



C.M.A(MD)No.1028 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.03.2024

CORAM:

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

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and

M.P(MD)No.1 of 2014

The Management,
M/s.ARC Parcel Service Depo,
Karisalkulam,
Near Fatima College,
Madurai.

...Respondent/Appellant

Vs.

1.TMT.Sathi Anusuya	... 1st Petitioner/1st Respondent
2.Mookiah @ Mari Selvam	... 2nd Petitioner/2nd Respondent
3.Visithra	... 3rd Petitioner/3rd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, to set aside the orders of the Deputy Commissioner of Labour, Madurai, dated 26.02.2014 received on 06.06.2014 passed in W.C.No.245 of 2008 and allow the appeal.



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For Appellant : Mr.C.Karthikeyan
for Mr.P.Chandra Bose

For Respondents : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in W.C.No.245 of 2008 on the file of the Commissioner of Workmen Compensation (Deputy Commissioner of Labour), Madurai, wherein the respondents 1 to 3 herein have filed a claim petition before the Deputy Commissioner of Labour for the death of one Thanikodi. The Tribunal has awarded a sum of Rs.2,36,520/-. As against the order passed by the Deputy Commissioner of Labour, the respondent has filed this Civil Miscellaneous Appeal.

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

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

The first respondent is wife of deceased Thanikodi and other respondents are children of Thanikodi. The said Thanikodi was working as



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load man for more than 17 years under the respondent and he used to loading and unloading the things from the lorry. While so, on 19.06.2005 at about 04.00 am, when he was on duty, he sustained injury due to the bundle fell on him. Thereafter, he was admitted in the Raja Hospital, Pasumalai and thereafter, his leg was amputated, then he died on 23.11.2006. At the time of accident, he was aged about 50 years and he was earning Rs.170/- per day and thereby, he claimed compensation.

4. The respondent filed his counter and additional counter stating that the petitioner are put to stick proof of the allegations levelled in the petition. The petitioner Company is covered under the ESI Act and they paid contribution for all the employees. The respondent also denied the employment of the deceased under the respondent. There was no relationship as employer-employee between the deceased and the respondent. However, as per Section 53 of the ESI Act, the petition under Workmen Compensation Act is not maintainable. The petitioner was not working as load man and he never paid any salary as alleged in the petition. Already the petitioner was working as a over head tank operator at Thanichiyam Panchayat and they also disbursed the death benefits of



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the deceased. Therefore, the present petition is liable to be dismissed.

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5. Before the Deputy Commissioner of Labour, on the side of the petitioners, they examined P.W.1 and P.W.2 and marked Exhibits P.1 to P.6. On the side of the respondent, they have examined R.W.1 and marked Exhibits R.1 to R.5.

6. After hearing both sides and perusing the evidences, the Deputy Commissioner of Labour has awarded a sum of Rs.2,36,520/- towards compensation. Aggrieved by the said order, the respondent has preferred this Civil Miscellaneous Appeal.

7. The learned Counsel appearing for the appellant / respondent would contend that the deceased was not working under the respondent and he was working as over head tank operator at Thanichiyam Panchayat and to that effect, they also given reply for the Right to Information petition. Therefore, there is no relationship between the deceased and the respondent as employer and employee. The respondent establishment is covered under the ESI Act and thereby, as per Section 53 of ESI Act, the



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petition under Workmen Compensation Act is not maintainable.

Therefore, the petition filed by the petitioner is liable to be dismissed. But the Deputy Commissioner of Labour has not considered the above said aspects and simply awarded compensation. Further as per the petition, the deceased sustained injury on 19.06.2005 but he died on 23.11.2006. The petitioner has not examined any medical evidences and not produced any medical records to prove his cause of death and thereby, also the petition is liable to be dismissed.

8. Even after the notice served to the respondents, they have not appeared before this Court and the names also printed in the cause-list. Upon hearing the petitioner side and perusing the records, the substantial questions of law involved in this case are:

- 1) Whether there was a relationship between the deceased and the respondent as employer and employee?
- 2) Whether the Deputy Commissioner of Labour justified in allowing the compensation without any medical evidence?
- 3) Whether the application under Workmen Compensation Act



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before the Deputy Commissioner of Labour is maintainable when there is a bar under Section 53 of the Employees of the State Insurance Act?

Point No.1 :

9. In this case, the respondents 1 to 3 / petitioners have filed a petition before the Deputy Commissioner of Labour for claiming compensation of death of one Thanikodi alleging that he was working under appellant / respondent as a load man. The said fact is denied by the appellant / respondent. In order to prove the same, the respondents / petitioners have not filed any documents to show that he was working under the appellant / respondent. Per contra, the appellant / respondent have produced Exhibits R.3 to R.5. On careful perusal of the above said documents, they revealed that the deceased was working under the Thanichiyam Panchayat as over head tank operator and drawn salary. While so, it is the duty of the respondents / petitioners to prove that the deceased was also working under the appellant / respondent. In this context, the respondents / petitioners have examined P.W.2 stating that he is the co-employee under the appellant / respondent and he deposed that he along with the deceased were working under the appellant / respondent,



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but he has not produced any documents to show that he was working under the appellant / respondent. The appellant / respondent also denied his employment. The respondents / petitioners have not produced any other documents to show that the deceased was working under the appellant / respondent. Therefore, the petitioners failed to prove that the deceased was working under the appellant / respondent.

10. Per contra, the Exhibits R.3 to R.5 shows that the deceased was working under the Thanichiyam Panchayat as over head tank operator. Further the appellant / respondent has examined R.W.1 and he also stating that no such person in the name of the deceased was working under the appellant / respondent and the said name of the witness has not been reflected in the list of employees. Therefore, the respondents / petitioners have failed to prove that the deceased was working under the appellant / respondent. Thereby, failed to prove relationship as employer and employee. Thus the substantial question of law 1 is answered.



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Point No.2:

11. The learned Counsel appearing for the appellant would contend that the petitioner have not proved the cause of death and the date of accident is on 19.06.2005 but he died on 23.11.2006. Therefore, there is no direct impact for the death of the petitioner, within the employment. The deceased was not sustained injury due to the employment and further the petitioners have not examined any medical witnesses to prove that the deceased taken treatment for the injury sustained by him and thereafter, he was on continuous treatment and then he died due to the said injury sustained by him. The petitioners have not examined the Doctor who treated the deceased for the injury sustained by him. Therefore, they failed to prove that the injury sustained in the course of employment and the death was also caused due to the injury sustained by him.

12. In this context, the learned Counsel appearing for the appellant relied judgment in *Naresh Kumar Khande Vs. M/s.State Ware Housing Corporation through the Branch Manager and Another reported in 2017 SCC Online Chh 866*, wherein the High Court of Chattishgarh held



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as follows:

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"4. The law in this regard has been well settled by the Supreme Court in case of Regional Director, ESI Corporation Vs. Francis De Costa, (1996) 6 SCC 1, wherein it has been held as under:

"27. We are of the view that in the facts of this case, it cannot be said that the injury suffered by the workman one kilometer away from the factory while he was on his way to the factory was caused by an accident arising out of and in the course of his employment.

28. In the case of Dover Navigation Company Limited Vs. Isabella Craig (1940 A.C.190), it was observed by Lord Wright that-

"Nothing could be simpler than the words" arising out of and in the course of the employment." It is clear that there are two condition to be fulfilled. What arise "in the course of" the employment is to be distinguished from what arises "out of the employment." The former words relate to time conditioned by reference to the man's service. the latter to causality. Not every accident which occur to a man during the time when he is on his employment, that is directly or indirectly engaged on what he is employed to do, gives a claim to compensation unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

29. Although the facts of this case are quite dissimilar, the principle laid down in this case, are instructive and should be borne in



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mind. In order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment."

13. *Rashida Haroon Kupurade Vs. and Divisional Manager, Oriental Insurance Company Limited and Others reported in 2010 (3) SCC 271*, wherein the Hon'ble Supreme Court in paragraph Nos.9 and 10 has held as follows:

"9. In order to better appreciate the submissions made on behalf of the parties, Section 3 (1) of the above Act is extracted hereinbelow;

"3. Employer's liability for compensation.-(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter."

It will be clear from the wording of the above section that compensation would be payable only if the injury is caused to a workman by accident arising out of and in the course of his employment. There has to be an accident in order to attract the provisions of



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Section 3 and such accident must have occurred in the course of the workman's employment.

10. As indicated hereinabove, in the instant case, there is no nexus between the accident and the death of the workman since the accident had occurred six months prior to his death. In such circumstances, we are unable to sustain the order of the High Court and we have no option but to set aside the same as far as the observations relating to the appellant herein are concerned."

14. On careful perusal of the above said judgments, it is clear that the compensation would be payable only if the injury is caused to a workmen by accident arising out of and in the course of employment and there has to be an accident in order to attract the provision of Section 3 and such accident must have occurred in the course of the workman's employment.

15. In the case on hand, the respondents / petitioners have failed to prove that the deceased was working under the appellant / respondent and also failed to prove that he sustained injury during the course of employment and also failed to prove though sufficient evidence that the deceased died due to the injury sustained by him. But the learned Deputy



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Commissioner without considering the above said aspects, held that the deceased was working under the appellant / respondent and he sustained injury arising out of and in the course of his employment without examining any medical evidences. Therefore, the order passed by the Tribunal without any medical evidence is not in accordance with law. Thus the substantial question of law is answered.

Point No.3:

16. The appellant contended that the appellant concerned is covered under the ESI Act and thereby, the provisions of Workmen Compensation Act will not apply as per Section 53 of the ESI Act. In order to prove the same, respondent produced Exhibits R.1 to R.3 stating that the respondent establishment is covered under the ESI Act. However, during the cross-examination, the witness admitted that there is no separate coverage for Madurai Branch at the time no reference about the other branches. The learned Counsel appearing for the appellant brought to the knowledge of this Court that sub code is given only after 2014. Therefore, there is no occasion to mention about the Madurai Branch. Therefore, R.W.1 also in his evidence stated that the respondent concern is covered under the ESI



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Act. The said coverage of ESI Act has not been denied by the respondents / petitioners but the respondents / petitioners contention is that the name of the deceased and other employees were not included in the list. Therefore, the available evidence shows that the respondent establishment was covered under the ESI Act.

17. In this context, the learned Counsel appearing for the appellant has relied judgments in ***Bharagath Engineering Vs. R.Ranganayaki and Another reported in 2003 (1) LLN 819***, wherein the Hon'ble Supreme Court in paragraph No.12 has held as follows:

"12. When considered in the background of statutory provisions, noted above, the payment or non-payment of contributions and action or non-action prior to or subsequent to the date of accident is really inconsequential. The deceased employee was clearly an "insured person", as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2 (8) of the Act and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily. The High Court was not justified in holding otherwise.



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We find that the Corporation has filed an affidavit indicating that the benefits under the Act shall be extended to the persons entitled under the Act. The benefits shall be worked out by the Corporation and shall be extended to the eligible persons."

18. On careful perusal of the above said judgments, it is clear that as per Section 53 of the Act, there is a bar against receiving compensation under any other law. In this case also, once the appellant / respondent establishment covered under the ESI Act, the respondents / petitioners cannot seek any compensation in view of the bar under Section 53 of the ESI Act. This Court also already in the previous point decided that the respondents / petitioners have not proved that the deceased was the employee under the appellant / respondent and thereby, the respondents / petitioners are not entitled to any claim through this petition. Thus the substantial question of law is answered.

19. This Court in the previous point while answering the substantial question of law decided that the respondents / petitioners failed to prove the relationship as employer and employee between the deceased and the



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appellant / respondent and also failed to prove that the deceased sustained injuries in the course of employment and there is no medical evidence to prove that the deceased died due to the injury sustained by him and also decided that the petition is barred in view of Section 53 of ESI Act. Therefore, the learned Deputy Commissioner of Labour ought not to have allowed the application. Hence, the order passed by the Deputy Commissioner of Labour, Madurai is liable to be set aside.

20. In the result, this Civil Miscellaneous Appeal stands allowed by setting aside the order passed in Commissioner for Workmen Compensation (Deputy Commissioner of Labour), Madurai in W.C.No.245 of 2008, dated 06.06.2014 and the petition in W.C.No.245 of 2008 is dismissed. Since the appellant has deposited the entire amount before the Deputy Commissioner of Labour, Madurai, he is at liberty to withdraw the same after a lapse of appeal time. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

22.03.2024



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