



C.M.A.No.2304 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2304 of 2011

and

M.P.No.1 of 2011

The New India Assurance Company
Ltd., Moore Street, Chennai – 1.

... Appellant

Vs.

1. C.Kuppuswamy
2. M/s.Easwarnath Constructions,
Jaisy Ganesh Buildings, No.28,
Perambur High Road, Chennai – 12.
3. Deputy General Manager,
Southern Railway, Head Quarters,
Park Town Chennai – 3.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, 1923 against the fair and decretal award dated 29th day of April, 2011, made in W.C.Case No.541 of 2005, on the file of Court of Commissioner for Workmen's Compensation – 1 (Deputy Commissioner of Labour – 1), Chennai – 6.

For Appellant : Mr.M.Krishnamoorthi

For Respondents : Mr.P.T.Ramkumar for R3

No appearance for R2

Not ready in notice for R1



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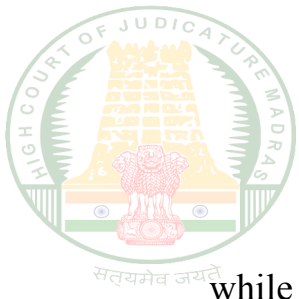
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JUDGEMENT

Assailing the award passed in W.C.Case No.541 of 2005 vide judgment dated 29.04.2011 on the file of the Court of Commissioner for Workmen's Compensation – 1 (Deputy Commissioner of Labour – 1), Chennai – 6, the present civil miscellaneous appeal has been filed by the appellant / Insurance company.

2. Though the notice has been served on the respondents 1 and 2, no one appeared on their behalf. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

3. It is the case of the appellant that the first respondent was engaged by the second respondent from the principal employer / third respondent as a labour for mixing cement and gravel in the mixer machine for laying platform at Chetpet Railway Station and he was paid a sum of Rs.150/- per day as salary. On 07.09.2004 at about 2:30 pm,



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while the applicant was on duty in loading Jally into the Mixer machine, his dothi including his body was caught by the wheel of mixer machine and he was rolled by the machine, due to which he sustained grievous injuries and was admitted in the Hospital. Claiming compensation in a sum of Rs.5,00,000/- the first respondent / claimant has filed claim petition before Workmen's Compensation Court.

4. Before the Tribunal, the first respondent / claimant examined P.W.1 to P.W.4 and marked Exs.P1 to Ex.P.9. On the side of the appellant / Insurer of the third respondent employer, they examined R.W.1 and marked Ex.R1. After adjudication, the Tribunal awarded a sum of Rs.1,01,664/- as compensation in favour of the claimant / first respondent.

5. The learned counsel for the appellant / insurance company submits that the claimant was only a sub-contractor and he is not an employee of the third respondent. When the policy does not cover a sub-contractor, the appellant / insurance company is not liable to indemnify the claimant. Hence, he prayed for allowing this appeal.



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6. The learned counsel for the third respondent submits that the claimant was only a sub-contractor, who is not allowed to do the above said work, which is only allotted to the skilled personnel who were specifically employed for the said job. When the first respondent on his own volition attempted to operate the said mixer machine and sustained injuries, for which he cannot claim any compensation. Accordingly, he prayed for passing appropriate orders.

7. Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the materials placed on record.

8. From a careful scrutiny of impugned award, it is manifest that the Tribunal has awarded compensation as set out above only on proper appreciation of evidence and sound reasons. This is more so in respect of income towards which a sum of Rs.4,000/- has been fixed as notional income as per the rulings of the Workmen's Compensation Act, which, by no means, be called excessive, to arrive at a sum of Rs.1,01,664/- as



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compensation for the loss sustained by the injured.

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9. It is seen that the Tribunal has awarded compensation, as above, only on proper appreciation of the evidence on record and hence, the same cannot be said to be exorbitant as claimed by the claimant and rather it is only in commensurate with the injuries suffered by the injured.

10. In view of the above discussion, this Court holds that the impugned award of the Tribunal does not warrant interference and the Civil miscellaneous appeal is dismissed while confirming the award passed by the tribunal in W.C.No.541 of 2005 dated 29.04.2011 and the appellant is directed to deposit the compensation of Rs.1,01,664/- awarded by the tribunal to the credit of W.C.No.541 of 2005 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment, if not already deposited.



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M.DHANDAPANI, J.

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11. On such deposit being made, the Tribunal is directed to transfer the said amount to the first respondent directly to his bank account through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

06.11.2024

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Index : Yes / No

Speaking order / Non speaking order

Neutral Citation Case : Yes / No

To

1. The Court of Commissioner for Workmen's Compensation – 1 (Deputy Commissioner of Labour – 1), Chennai – 6.

2. The Section Officer, V.R. Section, High Court, Madras.

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