



C.M.A.(MD)No.148 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.02.2024

CORAM:

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

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and

M.P(MD) Nos. 2 to 5 of 2014

M.Mal Sornapandian

.. Appellant/^{1st} Respondent

Vs.

1. Senthil

..1st Respondent/Claimant

2. Ayyappan @ Ayambalam

..2nd respondent/2nd Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923 against the award of the Deputy Commissioner of Labour (Workmen's Compensation Act)Tirunelveli in W.C. No.37 of 2008 dated 24.12.2012.

For Appellant : Mr.S.Ramu

For R-1 : Mr. N.Subramani

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in W.C. No.37 of 2008 dated 24.12.2012 on the file of the Deputy Commissioner of Labour (Workmen's Compensation) Tirunelveli, wherein the first respondent herein has filed petition for compensation due to the injuries sustained by him during the course of employment.



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2. The Tribunal has awarded a sum of Rs.3,78,370/- towards compensation. As against the order passed by the Tribunal the employer/first respondent has filed the present appeal

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

4. The case of the petitioner before the Tribunal is that he was working under the employment of the second respondent/second respondent, who is the Contractor and the first respondent is the principal employer. Whiles, on 05.07.2007 when he was working under the second respondent during the course of employment, he sustained injuries and thereby he claimed compensation as against the first respondent.

5. The case of the first respondent is that the petitioner is not entitled to any compensation. All the allegations made in the petition are denied as false. The petitioner is put to strict proof of the averments made in the petition. The first respondent/appellant is the registered contractor and the second respondent/second



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respondent was not a maistry and on the date of occurrence no any work was carried out. According to the petitioner, while the petitioner was applying grease for the machine he sustained injuries. Therefore the above said injuries are not during the course of employment and not related to employment. There is no relationship between the injured and the first respondent as employer and employee. Therefore the first respondent is not liable to pay any compensation to the petitioner.

6. The case of the second respondent before the Tribunal is that, the petitioner is not entitled for any relief from the second respondent. The relationship as employer and employee is denied and the second respondent was not working under the first respondent as Maistry. Therefore the second respondent is not liable to pay compensation to the petitioner, hence the petition is liable to be dismissed.

7. Before the Tribunal, on the side of the petitioner they have examined P.W.1 and P.W. 2 and marked exhibits Exs P.1 to P.8 and no witness were examined and no document were marked on the side of the respondent.



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8. After analyzing the evidence adduced by both parties, the Tribunal has awarded a sum of Rs.3,78,370/- towards compensation to the petitioner. As against the order passed by the Tribunal, the present appeal has been filed by the employer/first respondent on various grounds.

9. The learned counsel appearing for the appellant/first respondent would contend that the first respondent/petitioner was not under the employment of the appellant/first respondent. There is no relationship between the petitioner and the first respondent as employer and employee. The first respondent/petitioner is the registered Government contractor and the petitioner was working under the second respondent. The first respondent/petitioner has failed to prove the relationship between the parties as employer and employee but the Tribunal without considering the same erroneously awarded compensation by directing the appellant/first respondent to pay the compensation.

10. The learned counsel appearing for the second respondent would contend that the appellant/first respondent is the registered Government contractor and the second respondent was working as maistry under the first respondent and the petitioner was working as



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labour under the employment of the first respondent through second respondent. Therefore, the first respondent is the principal employer and he is liable to pay compensation to the petitioner. The Tribunal also after taking into consideration fairly awarded compensation and the same is in order and there is no substantial question of law involved in this case, therefore the appeal is liable to be dismissed.

11. This Court at the time of admission admitted the appeal and framed the following substantial questions of law:

i) Whether the Deputy Commissioner of Labour is correct in awarding the compensation when there is no documentary evidence produced by the first respondent/claimant to prove his employment as per Section 3 of Workmen's Compensation Act, 1923?

ii) Whether the Deputy Commissioner of Labour is correct in solely relying upon the First Information Report/Ex.P.1, which was registered 10 days after the alleged date of occurrence which raised great doubt the genuineness of the same?

iii) Whether the Deputy Commissioner of Labour is correct in concluding that the appellant is the principal employer who provides employment to the first respondent/claimant as per Sections 12(1)



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and 12(2) of Workmen Compensation Act and thereby he is liable to pay compensation to the first respondent/claimant?

Substantial Question of law No.1

12. In this case the appellant/first respondent is the registered Government contractor. The only contention of the appellant is that on the date there was no any work was carried out and the petitioner sustained injuries while applying grease to the mixer machine. Therefore there is no nexus between the accident and the employment and there is no relationship between the appellant/first respondent and the first respondent/petitioner as employer and employee. In order to prove the case, the petitioner was examined as P.W.1 and he deposed before the Tribunal that the appellant /first respondent is the principal employer and the second respondent /second respondent was working under the appellant/first respondent as Maistry. The first respondent/petitioner was working under the second respondent/second respondent as Labour. On the date of occurrence, when he was working in Kulanyankarisal-Rathinapurai road where he was engaged in road work, he sustained injuries. Further, he has produced documents i.e., First Information Report/Ex.P.1 and also he issued notice to the second respondent through Ex.P.2 and Ex.P.4 is the reply sent by the respondent and



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Ex.P5 is the reply give under the Right to Information Act. Ex.P6 is the letter from the Block Development Officer.

13. On careful perusal of the above said documents would show that the appellant /first respondent is the main contractor and the second respondent/second respondent was working as Maistry and he only engaged the first respondent /petitioner for road work. The accident took place while applying grease to the mixer machine and thereby in the course of employment only the accident was happened and thereby the appellant /first respondent being principal employer is liable to pay compensation to the first respondent /petitioner. Further the petitioner has proved that he was working under the employment of the appellant /first respondent. In all cases the petitioner need not prove his employment through documentary evidence, particularly in private road contract work. Based on the evidence of the petitioner, the Tribunal also after elaborate discussion held that the accident took place during the course of employment and the petitioner was under the employment of the second respondent/second respondent. Therefore the petitioner proved his employment as per Section 3 of Workmen's Compensation Act, 1923. Thus, the first substantial question of law is answered.



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Substantial Question of law No.2

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14. According to the appellant/first respondent the First Information Report was registered after 10 days from the date of accident and thereby creates doubts about the genuineness of the First Information Report. In this context the learned counsel appearing for the appellant/first respondent contended that immediately after the accident both the respondents approached the first respondent/petitioner and they assured to give compensation, thereby complaint was not given immediately. Since the respondent have not amenable for amicable settlement, thereafter complaint was given and First Information Report was registered. After registration of the First Information Report the matter was investigated by the investigation officer and thereafter final report was filed. Merely because the complaint was given with delay, it cannot be stated that it creates doubt. Other circumstances have also to be looked into. In this case, the appellant/first respondent has not adduced any evidence to rebut the evidence on the side of the first respondent /petitioner, thereby the evidence on the petitioner side is reliable and acceptable. P.W.1 categorically deposed about the date of accident and the employment under the first respondent through second respondent. Therefore mere delay in registration of the First Information Report is not sufficient to



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disprove the accident. Thus, the second substantial question of law is answered.

Substantial Question of law No.3

15. In this case, according to the first respondent/petitioner the second respondent/second respondent is the maistry working under the appellant/first respondent and the second respondent/second respondent engaged the first respondent/petitioner in road work and at that time only the accident had happened. Therefore the first respondent being principal employer is liable to pay compensation to the first respondent /petitioner under Sections 12(1) and 12(2) of Workmen Compensation Act. The Tribunal also after elaborate discussion arrived at fair conclusion and no any infirmity or perversity found in the order of the Tribunal. Thus, the third substantial question of law is answered.

16. In view of the above answers to the substantial question of law, this Civil Miscellaneous Appeal has no merits and deserves to be dismissed.



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17.In the result, the Civil Miscellaneous Appeal stand dismissed. No costs. Consequently connected miscellaneous petitions are closed.

21.02.2024

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

1. The Deputy Commissioner of Labour
(Workmen's Compensation)Tirunelveli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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