



Civil Miscellaneous Appeal No.77 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.77 of 2023

M/s.The Oriental Insurance Co. Ltd.,
Bali Towers, I Floor,
No.1, Abdul Razak Street,
Saidapet, Chennai - 15.

... Appellant

Vs.

1.G.Radha
W/o.Gurusamy

2.G.Vinodhini
D/o.Gurusamy

3.G.Sangeetha
D/o.Gurusamy

4.G.Kalaivani
D/o.Gurusamy

5.G.Dhanasekar
S/o.Gurusamy

6.The Superintending Engineer,
Chennai Metropolitan Water Supply
& Sewerage Board,
No.1, Pumping Station Road,
Chinthadripet, Chennai - 600 002.

7.E.Saravanan
S/o.Ethiraj

... Respondents



Civil Miscellaneous Appeal No.77 of 2023

Civil Miscellaneous Appeal filed under Section 31 of the Workmen Compensation Act against the judgment passed in E.C.No.87 of 2018, dated 27.08.2022 passed by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour - I), Chennai.

For Appellant : Mrs.R.Rathna Thara
For Respondents : Mr.Thangamani [R1 to R5]
Mr.Jerry V.V.Sundar [R6]
Mr.V.Govardhanan [R7]

JUDGMENT

The Insurance Company has filed the present appeal against the judgment passed by the Joint Commissioner of Labour - I, Chennai, in E.C.No.87 of 2018, dated 27.08.2022.

2. The claimants, who are wife and children of the deceased Gurusamy, filed the claim petition on the ground that the deceased Gurusamy was engaged by the seventh respondent herein, who was a contractor under the sixth respondent for the purpose of laying pipelines for water supply at Triplicane. On 02.09.2017, when he was engaged by the seventh respondent, the earth caved in and the deceased was caught inside and he died on the spot. It is under these circumstances, the legal representative of the deceased filed the petition under the Employees Compensation Act before the Joint Commissioner I, Chennai.



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3. The Joint Commissioner of Labour, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the deceased was in fact engaged by the contractor, who is the seventh respondent herein and the contractor was covered by the insurance policy issued by the appellant and therefore, directed the insurance company to pay compensation of Rs.7,18,960/- to the legal representatives of the deceased. This compensation was directed to be paid with interest at the rate of 12% from the date of accident till the date of actual payment. Aggrieved by the same, the insurance company has filed the present appeal before this Court.

4. Heard learned counsel on either side and carefully perused the materials available on record.

5. The main ground that was urged by learned counsel for appellant is that the seventh respondent herein did not employ the deceased and he was employed only by one M.Venkatesan, who was the actual contractor in this case. Learned counsel also relied upon the First



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Information Report in this regard, which was marked as Ex.A3. Learned counsel also relied upon the investigation report, which was marked as Ex.R5 wherein it has been mentioned that the deceased was engaged by one Venkatesan and which was spoken to by RW-2 and RW-3.

6. *Per contra*, learned counsel for respondents 1 to 5 and learned counsel for seventh respondent submitted that the Tribunal has properly appreciated the evidence available on record and has come to a right conclusion in directing the appellant insurance company to pay the compensation amount and that the same does not require the interference of this Court.

7. In order to decide the relationship between the seventh respondent and the deceased, it will more relevant to take note of the stand that was taken by the seventh respondent before the Tribunal. The relevant portions in the counter affidavit filed by the seventh respondent herein is extracted hereunder:

"2) The above application deserves to be converted/re-numbered as Employee's Compensation Claim (E.C) to contest, because on 02.09.2017 at around 05:30 P.M while the employee Thiru.Gurusamy was laying and connecting the ductile iron pipes



of 5.5 m length and 150 mm diameter inside a 5 feet depth trench, suddenly the sand from the sides of the trench slid and fell on him who was working inside the trench. Other co-workers and fire rescue personnel team rescued the employee Gurusamy. Immediately the co-worker rang to 108 ambulance, the doctors diagnosed the worker and declared him dead is true.

3) The said deceased is covered under 4th Opposite party **Oriental Insurance Co., Ltd., vide Employers Liability Policy No.411600/48/2018/1110, covering the period from 23/08/2017 to 22/10/2017.** The 4th opposite party namely Oriental Insurance Co., Ltd., is bound to indemnify the risk, based on the Contract of Insurance/Contract of Indemnity. Hence this claim deserves to be converted into Employee's Compensation Claim (E.C) and award be passed as against the 4th Opposite party namely Oriental Insurance Co., Ltd."

8. The contractor, who is the seventh respondent herein, has come up with a very specific case that the deceased was engaged by him and the accident had taken place while the deceased was laying the pipelines on 02.09.2017. The contractor never denied the relationship of employer and employee between himself and the deceased. This is a very material evidence that has to be taken into consideration by the Court.

9. The Insurance Company is relying upon the First Information Report marked as Ex.A3. This First Information Report was registered based on the complaint given by one Velusamy. He is the relative of the



deceased Gurusamy. He has stated in the complaint as if the deceased was working under one Venkatesan and in the course of his employment, the accident took place and he died. A similar reference is found in the inquest report that was marked as Ex.A5. That apart, the investigation report, which was marked as Ex.R5 also comes up with the finding that the deceased was actually engaged by one Venkatesan.

10. The Joint Commissioner of Labour has considered the evidence of investigator, who was examined as RW-2 on the side of the insurance company. He has stated that he enquired over phone and found that Venkatesan was the sub-contractor, who engaged the deceased. Accordingly, he has prepared the investigation report. The Joint Commissioner of Labour found that the investigation report cannot be acted upon since it was an information gathered over phone. That apart, insofar as the First Information Report is concerned, the Tribunal gave a finding that the information given in the First Information Report cannot be taken to be conclusive since the First Information Report is not the encyclopedia of the entire case and it is only a starting point for conducting an investigation.



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11. The Insurance Company could have established the defence taken by them that the deceased was actually employed by one Venkatesan, who is the sub-contractor, by either calling the person who gave the complaint before the police or by calling the said Venkatesan as a witness. None of them were called as a witness and the insurance company wants to rely upon some stray reference made to Venkatesan in the First Information Report and in the investigation report. This Court holds that in the light of the specific stand taken by seventh respondent stating that the deceased was employed by him and which has not been discredited, the finding of the Tribunal does not suffer from any illegality or perversity.

12. This Court also finds that no substantial question of law is involved in this case. The entire amount has already been deposited by the appellant insurance company. The claimants, who are respondents 1 to 5 are entitled to withdraw the same.

13. The name of the third claimant has been mentioned as Ambika



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both in the judgment passed by the Joint Commissioner of Labour as well

N.ANAND VENKATESH, J.

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as in the Civil Miscellaneous Appeal cause title. The order passed by the Joint Commissioner dated 29.10.2022 in E.C.No.87 of 2018 was placed before this Court, wherein it has been mentioned that the correct name is G.Sangeetha, instead, it has been wrongly mentioned as G.Ambika and there was a direction to amend the name of the third claimant. Unfortunately, the same was not incorporated in the judgment. However, considering the order passed by the Joint Commissioner of Labour, the name of G.Ambika shall be replaced with the name of G.Sangeetha in all the concerned records.

In the result, this Civil Miscellaneous Appeal stands dismissed. No costs.

29.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Joint Commissioner of Labour - I,