



C.M.A.(MD) No.1715 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.1715 of 2010

and

M.P.No.1 of 2010

M/s.Viswabharathy Textiles (P) Ltd.,
Trichy Road, Vadamadurai,
Dindigul,
Through its Managing Director.

... Appellant

Vs.

1.G.Vasanth,
2.Minor.Dinesh Babu,
3.Minor.Suppriya,
(R2 and R3 represented by their mother and
next friend/first respondent)

... Respondents

Prayer: Civil Miscellaneous Appeal filed Section 30 of the Workmen's Compensation Act, 1923 to set aside the orders dated 30.07.2010 passed in W.C.No.100 of 2005 passed by the Deputy Commissioner of Labour, Dindigul.

For Appellant : Mr.C.Karthikeyan

For Respondents : Mr.R.Sundar



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JUDGMENT

The instant appeal has been filed challenging the quantum of compensation, mainly on the ground that the deceased sustained minor injuries due to the accident and the nexus between the accident and death have not been established.

2. The respondents filed a claim petition stating that during the course of employment on 15.03.2003, while the deceased was unloading certain goods, he sustained injuries, as a result of which his right middle finger and ring finger were amputated; and that the deceased died two months later due to chest pain.

3. The appellant filed a counter stating that the nexus between the accident and the death has not been established; that due to the accident, he had suffered only minor injuries and he had also resumed work and that therefore, the finding of the Commissioner that the nexus between the accident and death has been established is perverse.

4. The claimants examined two witnesses as P.W.1 and P.W.2 and



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marked Exs.P1 to P9. The appellant examined one witness as R.W.1 and

marked Exs.R1 and R2.

5. The Tribunal, after taking into consideration oral and documentary evidence, held that the accident took place during the course of employment and the deceased died due to the injuries suffered in the accident and awarded the compensation of Rs.4,15,960/-.

6. The learned counsel for the appellant submitted that the claimants had not examined the doctor who treated the deceased for the injuries sustained by him; that the medical records have not been filed to establish the nexus between the accident and the death; and that in any case, the injuries are minor in nature and from those injuries the nexus between the accident and the death cannot be inferred.

7. The learned counsel for the respondents, per contra, submitted that the deceased was a healthy youngster, aged 30 years and after the accident, there was no reason for him to die at such a young age; that the doctor, who had treated the deceased on 15.05.2003, stated that the deceased died due to chest pain; and that the records would show that the



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deceased sustained injuries in the chest at the time of accident and therefore, nexus has been established.

8. The instant appeal raises the following substantial question of law:

“Whether the Commissioner was right in awarding compensation for the death, in the absence of any evidence to prove the nexus between the injuries sustained in the accident and the death of the deceased?”

9. On perusal of the evidence adduced on the side of the respondents, it is seen that the doctor, who had treated the deceased after he had sustained injuries, had not been examined by the claimants. The discharge summary issued by the hospital, where the deceased was treated, shows that the deceased had sustained injuries in the ring and middle finger; and that both the fingers were amputated. However, there is no reference to any other injuries said to have been sustained by the deceased.

10. It is the case of the respondents that the deceased sustained



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injuries in the chest at the time of the accident. However, there is no evidence to substantiate the said version. The deceased died two months after the accident. The doctor, who treated him when he was admitted to the hospital on 15.05.2003 for chest pain, had not stated that the death was due to the injuries sustained by the deceased. Further, the nature of the injuries sustained are such that, the nexus cannot be inferred. In such circumstances, this Court is of the view that the finding of the Commissioner holding that the nexus between the accident and the death has been established is perverse and liable to be set aside. The substantial question of law is answered accordingly.

11. However, the respondents are entitled to compensation for the injuries sustained by the deceased, which has been proved. Admittedly, the deceased had suffered amputation of the middle finger and ring finger. Part 2 of Schedule 1 of the Employee's Compensation Act, 1923 would show that the percentage of the loss of earning capacity for the amputation of two phalanges of the middle finger and two phalanges of the ring finger is 9% and 6%, respectively. Thus, the total percentage of loss of earning capacity has to be $9 + 6 = 15\%$. Since the deceased was aged 30 years, the factor applicable is 207.98. Thus, the compensation under the head 'loss



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of earning capacity' has to be Rs.4,000/- x 15/100 x 207.98 =

Rs.1,24,788/-.

12. The claimants shall also be entitled to compensation towards medical treatment. Though no bills have been produced by the claimants, the medical expenses incurred for the treatment cannot be ruled out. This Court is of the view that a sum of Rs.25,000/- can be awarded under the said head. The compensation under the head 'funeral expenses' is confirmed. Thus, the compensation payable to the claimants is reduced as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Commissioner</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Loss of earning capacity	Rs.4,15,960/-	Rs.1,24,788/-	Reduced
2	Funeral expenses	Rs. 2,500/-	Rs. 2,500/-	Confirmed
3	Medical expenses	---	Rs. 25,000/-	Granted
Total		Rs.4,18,460/-	Rs.1,52,288/-	Reduced by Rs.2,66,172/-

13. The respondents/claimants are entitled to withdraw the modified amount of Rs.1,52,288/- (Rupees One Lakh Fifty Two Thousand Two Hundred and Eighty Eight only) together with proportionate interest and



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costs, as per the apportionment fixed by the Commissioner, less the amount already withdrawn, if any, by filing appropriate application before the Commissioner.

14. The respondents 2 and 3 were minors when the claim petition was filed in the year 2005. They would have attained majority now. Hence, they are directed to file appropriate application for recording themselves as major and withdraw their shares.

15. The appellant shall be permitted to withdraw the excess amount deposited before the Commissioner by filing suitable application.

16. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd



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To:

1.The Commissioner for Workmen Compensation,
The Deputy Commissioner of Labour, Dindigul.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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