



C.M.A(MD)No.945 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2024

CORAM:

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

C.M.A(MD)No.945 of 2012

and

M.P(MD)No.2 of 2013

E.Saravanan

... Appellant/Respondent

Vs.

G.Mathiyas

... Respondent/Petitioner

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, 1923, to set aside the judgment and decree of the Deputy Commissioner of Labour, Madurai in W.C.No.2 of 2008, dated 05.03.2012 allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.I.Velpradeep
for M/s.Thilagavathi

For Respondent : Mr.T.Ravichandran



C.M.A(MD)No.945 of 2012

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed by the Deputy Commissioner of Labour, Madurai, wherein the respondent herein has filed a petition before the Tribunal for claiming compensation.

2. The Tribunal has awarded a sum of Rs.1,16,208/- towards compensation and directed the respondent to pay the amount. As against the award passed by the Tribunal, the respondent herein has preferred this Civil Miscellaneous Appeal.

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 averments before the Tribunal are as follows:

The petitioner and others were directly engaged by the respondent and they were worked as Mason in the respondent's marriage hall. While so on 01.08.2005 at about 08.30 A.M., when the petitioner was working



C.M.A(MD)No.945 of 2012

under the employment of respondent along with Thomas, Moses, Baskar, Xavier, Ajith Kumar and John Paul, at about 05.00 P.M., he was working in the ladder, he fell down and he sustained injury and his right hand elbow was damaged. Immediately he was taken to Ravichandran Hospital and thereafter, the respondent promised to pay the medical expenses. But thereafter, he failed to pay the medical bills. After treatment, on the same day itself, he was taken to his house by the respondent. Thereafter, the petitioner had taken continuous treatment. Thereafter, again on 11.08.2005 and on 12.09.2005, taken treatment and also sustained permanent disability. The petitioner was permanently disabled. He was earning a sum of Rs.140/- per day and on 20.12.2005, he issued an advocate notice and the same was received by the respondent. The respondent has not send any reply. Therefore, the petitioner filed a petition for claiming compensation of Rs.3,00,000/-.

5. The brief averments of the counter filed by the respondent are as follows:

The petitioner was never engaged by the respondent and he is not aware of the nature of accident and injuries caused to the petitioner. The



C.M.A(MD)No.945 of 2012

respondent denied the rate of wages, age and nature of injury stated by the applicant. However, the claim of loss of earning capacity is only imaginary. Hence, the petition is liable to be dismissed.

6. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.4 were examined and marked Exhibits P.1 to P.8. On the side of the respondent, R.W.1 was examined and marked Exhibit R.1.

7. After considering the evidences adduced on either side, the Tribunal has awarded a sum of Rs.1,16,208/- towards compensation. As against the same, the respondent has filed this Civil Miscellaneous Appeal.

8. At the time of admission of this appeal, no substantial question of law was framed by this Court.

9. The learned Counsel appearing for the appellant / respondent would contend that the respondent / petitioner has not proved the employer employee relationship between the respondent / petitioner and the appellant / respondent and the date of accident is 01.08.2005 and the



C.M.A(MD)No.945 of 2012

WEB COPY

respondent / petitioner has not produced any records to show that on the date of accident, he was admitted in the Hospital and no complaint was given and FIR has not been registered. The respondent / petitioner has produced the medical records for the date from 01.10.2005. Therefore, the respondent / petitioner has not proved that the injury sustained by the appellant / respondent was during the course of employment under the employment of respondent. The Tribunal failed to consider the above said aspects and erroneously came to a conclusion that the petitioner was under the employment of the respondent and he sustained injury during the course of employment. Therefore, the order passed by the Tribunal is liable to be set aside.

10. The learned Counsel appearing for the respondent / petitioner would contend that the respondent was working under the appellant and the appellant engaged the respondent and others for doing Mason work in his marriage hall. On 01.08.2005, when the petitioner was working under him and he was under the employment, during the course of employment, he fell down from the ladder and sustained injuries. Immediately, he was taken to the Hospital by the appellant and the appellant assured to incur



C.M.A(MD)No.945 of 2012

medical expenses and on the same day evening, the petitioner was taken to his home. After treatment, he was taken to his house and thereafter, he had taken treatment through continuously and lastly on 01.10.2005 he went to the hospital and taken treatment and obtained disability certificate. As per the disability certificate, he sustained disability of 43%. Therefore, he claimed compensation. Already he issued notice to the appellant. After receipt of notice, the appellant failed to send any reply. The respondent had examined P.W.1 to P.W.4 and the other witnesses and they categorically deposed about the employment of the respondent (i.e.,) petitioner and the appellant / respondent has not adduced any contra evidence. Therefore, the Tribunal after taking into consideration of the evidences, fairly awarded compensation. Therefore, the present appeal is liable to be dismissed.

11. This Court had heard both sides and perused the records and after perusing the records, the substantial question of law involved in this case is:

i) Whether the Deputy Commissioner of Labour, Madurai is right on coming to a decision that the claimant is a workmen under the appellant



C.M.A(MD)No.945 of 2012

herein without any documentary evidence?

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12. In this case, according to the respondent, he along with Thomas, Moses, Baskar, Xavier, Ajith Kumar and John Paul engaged in the building work under the appellant's employment. At that time, on 01.08.2005, when they were engaged in the work, the petitioner sustained injuries. Immediately he was taken to Ravichandra Hospital and the petitioner also produced the disability certificate and X-ray certificate, dated 01.10.2005 (i.e.,) after two months from the date of incident. No complaint was given by the respondent as against the appellant and no medical records produced to show that on the date of accident he had admitted in the Hospital. Per contra, the available documents shows that he was admitted in the Hospital on 01.10.2005 and he sustained fracture injuries and his disability is 45%. In this context, P.W.1 in his evidence stated that on 01.08.2005 while he was working in the marriage hall of the respondent had sustained injury and immediately after the accident, the respondent had taken the petitioner to Ravichandra Hospital and assured that he will bear the medical expenses. But he has not fulfilled his promise. Further stated that on the same day itself, he was discharged in



C.M.A(MD)No.945 of 2012

the hospital. Further the petitioner himself stated in the petition as well as in his affidavit that, along with one Thomas, Moses, Baskar, Xavier, Ajith Kumar and John Paul also engaged in the Mason work. On the side of petitioner, P.W.1 to P.W.4 were examined and marked Exhibits P.1 to P.8. The petitioner side witnesses also categorically deposed about the incident. Though the petitioner has not produced any documents and produced the medical records belatedly after two months, the appellant / respondent has not stoutly denied the accident through his counter and on the careful perusal of the counter, they stated only evasive denial and thereby, the evidences of petitioner's side are reliable and acceptable. According to the petitioner's side evidence, he sustained injuries due to the accident when he was working under the respondent and the doctor P.W.3 also deposed about his disability. Therefore, the Tribunal after taking into consideration of evidences adduced on both sides, came to a conclusion that the petitioner was working under the respondent and he sustained injuries during the course of employment and thereby, awarded compensation.



C.M.A(MD)No.945 of 2012

WEB COPY

13. In view of the above said discussions, the order passed by the Tribunal in W.C.No.2 of 2008 on the file of the Deputy Commissioner of Labour, Madurai, dated 05.03.2012 is in order and no any perversity or infirmity found in the order passed by the respondent. Thus the substantial question of law is answered.

14. In the result, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed, accordingly it is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

11.03.2024

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

To

- 1.The Deputy Commissioner of Labour,
Madurai.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.945 of 2012

P. DHANABAL, J.

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C.M.A(MD)No.945 of 2012

11.03.2024