



C.M.A.(MD) No.31 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.(MD)No.31 of 2023

and

C.M.P.(MD)No.398 of 2023

N.Chandirasekaran.

... Appellant

VS.

1.Saroja,
2.Manimegalai,
3.Madhubala,
4.Saravanan,
5.Mariappan.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, 1923, against the judgment and award, dated 24.11.2022 in W.C.No.75 of 2018, on the file of the Commissioner of Workmen Compensation Court, Tiruchirappalli.



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For appellant : Mr.S.Ramsundarvijayraj

For Respondent
for R1 to R4 : Mr.N.Kamesh
for R5 : Died

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the sole respondent against the award dated 24.11.2022 in W.C.No.75 of 2018, on the file of the Commissioner of Workmen Compensation Act, Tiruchirappalli.

2. Heard arguments of the learned counsel on either side and perused the relevant records.

3. The legal heirs of the deceased Sekar had filed the claim petition in W.C.No.75 of 2018 before the Commissioner of Workmen Compensation Act, 1923, claiming compensation for the death of the first claimant/Sekar, who died due to the accident that occurred in the course of employment on 08.02.2015, against one Chandrasekaran,



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Sri Amman Agencies.

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4. The details as set out in the claim petition are given hereunder:

At the instance of the respondent, the first claimant's husband Sekar, along with Murugesan, Vadivel and others, on 08.02.2014, went to the fertilizer shop of the respondent, namely, Sri Amman Agencies at Uranipuram. They were unloading the fertilizer bags from the lorry stationed in front of the shop. When the deceased Sekar was unloading the fertilizer bags, he was not in a position to bear the weight and fell on the ground and also sustained injury over the head. On the way to the Primary Health Center, Thiruvonam, he breathed his last. Upon the dead body, postmortem was conducted at Alangudi Government Hospital. A case in Crime No.44 of 2015 was registered at Karambakkudi Police Station. The accident occurred during the course of employment while working under the respondent. The deceased was earning Rs.500/- per day and the respondent, who is the employer, is liable to pay compensation of Rs.15,00,000/-. By claiming the same, the claim petition was filed before the Commissioner of Workmen Compensation.



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WEB COPY 5. The details of the counter are given hereunder:

On 08.02.2015, in order to unload the fertilizer bags, though he called some persons, Sekar did not come on the day to unload the fertilizer bags. The said work is being carried out for a half an hour in a day once in one month. After that, they have gone to the other shop and for the said half an hour, the coolie would be paid Rs.150/- and no fertilizer shop will have permanent loadmen. The accident elsewhere occurred and hence, the claim petition is liable to be dismissed.

6. At trial, on the claimants' side, two witnesses were examined and seven documents were marked. On the respondent side, the respondent examined himself as R.W.1 and a copy of the agreement entered into between the respondent and one Ramachandran son of Karuppaiah Konar is Ex.R1.

7. Upon consideration, the learned Commissioner did not rely upon Ex.R1, but, relied upon the evidence of P.W.1 and concluded that the respondent is liable to pay compensation of Rs.6,44,200/- (including funeral expenses of Rs.5,000/-) to the claimants, who are



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the legal heirs of the deceased Sekar.

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8. This Court, while admitting this appeal on 19.01.2023, has framed the following substantial questions of law:

1. *Whether the learned Commissioner of Workmen Compensation Court, Tiruchirappalli is ordering the compensation on the appellant without considering the indemnifying theory, hence the same is liable to be inferred.*
2. *Whether the learned Commissioner of Workmen Compensation Court, Tiruchirappalli fixing the compensation, even though the first respondent's husband deceased Sekar has not been worked under the appellant, hence the same is liable to be inferred.*

9. During the pendency of this appeal, the fifth respondent died and his legal heirs have already been on record as the respondents 1 to 4. The learned counsel for the appellant has filed a memo to that



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effect and the same is recorded.

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10. The first claimant, who was examined as P.W.1, would state that while her husband was unloading the fertilizer bags, he fell down and died.

11. Through the ocular witness P.W.2/Thirunavukkarasu, it has come on record that when he was returning home along Uranipuram Bazar, he saw a stationery lorry with fertilizer bags in front of the Sri Amman Agencies causing disturbance to the other vehicles. He saw Sekar son of Mariappan, who was unloading the fertilizer bags from the lorry. While he was climbing the steps up the fertilizer shop, he lost his balance and fell down. Hence, he suffered head injury. No details were elicited advantageous to the respondent during his cross-examination.

12. The evidence of P.W.2 is corroborated by the evidence of P.W.1, who is the wife of the deceased. Admittedly, she did not witness



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the occurrence. The version of P.W.2 is found in Ex.P1/First Information Report.

13. Whereas, the respondent, in his counter as well as in his proof affidavit, would state that the deceased Sekar did not work in his shop on 08.02.2015 and to strengthen the said details, he filed Ex.R1/agreement. The agreement is dated 13.07.2019 and the date of occurrence is 08.02.2015. It is relevant to note that the persons mentioned in the counter have not been examined to prove the version of the respondent. Therefore, the Commissioner, having analysed the evidence of P.W.1, P.W.2 and R.W.1 coupled with Ex.P1/First Information Report, came to the conclusion that during the course of employment, while unloading the fertilizer bags in the respondent's fertilizer shop, namely, Sri Amman Agencies, the husband of P.W.1/ Sekar, while carrying the fertilizer bags and while climbing up the steps, fell down and suffered head injury on the back of his head and on the way to the hospital, he died. Therefore, I have no hesitation to hold that the learned Commissioner has fastened the liability on the respondent in a right perspective. I do not find any good reason to



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disturb the finding of the learned Commissioner. Hence, the substantial questions of law are answered in favour of the claimants.

14. It is reported by the learned counsel for the appellant that no amount has been deposited at the time of numbering this appeal as statutory deposit.

15. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(ii) The compensation of Rs.6,44,200/- (including the funeral expenses of Rs.5,000/-) awarded by the Commissioner is confirmed.

(iii) The appellant is directed to deposit the compensation amount i.e., Rs.6,44,200/- (less the amount already deposited, if any) together with interest at the rate of 12% per annum from the date of accident till the date of deposit and costs to the credit of W.C.No.75 of 2018 on the file of Commissioner of Workmen Compensation, Tiruchirappalli, within a period of six (6) weeks from the date of receipt of a copy of this Judgment, otherwise, for the delay period, the interest will be at 18% p.a.



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WEB COPY(iv) On such deposit being made, the first respondent/wife is permitted to withdraw Rs.3,44,200/- and the respondents 2 to 4/children are permitted to withdraw Rs.1,00,000/- each along with interest and costs, by filing necessary application before the Tribunal.

15.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
apd

To

1.The Motor Accidents Claims Tribunal / Special Sub Court, Tirunelveli.

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



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R.KALAIMATHI,J

apd

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