



C.M.A(MD)No.1196 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.03.2024

CORAM:

THE HON'BLE MR.JUSTICE P. DHANABAL

C.M.A(MD)No.1196 of 2013

and

M.P(MD)No.1 of 2013

The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Theni District.

... Appellant/Respondent

Vs.

B.Ponnuthai (Died)

... Respondent/Petitioner

2.P.Santhi

3.P.Sathya

4.P.Prabha

5.P.Saravanan

... Respondents

(Respondents 2 to 5 are brought on record as legal heirs of the deceased sole respondent vide Court order, dated 28.06.2022 made in C.M.P(MD)No.8729 of 2021 in C.M.A(MD)No. 1196 of 2013)



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Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, to set aside the order, dated 28.02.2013 in W.C.No.94 of 2011 on the file of the Commissioner for Workmen Compensation at Dindigul and the order copy was received on 11.03.2013 to the appellant.

For Appellant : Mr.B.Ramanathan

R-1 : Died (Steps taken)

For R-2 to R-5 : Mr.R.Thangasamy

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in W.C.No.94 of 2011 on the file of the Commissioner for Workmen's Compensation, Dindigul, wherein the first respondent herein has filed a petition before the appellant for seeking compensation of death of one Palanichamy, who was working under appellant.

2. The Tribunal has awarded a sum of Rs.3,01,840/-. As against the award passed by the Tribunal, the respondent has preferred this Civil Miscellaneous Appeal by disputing the liability.



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3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

4. The brief facts of the petition before the Tribunal are as follows:

The petitioner is the wife of one Palanichamy, who was working as Wireman at Rasingapuram Sub Station. While so, on 19.11.2008, when he was working from 01.00 P.M to 09.00 P.M at about 07.40 P.M, he was directed to purchase tea from the tea-stall. When he was proceeding to purchase the tea in the road a bus bearing Registration No.TN 29 N 1155 dashed against the deceased and he was admitted in the hospital and was in patient from 20.11.2008 to 04.12.2008. Thereafter, he died on 06.12.2008. The deceased was aged about 51 years on the date of accident and he was earning a sum of Rs.10,520/- per month and thereby, they claimed compensation.



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5. The brief facts of the counter filed by the respondents are as follows:

The petition is not maintainable either in law or on facts and the same is liable to be dismissed *in limine*. The accident was occurred due to the motor accident and the said accident is not related to the employment of the deceased. Already the death benefits of the deceased was settled to the petitioner. Therefore, the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioner, the petitioner herself was examined as P.W.1 and marked Exhibits P.1 to P.8. On the side of the respondents, R.W.1 was examined and marked Exhibits R.1 to R.8.

7. After considering the evidences adduced on both sides, the Tribunal has awarded a sum of Rs.3,01,840/- towards compensation. Aggrieved by the above said order, the respondent has filed this Civil Miscellaneous Appeal on various grounds including the substantial question of law.



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8. The learned Counsel appearing for the appellant / respondent would contend that the accident was occurred due to road accident and the petition is not maintainable under the Workmen Compensation Act. The petitioner ought to have filed a petition before the Motor Accident Claims Tribunal and not before the Workmen Compensation Act. The Tribunal has not considered the above said aspects and erroneously awarded compensation under the Workmen Compensation Act. Though the deceased was working under the appellant, the accident was not occurred relating to his employment and that is purely road accident. Therefore, the order passed by the Tribunal is liable to be set aside.

9. The learned Counsel appearing for the respondent / petitioner would contend that the appellant / respondent has not disputed the relationship of employer and employee between the deceased and the appellant and also not denied that the accident took place out of and during the course of employment. Once the accident took place during the course of employment, the claim of compensation is choice of the petitioner and they have to choose either to file petition under Workmen Compensation Act or under the Motor Vehicles Act. The petitioner has



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chosen to file petition under the provisions of Workmen Compensation Act. Therefore, the contention of the appellant is not acceptable and no such plea was taken before the Tribunal. Moreover, the Tribunal has passed order after analyzing the evidences adduced on both sides and the order is reasonable. Therefore, the present Civil Miscellaneous Appeal is liable to be dismissed.

10. This Court had heard both sides and perused the records and upon hearing both the sides, the point for determination in this appeal is:

i) Whether any substantial question of law involved in this case and the appeal has to be allowed or not?

11. In this case, there is no dispute that the deceased was working under the employment of the appellant and the deceased was also died during the course of employment (i.e.,) out of and in the course of employment. The only contention of the appellant is that he met with a road accident and the accident was took place due to the negligence on the part of the bus driver. Therefore, the petitioner has to approach the Motor Accident Claims Tribunal for compensation and not under the Workmen



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Compensation Act.

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12. In this context, it is relevant to refer the Section 167 of the Motor Vehicles Act:

"167. Option regarding claims for compensation in certain cases.-

Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

13. On careful perusal of the above said provisions, it is clear that it is the option of the petitioner to choose the forum. In this case, there is no dispute that the deceased was working under the appellant and he was on duty at the time of accident. Therefore, the petitioner has chosen to file petition under the provisions of Workmen Compensation Act and the Tribunal also after elaborate discussion, awarded fair compensation and the appellant has not disputed other things. The appellant's only contention is that the maintainability of the petition before the Tribunal. There is no



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plea taken before the Tribunal in respect of the maintainability of the petition. However, as per Section 167 of the Motor Vehicles Act, the petitioner had option to choose the forum. Therefore, the petition is very well maintainable before the Workmen Compensation Act as Deputy Commissioner of Labour has power to decide the claim. There is no dispute in respect of the quantum of the amount and the first respondent also not disputed the quantum of the award amount.

14. In view of the above said discussions, this Court is of the opinion that this Civil Miscellaneous Appeal has no merits and no any substantial question of law involved in this case and thereby, this Civil Miscellaneous Appeal is liable to be dismissed.

15. In the result, this Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

19.03.2024



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Commissioner for Workmen Compensation,
Dindigul.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

BTR

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