



C.M.A.(MD)No.1284 of 2013

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Dated: 12.02.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

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Executive Officer
Arulmighu Seethalakshmi Sametha
Godandaramar Kovil,
Ootathur Village and Post
Lalgudi Taluk
Tiruchirapalli District

.. Appellant/2nd Respondent

Vs.

1. T. Muthulingam
2. Jothi Asari
3. The Joint Commissioner
Hindu Religious and Charitable
Endowment Board,
Thiruvaramgam
Thiruchirapalli District

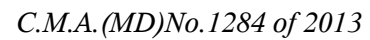
..1st Respondent/Petitioner
..2nd respondent/1st Respondent

.. 3rd respondent/3rd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Employees Compensation Act, 1923 to set aside the award dated 08.10.2012 made in W.C. No.48 of 2007 on the file of the Court of Deputy Commissioner of Labour, Tiruchirapalli and allow this appeal.

For Appellant : Mrs. Maria Roseline

For R-1 : M/s. V.Sujatha Siddharthan



This Civil Miscellaneous Appeal has been preferred as against the order passed in W.C. No.48 of 2007 on the file of the Deputy Commissioner of Labour, Tiruchirapalli, wherein the first petitioner claimed a sum of Rs. 5,00,000/- and the Tribunal has awarded a sum of Rs.4,26,080/- towards compensation. As against the order passed by the Tribunal the second respondent has filed the present appeal

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

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

The first respondent is the contractor of the 2 and 3 respondents. The son of claimant, Selvaraj was working under the first respondent, Whiles, on 26.08.2006 when the son of the claimant namely Selvaraj was working in the respondent 2 and 3 temple, Arulmighu Seethalakshmi Sametha Godandaramar temple, the stone fell on the son of the claimant and he died on the spot



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itself. At the time of death the deceased was aged about 28 years and he was earning a sum of Rs.200/- per day and at the time of accident the deceased was working under the first respondent contractor. The second and third respondents are the temple authorities where the construction work was done by the deceased. Therefore the respondents are all jointly and severally liable to pay the compensation to the petitioners.

4. The brief facts of the counter filed by the second respondent are as follows.

The petition is not maintainable and the same is liable to be dismissed in *limine*. The petitioners are put to strict proof of the averments made in the petition. The accident was occurred due to the negligence of the deceased and the temple management is no way responsible for the accident. The temple authorities permitted the donors to do the construction work and the first respondent only engaged the deceased for the construction work. Therefore there is no relationship between the deceased as employer and employee. Therefore if any compensation awarded the first respondent and the donors only liable to pay compensation to the deceased. Hence the petition is liable to be dismissed.



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5. No counter was filed by the first respondent.

6. Before the Tribunal the petitioner was examined as P.w.1 and marked exhibits Exs P.1 to P4 and no witness were examined on the side of the respondent.

7. After analyzing the evidence adduced by both parties, the Tribunal has awarded a sum of Rs.4,26,080/- towards compensation and directed the second respondent who is the principal employer of the deceased to pay the award amount along with interest @ 12% per annum. Aggrieved by the said order the second respondent has filed the present petition on various grounds.

8. The learned counsel appearing for the appellant would contend that the first respondent herein as petitioner has filed the claim petition seeking compensation for the death of his son alleging that during the course of his employment under the second respondent the stone fell down on his head and he died. Infact the temple has permitted the donor to do construction work in the premises and the donor in turn had engaged the second respondent as Contractor for doing the work and the son of the first respondent was employed with the second respondent therefore the appellant /



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second respondent is not liable to pay any compensation to the petitioner. The compensation has to be paid either by the contractor or by the donor. But the tribunal failed to consider the same and awarded compensation by directing the appellant /second respondent to pay the above said amount. The first respondent was under the service of second respondent and therefore the Tribunal ought to have fixed liability on the second respondent who was set exparte . The appellant/second respondent is not a principal employer therefore the order passed by the Tribunal is liable to be set aside by allowing this appeal.

9. On the side of the respondents 1 and 2 none appeared

10. The learned counsel appearing of the first respondent would contend that the deceased was working under the contractor/ second respondent herein and the appellant/second respondent is principal employer. The accident was took place in the premises of appellant/ second respondent. Therefore the second respondent being Principal employer is liable to compensation to the first respondent/petitioner under Section 12(2) of Employees compensation act. Therefore the Tribunal after taking into consideration all the aspects correctly awarded compensation by



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fixing liability as against the appellant/ second respondent.

Therefore the award passed by the Tribunal is liable to be confirmed. To support his contention, he relied on the judgment in the case of ***Bhutabahi Angadbhai and another. vs. Gujarat Electricity Board and others*** reported in ***1987 2 ACJ 987***.

11. The learned counsel appearing for the third respondent also reiterated the arguments of the appellant.

12. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, frames the following substantial question of law:

i) Whether the Deputy Commissioner of Labour was right in fixing the liability on the appellant when even as per the case of the first respondent his son was in the service of the second respondent?

13. In this case, it is admitted fact the deceased was working in the temple under the control of appellant/second respondent and during the course of employment he died in the temple. It is also admitted that the temple belongs to appellant/second respondent



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and third respondent/third respondent. According to the appellant/second respondent the temple had permitted the donors to execute the work and thereby the donors have engaged the contractor, second respondent/first respondent and the deceased was under the employment of second respondent/first respondent and there is no nexus for the appellant/second respondent and the deceased. In this context, it is relevant to refer the provision of Section 12 of Workmen Compensation Act, which reads as follows:

“12. Contracting—

(1)Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2)Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3)Nothing in this section shall be construed as preventing a an employee from recovering compensation from the contractor instead of the principal.

(4)This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.



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14. From the bare perusal of section it is clear that to secure the compensation to the employees who have been engaged through the contractor by the principal employer for its ordinary part of business which in the ordinary course the principal employer is supposed to carry out by its own servants and the principal employer is liable to pay compensation and he will be entitled to be indemnified by the contractor. In this context the learned counsel appearing for the first respondent relied the judgment in ***Bhutabahi Angadbhai and another. vs. Gujarat Electricity Board and others*** reported in ***1987 2 ACJ 987***, wherein it is held as follows:

“9. The object of enacting Section 12 of the Act is to give protection to the workmen and secure compensation from the persons who can pay and in case of an accident such workmen will not be dependent, sometime upon a petty contractor who will not be able to pay compensation on account of his financial inability. In our opinion, the main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged through the Contractor by the principal employer for its ordinary part of the business, which, in the ordinary course, the principal employer is supposed to carry out by its own servants.

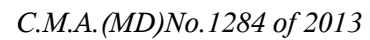
10. While imposing this liability on the principal employer, sub-Section (2) of Section 12 of the Act has provided that the principal employer will be entitled to be indemnified by the contractor in case the principal employer is required to pay compensation to the employees of the contractor”.



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15. In view of the above said judgement and provisions of Section 12 it is clear that the principal employer is liable to pay compensation to the employees of contractor and the principal employee will be entitled to be indemnified by the contractor. In the case on hand also the temple is the principal employer and though the deceased was working under the second respondent/first respondent the appellant/second respondent being the principal employer is liable to pay the compensation to the petitioner. The tribunal also after elaborate discussion correctly fixed the liability on the principal employer i.e., appellant/second respondent. In this case there is no dispute in respect of quantum fixed by the Commissioner of Labour, i.e., appellant/second respondent and the present appeal is filed only as against the liability. Therefore the order passed by the Tribunal in fixing liability as against the appellant/second respondent even as per the first respondent his son was in the service of the second respondent is in order and there is no any infirmity or perversity found in the order of the Tribunal and warrants no interference. However the contractor, second respondent/first respondent was set exparte and the appellant/second respondent will be entitled to be indemnified by the Contractor i.e., second respondent/first respondent in accordance



16. In the result, this Civil Miscellaneous Petition is partly allowed and the order passed by the Tribunal is modified to the effect that the petitioner is entitled to a sum of Rs.4,26,080/- and the second respondent is directed to pay the above said amount and the second respondent will be entitled to be indemnified by the contractor / first respondent as per section 12(2) of the Employees Compensation Act, 1923 in accordance with law. No costs.

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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1. The Deputy Commissioner of Labour, Tiruchirapalli
2. The Joint Commissioner
Hindu Religious and Charitable
Endowment Board,
Thiruvarangam
Thiruchirapalli District
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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