachery, Madurai 625 006

2.Thiyagarajan

...Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 30(1) of Employee Compensation Act, to set aside the order passed by the Deputy Commissioner of Labour, Madurai in W.C.No.230 of 2008 dated 12.05.2015 by allowing this appeal.



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For Appellants : Mr.A.Sahaya Philomin Raj
For R2 : Mr.R.Aravindan
For R1 : No appearance

J U D G M E N T

The above appeal has been filed by the workmen challenging the dismissal of their claim petition under Workmen Compensation Act on the ground that the establishment is covered under E.S.I.Act.

2.According to the claimants, the deceased was working as an electrician in the respondent industry. On 25.08.2006, when he was working in the industry, he sustained injuries due to electrocution and passed away after being admitted in the Government Hospital.

3.The Claimants had contended that the employer had paid a sum of Rs.16,000/- towards funeral expenses and they have not paid any compensation for the death of the workman. The claimants had further contended that the deceased was earning a sum of Rs.200/ per day and his monthly income was Rs.6,000/-. The claimants had prayed for a compensation of Rs.4,09,700/- with 12% interest before the Deputy Commissioner of Labour, Madurai.



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4.The respondent/employer had filed a counter disputing the entire allegation and contending that there was no employer employee relationship between the industry and the deceased person. The deceased Kumar is totally a stranger to the respondent concern. The respondent had further contended that on 25.08.2006, there was a disturbance in the electricity supply and a letter was addressed to the electricity board to repair the same. Since an employee of the electricity board had died due to electrocution in some other place, no electrician from the board was available on the said date for carrying out the repair activities in the respondent industry.

5.The deceased had introduced himself as an electrician and he voluntarily came forward to carry out the repair. However, one of the employees of the respondent industry had objected to the same and he had directed the deceased to get permission from the management. Neglecting the said advise, the deceased had attempted to repair and got electrocuted. The management came to know about the electrocution only at 7.00 p.m on the said date and immediately had lodged a complaint before Thirunagar Police Station. However, with malafide



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intention, the police authorities have registered an F.I.R as against the management. Therefore, the management has also lodged a complaint to the Superintendent of Police Madurai through a registered post on 01.10.2006.

6.The respondent in the counter had further contended that they have never availed the service of the deceased and there was no master and servant relationship. They have further contended that the deceased was not invited to rectify the mistake and he is totally a stranger and on his own volition, he has invited the accident. They have also disputed the payment of Rs.16,000/- for the funeral expenses of the deceased. They have further contended that the deceased is the owner of an electrical shop by name “Davidson Electrical Works” at Thirunagar, Madurai. Therefore, he is not an electrician whose service was availed by the management. Hence, they have prayed for dismissal of the claim petition.

7.A counter was filed by the second respondent who is the son of the proprietor of “Subam Rubber Industries” contending that the factory is covered under the provision of E.S.I.Act from 18.05.2006 onwards and



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they are regularly remitting E.S.I.Contribution. Therefore, even assuming that an accident has taken place and even there is non payment of contribution on the date of the accident, the deceased should be treated as an insured person covered under E.S.I.Act. They have further contended that in view of Section 53 of the E.S.I.Act, the claim petition under Workmen Compensation Act is not maintainable.

8.The Commissioner under Workmen Compensation Act after considering the contentions of either parties had arrived at a finding that the respondent employer is covered under E.S.I.Act and therefore, in view of Section 53 of E.S.I.Act, a claim under Workmen Compensation Act is not maintainable. Granting liberty to the claimants to proceed under the E.S.I.Act, the claim petition was dismissed. Challenging the said order, the present appeal has been filed by the claimants.

9.The learned counsel for the appellants/claimants had contended that though the deceased is an employee as contemplated under E.S.I.Act, his name was not registered as one of the employees and no contribution amount was paid by the employer to E.S.I.Corporation to



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claim compensation for the death due to electrocution. Therefore, the claimants will not be in a position to proceed under E.S.I.Act. He had further contended that when the employee is not registered with the E.S.I. Corporation and no contribution is being paid by the employer, certainly the legal heirs of the deceased person can very well invoke the provisions under the Workmen Compensation Act. Hence, he prayed for allowing the appeal and remitting the matter back to the Deputy Commissioner of Labour, Madurai for considering the claim petition on merits.

10. Per contra, the learned counsel for the respondents had relied upon the judgement of the Hon'ble Supreme Court reported *in (1996) 4 SCC 255 (A.Trehan Vs. Associated Electrical Agencies and another)* and contended that whenever an establishment is covered under E.S.I.Act, a workmen who is an insured person under an employer under E.S.I.Act cannot claim compensation under Workmen Compensation Act, in view of the absolute bar under Section 53 of the E.S.I.Act. The learned counsel for the respondent had relied upon another judgment of the Hon'ble Supreme Court reported *in 2003 ACJ 393 (Bharagath*



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Engineering Vs. R.Ranganayaki and another) to contend that even in a case where an application for registration of an employee for the purpose of insurance is submitted after the accident, the E.S.I.Act alone is applicable and the Workmen Compensation Act cannot be invoked in view of the bar under Section 53 of the E.S.I.Act.

11.The learned counsel for the respondents had further contended that the deceased was not an employee of the industry and he was not invited to offer any service to the industry. In view of absence of some staff from the electricity board, he had voluntarily came to the industry to offer his services and he had attempted to repair the electrical device in violation of the advise given by the staff of the industry namely Manoharan. Therefore, viewed from any angle, the claimant is not entitled to any compensation either under Workmen Compensation Act or under E.S.I.Act. Hence, he prayed for dismissal of the appeal.

12.I have considered the submissions made on either side and perused the materials available on record.



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13.It is the specific case of the claimants that the deceased Kumar was carrying out electrical repair work in the respondent industry and due to electrocution he had passed away and therefore, they are entitled to receive compensation under Workmen Compensation Act. However, in the counter filed by the both the respondents, it could be seen that the industry is covered under E.S.I.Act and it is alleged that there was no employer employee relationship between the deceased and the industry.

14.The first issue that would arise for consideration is that when the industry is covered under E.S.I.Act, whether the legal heirs of the deceased employee would be entitled to invoke the provision under the Workmen Compensation Act or not. As rightly pointed out by the learned counsel for the respondents, in view of the judgement of the Hon'ble Supreme Court reported in **(1996) 4 SCC 255 (A.Trehan Vs. Associated Electrical Agencies and another)**, whenever an establishment is covered under E.S.I.Act, there is an absolute bar for an employee or his legal heirs to invoke the provision of Workmen Compensation Act to seek compensation for the injuries /death arising out of an industrial accident. Therefore, it is clear that the Commissioner



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under Workmen Compensation Act has rightly rejected the claim petition on the ground that the respondent industry is covered under E.S.I.Act.

15.The learned counsel for the appellants had contended that even though the industry is covered under E.S.I.Act, the deceased employee was not registered as an employee under E.S.I.Act, no contribution has been paid by the employer on behalf of the deceased employee. Therefore, the claimants will not be in a position to receive any compensation whatsoever from the E.S.I.Corporation. Hence, he contended that the appeal may be allowed and the Commissioner under Workmen Compensation Act may be directed to decide the appeal on merits.

16. The next issue that arises for consideration, where an industry is covered under E.S.I.Act, but a particular employee is not registered as an employee under E.S.I.Act and no contribution has been paid by the employer for such an employee, whether such person could be permitted to invoke the provisions of the Workmen Compensation Act for the injury/death or not.



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17.The Hon'ble Supreme Court in a judgment reported in (2003) 2

SCC 138 (Bharagath Engingeering Vs.R.Ranganayaki and another)

in Paragraph No.12 has held that the payment or non payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. When the deceased employee was an insured person as defined under the Act and he suffered an employment injury and there is no dispute that he was in employment of the employer, in view of Section 53 of the E.S.I.Act, proceedings under the Compensation Act were excluded statutorily. Therefore, the registration or non registration of an employee under E.S.I.Act or payment or non payment of contribution for such an employee is not a gaining factor to decide about the applicability of the E.S.I.Act to a particular establishment when the said establishment is already covered under E.S.I.Act.

18.As per the provisions of E.S.I.Act, the employer is duty bound to send a declaration form within 10 days from the date of appointment of an new employee and failure to do so, would not result in non-coverage of such employee. However, the E.S.I.Corporation would be



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duty bound to pay compensation under the relevant provisions and thereafter, they would be entitled to invoke Section 68 of the E.S.I.Act and recover the same from the employer. Therefore, it is clear that the claimants have to approach the E.S.I.Corporation alone for the relief of compensation.

19.The employer has taken a specific stand that the deceased Kumar was not their employee and he had voluntarily undertaken to do some repair work in violation of the directions of the staff of the industry. Therefore, the claimants are duty bound to establish that there was a employer employee relationship before E.S.I.Corporation to receive benefits under the said Act.

20.In view of the above said deliberations, the dismissal of the claim petition by the Commissioner under Workmen Compensation Act is legally sustainable and this Court does not find any error in the present appeal. This Civil Miscellaneous Appeal stands dismissed with liberty to the claimants to approach the E.S.I.Corporation. No costs.

20.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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WEB COPY

To

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



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)No.1192 of 2016

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