



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: **25.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.715 of 2020 & 658 of 2021

and

C.M.P(MD)Nos.7287 of 2020 & 6251 of 2021

C.M.A(MD)No.715 of 2020:

P.Venkateshapandian

... Appellant/2nd Respondent

Vs.

1.N.Ravichandran @ Ravi

... 1st Respondent/Claimant

2.The Executive Engineer,
Public Works Department,
Building (Construction and Maintenance) Section,
Collectorate Complex,
Collectorate Post,
Ramanathapuram-623 501.

3.S.Arul

... Respondents 2 & 3/
Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 (1) of the Workmen Compensation Act, 1923, to set aside the award passed by the learned Commissioner of Workmen Compensation Court, Madurai in W.C.No.91 of 2013, dated 01.10.2020 and allow the above Civil Miscellaneous Appeal.



WEB COPY



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

For Appellant : Mr.S.Ramsundarvijayraj

For R-1 : Mr.S.Ramesh

For R-2 : Mr.C.Satheesh
Government Advocate

For R-3 : No appearance

C.M.A(MD)No.658 of 2021:

Executive Engineer,
Public Works Department,
Buildings (Construction and Maintenance) Division,
Collectorate Complex,
Collectorate Post,
Ramanathapuram District. ... Appellant/1st Respondent

Vs.

1.N.Ravichandran @ Ravi ... 1st Respondent/Claimant

2.Venkatesapandi

3.S.Arul ... Respondents 2 & 3/
Respondents 2 & 3

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Employee's Compensation Act, 1923, to set aside the order in E.C.No.91 of 2013, dated 01.10.2020 on the file of the Commissioner of Employees Compensation Tribunal, Madurai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.C.Satheesh
Government Advocate



WEB COPY



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

For R-1 : Mr.S.Ramesh
For R-2 : Mr.S.Ramsundarvijayraj
For R-3 : No appearance

COMMON JUDGMENT

These two appeals have been filed by the respondents 1 and 2 in W.C.No.91 of 2013 on the file of the Commissioner of Employees Compensation Tribunal, Madurai.

2. According to the injured claimant, he was engaged as a construction worker by the second respondent PWD contractor for carrying out demolition of the old building of Veterinary Hospital at Iyermadam Village in Ramanathapuram Town. While he was carrying out the demolition work, a portion of the wall had suddenly collapsed and the claimant got trapped in the debris and sustained grievous injuries. He had further contended that he was admitted to Government Rajaji Hospital, Madurai and despite best treatment, his left leg had to be amputated. Hence, he had prayed for a compensation of Rs.8,56,752/-.



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

3. The PWD Department had filed a counter contending that there is no employer employee relationship between the claimant and the PWD Department. The contract work of demolition of the old hospital has been entrusted to the respondents 2 and 3 in the claim petition and the claimant was engaged only by the said contractors. It was further contended that, as per the agreement entered into between the contractor and the PWD Department, the contractor alone is responsible for any liability arising under the Workmen's Compensation Act. The claimant has to move the Welfare Board meant for the construction workers seeking compensation and he cannot approach the Workmen's Compensation Commissioner.

4. The second respondent, who is the PWD contractor had filed a counter contending that, the claimant was never employed under him on 09.12.2011 and no such incident has taken place at 09.00 a.m on the said date. The contract work was started on 01.02.2012 and it was completed on 26.03.2012. No police complaint was lodged about the accident and after a period of one year, as an after thought, the present claim petition has been filed.



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

WEB COPY

5. The Tribunal after considering the oral and documentary evidence submitted on either side has arrived at a finding that, the claimant had worked as a construction worker under second and third respondents. It was further found that, the second and third respondents are contractors of the PWD Department based upon an agreement between them. The Commissioner has further found that, the accident has taken place during the course of employment. Ultimately, the authority has proceeded to fix the compensation at Rs.7,97,046/- as compensation along with 12% interest from the date of accident. The Tribunal has directed the first respondent PWD Department, being the principal employer, to satisfy the award amount and thereafter, permitted them to recover the same from their contractors, namely, the second and third respondents in the claim petition. Challenging the said award, the second respondent Contractor has filed C.M.A(MD)No.715 of 2020 and the Executive Engineer of PWD Department has filed C.M.A(MD)No.658 of 2021.

6. C.M.A(MD)No.715 of 2020 has been admitted on the following substantial questions of law:



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

"(a) Whether the Commissioner of Workmen Compensation erred in mulcting liability on the Appellant, when the claimant himself has admitted that he was employed under the third respondent and that there existed no relationship between them as employer-employee?"

"(b) Whether the Commissioner of Workmen Compensation erred in deciding the claim in favour of the claimant, when the claimant has allegedly lodged a complaint one year after the date of occurrence and his bona fide was questioned by the appellant?"

7. In C.M.A(MD)No.658 of 2021, the following substantial questions of law have been raised:

"1. The contract between appellant / first respondent and second and third respondents whether it was consider by Tribunal.

2. The second respondent liable to pay compensation as per agreement. Whether it is consider by Tribunal or not.

3. Whether any opportunity given by Tribunal to appellant / first respondent to establish his case."

8. The learned Counsel appearing for the appellant in C.M.A(MD)No.658 of 2021 drew the attention of this Court with regard to the paragraph No.2 of their counter and contended that the claimant



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

was not employed with the Department. There is no employer employee relationship between the appellant Department and the claimant. Further, there is a specific agreement between the Contractor and the Department to the effect that incase of any death or injury resulting in the claim application under Workmen's Compensation Act, the entire liability should be borne by the contractor. Therefore, they are not liable to pay any compensation.

9. The learned Counsel appearing for the appellant in C.M.A(MD)No.715 of 2020 had contended that the claimant himself has admitted that he was employed under the third respondent and therefore, there is no employer employee relationship between the second respondent and the claimant. He further contended that the claimant had lodged a complaint one year after the date of occurrence and therefore, there is no *bona fides* on the part of the appellant.

10. Per contra, the learned Counsel appearing for the claimant had contended that the accident has taken place at about 09.00 a.m at the old Veterinary Hospital in Ramanathapuram District. Immediately he was admitted to the Government Hospital, Ramanathapuram and later he was



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

referred to the Government Rajaji Hospital, Madurai. Despite best treatment from Government Rajaji Hospital, Madurai, his left leg had to be amputated and his right leg had been completely damaged. He had further contended that the second and third respondents are the contractors and the first respondent in the claim petition is the principal employer and admittedly, the accident has taken place only during the course of employment. He relied upon Exhibit P.6 wound certificate. Exhibit C.1 medical records of Government Rajaji Hospital, Madurai and Exhibit C.2 medical records of Government Hospital, Ramanathapuram in support of his contentions. Hence, he prayed for sustaining the award passed by the Workmen's Compensation Commissioner.

11. I have carefully considered the submissions made on either side and perused the materials available on record.

12. It is the specific case of the claimant that while he was engaged as a construction worker for demolishing the old Veterinary Hospital at Ramanathapuram, a portion of the wall has fallen down and he got trapped in the debris and sustained grievous injuries. It is also an admitted case that, the PWD Department had engaged the second



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

respondent as a contractor for demolition of the said Veterinary Hospital and for construction of a new hospital in the said site. Therefore, there is no dispute that PWD Department is the principal employer and the second respondent is the contractor.

13. The second respondent in the claim petition has filed the appeal in C.M.A(MD)No.715 of 2020 has contended that the claimant was never employed under him on the said date. However, from the deposition of the second respondent, it is clear that, he was not maintaining any attendance register or wage register to indicate the number and name of the employees, who were attending day to day work. Therefore, he has failed to establish that the claimant was not working under him on the date of accident. A perusal of accident register which has been marked as Exhibit C.2 reveals that, the claimant has sustained grievous injuries while demolishing the old veterinary hospital at Ramanathapuram on 09.12.2011. Neither the principal employer nor the contractor is able to establish any motive for falsely implicating them in the case. The hospital records, clearly indicate that the claimant was engaged as a construction worker by the second respondent for the works assigned to them by the first respondent Department. Therefore, the



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

Commissioner was right in arriving at a finding that, there is employer employee relationship between the second respondent in the claim petition and the claimant. There is no dispute that the work was handed over to the second respondent by the PWD Department. Therefore, the appellant in C.M.A(MD)No.658 of 2021 is the principal employer and the second respondent in the claim petition / appellant in C.M.A(MD)No. 715 of 2020 is the contractor.

14. In view of Section 12(2) of the Employee's Compensation Act, 1923, the principal employer is liable to pay the award amount under the Workmen's Compensation Act and thereafter, he is entitled to recover the said amount from the contractors. The Commissioner has rightly directed the PWD Department to satisfy the entire award amount and thereafter, permitted the Department to recover the same from its contractors. Therefore, in such circumstances, this Court does not find any reason to interfere in the award of the Commissioner in W.C.No.91 of 2013. All the substantial questions of law in both the appeals are answered as against the respective appellants. There are no merits in the appeal.



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

WEB COPY 15. Both the Civil Miscellaneous Appeals stand dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

25.07.2024

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

To

1.The Commissioner of Workmen
Compensation Court,
Madurai.

2.The Commissioner of Employees Compensation Tribunal,
Madurai.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)Nos.715 of 2020 & 658 of 2021

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)Nos.715 of 2020 & 658 of 2021

25.07.2024