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CMA NO.1927 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30 / 07 / 2024

JUDGMENT PRONOUNCED ON : 29 / 08 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.1927 OF 2022
AND CMP NO.14272 OF 2022

Raymond Showroom
Represented by its Manager
No.1, Bhimsena Thottam,
E.V.S. Towers, Mylapore,
Chennai – 600 004.

... Appellant / 2nd Opposite Party

Versus

1.Sekar

... 1st Respondent / Applicant

2.Abdul Rehman

... 2nd Respondent/1st Opposite Party

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Workment Compensation Act, 1923, praying to set aside the order made in E.C.No.107 of 2018, dated 20.07.2022 on the file of Commissioner of Workmen Compensation (Joint Commissioner of Labour – 1) Teynampet, Chennai.

For Appellant : Mr.Amar D. Pandiya
for Mr.F.Kammal Baig

For Respondent-1 : Mr.S.Karthik



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J U D G M E N T

Feeling aggrieved with the Order dated July 20, 2022 passed by the Commissioner for Workmen Compensation (Joint Commissioner of Labour – 1) Teynampet, Chennai' [henceforth 'Commissioner' for brevity] in E.C.No.107 of 2018, the second respondent therein, namely Raymond Showroom, has preferred this Civil Miscellaneous Appeal.

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

Applicant's case

3.It is the case of the applicant that the deceased - Thiagarajan is his younger son and he has been working as a employee under the first opposite party. The 1st opposite party carrying on his business of Air Conditioner (AC) service in and around Chennai by engaging the applicant's son - Thiagarajan as helper to carry out AC Services.

3.1.While so, on February 17, 2018, 1st opposite party had taken the applicant's son - Thiagarajan to do AC services at the place of the 2nd opposite party. On the same day at about 07.20 p.m., there was a phone call from the 1st opposite party to his elder son - Parthiban that his younger son -Thiagarajan was electrocuted while doing AC services in the place of the 2nd

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opposite party and was admitted in Kalyani Hospital, Mylapore, Chennai.

Subsequently, he was shifted to Rajeev Gandhi Government General Hospital, Chennai for further treatment. Later, his son passed away on February 27, 2018. Police complaint was registered under Crime No.141/18 on the file of Mylapore Police Station on February 27, 2018. According to the applicant, the deceased passed away in and out of the course of employment. Therefore, he filed a petition praying to award a compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only) for the death of his son against the opposite parties.

1st Opposite Party's case

4.The first opposite party filed counter statement denying the allegations levelled against them by the applicant. The first opposite party denied the allegation that the deceased has been working as an employee under 1st opposite party. Stating so, the first opposite party sought to dismiss the application filed by the applicant seeking compensation.

2nd Opposite Party's case

5.The second opposite party filed counter denying the allegations made by the applicant against them. The second opposite party asserted that there is no relation / regular contract to do the AC service between them and



the first opposite party. Further, they have no knowledge as to whether the deceased have visited the second opposite party's showroom for AC Service. Further, all its employees are insured and the applicant's son is not coming under its employee category. The second opposite party is not liable for any compensation if any untoward incident happens to anyone working under the first opposite party. Thus, it sought to dismiss the application filed by the applicant.

6.Before the Commissioner, on the side of the applicant, the applicant was examined as P.W.1 and Ex-P.1 to Ex-P.4 were marked. On the side of the opposite parties, neither witnesses were examined nor documents were marked.

7.The Commissioner framed the following points for determination:

- i. *'Whether there exists an employer – employee relationship between the deceased and the opposite parties? Whether the injuries sustained by the deceased were employment injuries and whether the deceased succumbed to those injuries?*
- ii. *What is the quantum of compensation to be awarded to the dependents of the deceased as per Workmens' Compensation Act, 1923?*



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iii. *Which opposite party is liable to pay compensation to the dependents of the deceased?'*

(Translated from Tamil)

8.The Commissioner after analyzing the oral and documentary evidence, came to the conclusion that the deceased passed away while repairing the Air Conditioner (AC) of the second opposite party while under employment of the first opposite party and hence, the first opposite party is the immediate employer and the second opposite party is the principal employer. Thus, there was an employer – employee relationship between the deceased and the opposite parties, and the deceased sustained injuries because of electrocution in and out of the course of employment. Therefore, both the opposite parties are liable to pay compensation to the applicant.

8.1.Further concluded that, at the time of accident, the deceased was 17 years old and would have earned a sum of Rs.6,380/- as per the Minimum Wages Act, 1949. Accordingly, by considering the age factor at 227.49 and by adding a sum of Rs.5,000/- towards funeral expenses, the Commissioner awarded compensation of Rs.7,30,693/- $[(Rs.6,380/- \times 50/100 \times 227.49) + Rs.5,000/-]$ payable to the dependant(s). Out of the said sum, a sum of Rs.3,67,847/- (Rupees Three Lakhs Sixty Seven Thousand Eight

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Hundred and Forty Seven only) is payable by the first opposite party and the remaining sum of Rs.3,62,846/- is payable by the second opposite party.

9. Feeling aggrieved with the Order passed by the Commissioner, the second respondent – Raymond Showroom has preferred this Civil Miscellaneous Appeal.

Substantial Questions of Law:

10. On July 10, 2024 this Court framed the following substantial questions of law:

“1. Whether the appellant would come under the term 'employer' as per Section 2(e) of the Employee's Compensation Act, 1923?

2. Whether the deceased - Thiyagarajan was employed under the appellant?

3. Whether Employer – Employee relationship was subsisting at the time of the accident?

4. Whether the 1st respondent / applicant is a 'dependent' of the deceased - Thiyagarajan as per Section 2(1)(d) of the Employee's Compensation Act?”

Arguments:

11. The learned Counsel for the appellant / 2nd opposite party /



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Raymond Showroom has argued that the deceased - Thiyagarajan was not employed under the appellant. No employer – employee relationship existed at the time of the alleged incident. Since the deceased was not employed under the appellant, the appellant is not liable to pay any compensation to the dependant(s) of the deceased.

11.1 Further argued that the first respondent herein / applicant is the father of the deceased - Thiyagarajan, who is working in Health Department, Chennai City Municipal Corporation earning a sum of Rs.20,000/- (Rupees Twenty Thousand Only) per month. Hence, the first respondent would not come under the definition of 'dependant' under Section 2(1)(d) of the Employees' Compensation Act, 1923. The Commissioner has not appreciated the facts as per law. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.

12. Per contra, learned Counsel for the first respondent herein— applicant has argued that the appellant / second opposite party has not specifically denied the occurrence. The documents filed by the applicant viz., Death Report (Ex-P.2), FIR (Ex-P.3) and Post-mortem Report (Ex-P.4) would establish that the deceased died due to electrocution, while servicing the Air Conditioner installed in the second opposite party's showroom. In these

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circumstances, though the deceased was not working directly under the second opposite party, he was indirectly employed by the second opposite party through the first opposite party at the material point of time. Hence, the first opposite party is the immediate employer while the second opposite party is the principal employer. Hence, an employer – employee relationship was existing between the opposite parties and the deceased at the time of accident. Hence, there is no need to interfere with the Order of the Commissioner. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

12.1. In support of this submission, learned Counsel for the first respondent herein– applicant relied on the following judgments:

(i) *D.Sivasankar's case - The Oriental Insurance Company Ltd., Vs. D.Sivasankar and Another (2014 SCC OnLine Mad 240)*

(ii) *Fazlu Rahman Ansari's case - Fazlu Rahman Ansari Vs. National Insurance Company Limited and Others [(2019) 13 SCC 806].*

Discussion and Decision:

13. This Court has considered the submissions made on either side and perused the case file in light of the Substantial Questions of Law.

14. On November 19, 2019, the first opposite party cross-



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examined P.W.1, who is none other than the father of the deceased and the applicant before the commissioner.. In the cross-examination, P.W.1 deposed that he was working in the Health Department/Wing of Chennai City Municipal Corporation as a Mosquito Repellent Sprayer, thereby, earning a sum of Rs.20,000/- per month. Further, he has admitted that the deceased was working as an AC Mechanic only for a month and that he does not have a prior experience in it. Further deposed that, the accident occurred at the second opposite party's showroom. The second opposite party on January 28, 2020 cross examined P.W.1, in which, P.W.1 admitted that his wife is alive and his first son is unmarried and unemployed. Further admitted that, he did not cause notice to the second opposite party. Conjoint reading of the cross-examination of P.W.1 and the Ex-P.2 - Death Report, Ex-P.3 - FIR and Ex-P.4 - Post-mortem Report, would establish that on February 17, 2018 at about 07.20 p.m., when the deceased was repairing Air Conditioner (AC) installed at the second opposite party's showroom under the directions of the first opposite party as per the requirements of the second opposite party, he suffered electrocution, sustained injuries and later succumbed to those injuries. Hence, the applicant has proved that the accident occurred in and out of the course of employment and that the deceased succumbed to employment

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injuries.

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15.The deceased - Thiagarajan was directly working under the first opposite party. Hence, there exists employer – employee relationship between the deceased and the first opposite party. As far as the second opposite party is concerned, it is the first opposite party who directed the deceased to carry out the AC servicing work as per the requirements and instructions of the second opposite party. There is no contract or any sort of hiring / employment between the deceased and the second opposite party at the material point of time. The appellant cannot be construed as an 'employer' as per Section 2(e) of the Employee's Compensation Act, 1923. Hence, this Court is of the view that there was no employer – employee relationship subsisting between the second opposite party and the deceased at the material point of time. The Commissioner is not justifiable in holding that the second opposite party is the principal employer of the deceased, hence, liable to pay compensation. Accordingly, the Substantial Questions of Law Nos.1,2 and 3 are answered in favour of the appellant / second opposite party.

16.As far as the 4th Substantial Question of Law is concerned, the issue as to as to whether the father of the deceased working in the health department / wing of the Chennai City Municipal Corporation earning a sum



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of Rs.20,000/-, was dependent wholly or partially on the deceased was neither raised in the counter nor before the Commissioner by the opposite parties.

Consequently, the Commissioner did not frame any issue in this regard. In these circumstances, this issue cannot be raised before this Court at the stage of appeal. Further, it is essentially a question of fact and not question of law which has to be decided in an enquiry by the Commissioner. Moreover, the Commissioner has not awarded compensation to the petitioners specifically but to the dependent(s) of the deceased. No doubt, if in case the Commissioner finds that the deceased does not have any dependents at the time of disbursement, the compensation amount deposited will be refunded to the employees. Therefore, the 4th Substantial Question of Law does not arise at all in this Appeal.

17. In ***Fazlu Rahman Ansari's case*** (cited *supra*) relied on by the learned Counsel for the applicant, the injured was sub-contracted by the contractor to regularly work under M/s.Delhi Metro Rail Corporation. Considering the facts and circumstances of the case, the Hon'ble Supreme Court concluded that the injured therein was entitled to compensation from M/s.Delhi Metro Rail Corporation as principal employer. The facts of that case are deviant from the instant case as in the instant case, there is nothing

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available on record to show that the deceased was regularly employed under the second opposite party.

18.In ***D.Sivasankar's case*** (cited *supra*) relied on by the learned Counsel for the applicant, unlike the case on hand, it was established that the deceased was a permanent employee covered under Insurance Policy. Since it is distinguishable from the instant case, it is not applicable to the instant case.

19.The Commissioner, quantified the compensation at Rs.7,30,693/- and the first opposite party was directed to pay a sum of Rs.3,67,847/- and the second opposite party was directed to pay a sum of Rs.3,62,846/-, both along with interest at the rate of 12% per annum, to the applicant. Against the said Order, the first opposite party/2nd respondent has not filed any appeal. Hence, the Order passed against the first opposite party has reached finality. Hence, the only concern here is about the liability to pay compensation of Rs.3,62,846/- along with interest, fixed on the second opposite party. In view of the decisions arrived at for the Substantial Questions of Law Nos.1 to 3, the appellant / second opposite party is not liable to pay any compensation under the Employees' compensation Act, 1923. Hence, the Order of the Commissioner to the extent of directing the second opposite party to pay a sum of Rs.3,62,846/- along with interest is



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liable to be set aside.

20. However, at the time of accident, the deceased was a minor aged 17 years. The deceased died of electrocution while working on the Air Conditioner installed in the premises of the second opposite party at about 07.20 p.m. The second opposite party - Raymonds Showroom, being a major employer (not of the deceased), ought to have taken due care and caution while engaging workers to do repairing works in their premises. It ought to have ensured that due safety precautions, such as breaking the electricity circuit before working on the electrical appliances, were followed. If this had been done and negligence avoided, a life could have been spared. Though, as per the Employees' Compensation Act, 1923, the appellant / second opposite party is not liable to pay compensation, the appellant / second opposite party had contributed to the accident to some extent by way of its negligence and hence, in the interest of justice, this Court is of the considered view that it is reasonable to direct the second opposite party - Raymonds Showroom to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation to the dependent(s) of the deceased for its negligence under the law of torts.

21. In the result, the Civil Miscellaneous Appeal is partly allowed in the following terms:-

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- i)The appellant / second opposite party -
Raymonds Showroom is not liable to pay
compensation under the Employees'
Compensation Act, 1923;
- ii)However, the appellant is directed to deposit a
sum of Rs.2,00,000/- (Rupees Two Lakhs only)
along with interest at the rate of 12% per annum
from the date of accident till the date of such
deposit, before the Commissioner as
compensation to the dependent(s) of the
deceased - Thiagarajan under the law of torts;
- iii)If the appellant has already deposited any
amount, the same shall be adjusted against the
aforementioned sum of Rs.2,00,000/- along with
interest. If the amount already deposited is in
excess of the aforementioned sum of
Rs.2,00,000/- along with interest, the difference
shall be remitted to the appellant;



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- iv)The Commissioner is directed to conduct an enquiry to ascertain the dependant(s) of the deceased and hand over the amount to the dependant(s);
- v)In case if the Commissioner finds that there is no dependant(s) as per Section 2(1)(d) of the Employees' Compensation Act, 1923, the Commissioner is directed to remit the amount to the appellant;
- vi)In all other aspects, the Order of the Commissioner shall stand good;
- vii)Considering the facts and circumstances, there shall be no order as to costs;
- viii)Consequently, connected Civil Miscellaneous Petition is closed.

29 / 08 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order

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The Commissioner of Workmen Compensation
(Joint Commissioner of Labour -1)
Teynampet,
Chennai – 600 018.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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