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CMA NO.403 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.403 OF 2022

1.Bodda Soudhamma

2.Bodda Krishna

... Appellants /
Petitioners

Versus

1.M/s.G.K.Shetty Builders (P) Ltd.,

No.3, Clubs Road,

Chetpet, Chennai – 600 031.

2.Reliance General Insurance Co. Ltd.,

“Reliance House” 6th Floor,

No.6, Haddows Road,

Chennai – 600 006.

... Respondents /
Opposite Parties

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, praying to set aside the order dated 24.12.2019 in W.C.No.31 of 2017 on the file of the Joint Commissioner for Labour – II (Commissioner for Employee's Compensation – II), Chennai – 600 006.

For Appellants : Ms.A.Subadra



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for M/s.A.Shanmugaraj

For Respondent-1 : Served – No appearance

For Respondent-2 : Mr.S.Arunkumar

J U D G M E N T

Dissatisfied with the order dated December 24, 2019, passed by the 'Commissioner for Employees' Compensation - II (Joint Commissioner for Labour - II) Chennai – 6' [henceforth 'Commissioner' for brevity] passed in W.C.No.31 of 2017, the petitioners have filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties herein will henceforth be referred to as per their array before the Commissioner.

Petitioners' case

3.The case of the petitioners is that their son-Ganapathy was working as a Mason under the first respondent - Construction Company and was earning a sum of Rs.500/- as daily wages. On January 2, 2016, when the petitioners son-Ganapathy was working in a new construction site at Door



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No.471, M.K.N.Road, Alandur, their son fell down from the sixth floor of the building. Due to the accident, the petitioners son sustained grievous injuries and on the way to the hospital, he succumbed to the injuries. According to the petitioners, the first respondent had taken Workmen Compensation Insurance Policy for the employees engaged in the Residential Building Construction at Door No.471, M.K.N.Road, Alandur, with the second respondent - Insurance Company. The said policy was in force from December 28, 2015 to March 27, 2016. Hence, the first respondent, as a employer and the second respondent as an insurer are liable to pay compensation to the petitioners. Accordingly, the petitioners seek compensation of Rs.12,00,000/- with interest at the rate of 12% per annum from the date of accident, from the respondents.

First Respondent's case

4.The first respondent filed a counter stating that the petitioners' son-Ganapathy was working as a Mason under them and earned a sum of Rs.9,000/- per month as wages. They had taken policy from the second respondent vide Policy No.1216352711000348 for the period between December 28, 2015 and March 27, 2016. Hence, the second respondent, as an



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insurer alone is liable to pay compensation to the petitioners. Accordingly, they prayed to dismiss the petition against the first respondent.

Second Respondent's case

5.The second respondent - Insurance Company filed a counter denying the fact that the petitioners' son Ganapathy was working under the first respondent. Further stated that the first respondent has not taken a proper precautions / protective measures for the safety of his workers. Hence, the first respondent alone is liable to pay compensation to the petitioners and the second respondent is not liable to pay any compensation to the petitioners. Accordingly, the second respondent prayed to dismiss the original petition.

Exhibits

6.On the side of the petitioners, the first petitioner was examined as P.W.1 and one Padana Nagaraj was examined as P.W.2 and Ex-P.1 to Ex-P.7 were marked. On the side of the second respondent, one Sangeetha was examined as R.W.1 and Ex-R.1 – Insurance Policy was marked.



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Findings of the Commissioner

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7. After hearing both sides and after considering the evidence available on record, Commissioner awarded a sum of Rs.9,01,000/- along with interest at the rate of 12% per annum from the date of accident till the date of realization against the second respondent.

8. Dissatisfied with the quantum of compensation, the petitioners / appellants have preferred this Civil Miscellaneous Appeal.

9. The substantial question of law that arises for consideration in this appeal is as follows:

Whether the Joint Commissioner fixing the monthly wages at Rs.8,000/- is correct in law?

Arguments

10. Ms.A.Subadra, learned counsel appearing for the appellants / petitioners has submitted that the Commissioner has not properly appreciated



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Ex-R.1 - Insurance Policy. As per the Insurance Policy, since at the time of accident, the petitioners' son was 20 years old, the appropriate factor is 224.

The first respondent had taken insurance policy for 10 Masons for a value of Rs.2,70,000/-. The policy period is from December 28, 2015 to March 27, 2016 i.e., three months. Hence, as per the policy, a Mason is entitled to Rs.9,000/- per month (3 X 9000 X 10 = 2,70,0000) as wages. The said fact has not been considered by the Commissioner. Accordingly, she prayed to allow this appeal.

11.Mr.S.Arunkumar, learned counsel appearing for the second respondent – Insurance Company, after perusing Ex-R.1 - Insurance Policy, has fairly conceded that as per the insurance policy, a Mason is entitled to Rs.9,000/- per month.

Discussion and Decision

12.Admittedly, the petitioners son was 20 years old at the time of



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accident. Hence, relevant factor as per the Workmen's Compensation Act 1923 is 224. If this Court works out as per the Act, the compensation towards loss of dependency would be Rs.10,08,000/- (Rs.9000 X 224 X 50/100) and compensation towards funeral expenses would be Rs.5,000/-. Totally, the petitioners are entitled to Rs.10,13,000/- (Rupees Ten Lakhs Thirteen Thousand Only).

Conclusion

13.Considering the facts and circumstances of the case and in view of the terms of the Insurance Policy (Ex-R.1), the compensation awarded by the Commissioner is modified as hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of dependency (Rs.9000 X 224 X 50/100)	Rs.10,08,000.00
2	Funeral expenses	Rs.5,000.00
	Total	Rs.10,13,000.00

14.Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Commissioner is enhanced to **Rs.10,13,000.00 (Rupees Ten Lakh Thirteen Thousand Only)**. The second respondent - Insurance Company is directed to deposit the modified amount



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of Rs.10,13,000/- (Rupees Ten Lakh Thirteen Thousand Only), less the amount already deposited, if any, along with interest at the rate of 12% per annum from the date of accident till the date of realization, to the credit of W.C.No.31 of 2017 on the file of Joint Commissioner for Labour – II (Commissioner for Employees Compensation – II), Chennai, within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs.

26.06.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

The Joint Commissioner for Labour – II
(Commissioner for Employee's Compensation – II)
Chennai – 600 006.



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R.SAKTHIVEL, J.

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