



C.M.A. (MD) No. 358 of 2014

WEB COPY

Dated: 15.02.2024

CORAM:

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

C.M.A.(MD) No. 358 of 2014

and

M.P(MD) No. 2 of 2014

1. The Commissioner
Uthamapalayam Panchayat Union
Cumbum Main Road
Uthamapalayam Taluk
Theni District
2. The District Collector (Development)
O/o. District Collector,
Theni
..Appellant/2nd and 3rd Respondents

Vs.

1. Azhaguthai
 2. Minor. Jeyalakshmi
 3. Minor. Rajkumar
(Respondents 2 and 3 are represented by their
mother and guardian Mrs. Azhaguthai)
 4. Rajapandi
 5. The Special Officer
Agro Engineering Service Cooperative Centre Ltd
Panchayat Union Office Campus
Uthamapalayam Post
Theni District
..Respondents/1st and 4th Respondents
- ..Respondents/Petitioners

Prayer : This Civil Miscellaneous Appeal filed under Section 30 of the Workmen Compensation Act, against the order passed by the learned Deputy Commissioner of Labour (Workmen Compensation



C.M.A. (MD) No. 358 of 2014

Tribunal) in W.C. No.116 of 2007 dated 10.0.2013

WEB COPY

For Appellant : Mr. N. Muthu Vijayan
For R1 to R3 : Mr.B.Santhanam Rajesh
For R4 : Mr.S. Palanivelayutham
For R5 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in W.C. No.116 of 2007 dated 10.0.2013, wherein the respondents 1 to 3 herein have filed claim petition before the Tribunal and the Tribunal has awarded a sum of Rs.3,84,570/-

2. As against the order passed of the Tribunal the respondents 2 and 3 have filed 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 before the Tribunal are as follows:

The petitioners are the legal heirs of the deceased Murugan who was engaged in deepening the well of the second and third respondent at Nayagagoundanpatti panchayat well under the



C.M.A. (MD) No. 358 of 2014

employment of first respondent Contractor. His wages was Rs.150/- per days and on 19.04.2003 at about 22.30 hours when the deceased Murugan was engaging in the panchayat well in the deepening work, a piece of big stone has fell on his head, thereby he sustained grievous injuries and died in the Rajaji Hospital at Madurai on 20.04.2003. The deceased Murugan was working under the contractor of the first respondent and the respondents 2 and 3 are principal employers and thereby the accident took place while he was in the course of employment. The deceased was earning a sum of Rs.4500/- per month and he was aged about only 37 years on the date of accident. Therefore the petitioners are entitled for compensation from the respondents 2 and 3.

5. The first respondent filed counter stating that the deceased Murugan was not working under his Contract and the tender was not awarded to him. He was not a contractor. The deceased was working under the second and third respondent's well and at that time he only sustained injuries and died due to that injuries. Now he is working as agricultural coolie and the second and third respondents are liable to pay the compensation, hence the petition is liable to be dismissed.



C.M.A.(MD)No.358 of 2014

6. The counter filed by the second and third respondent are as follows: The averments made in the petition are false and the same is liable to be dismissed in limine. There is no direct relationship between the deceased and the second and third respondent and there is no relationship as employer and employee . Therefore the respondents are not liable to pay compensation to the deceased Murugan. The second respondent has called for tender for the work and the fourth respondent is the Contractor to the said work and the first respondent is the Sub contractor, thereby, the respondents 2 and 3 are not liable to pay any compensation to the petitioners. Therefore the petition is liable to be dismissed as against these respondents.

7.Before the Tribunal, on the side of the petitioner P.W.1 and P.W.2 were examined and marked Exs.P.1 to Ex.P.9. On the side of the respondents R.W. 1 was examined and Exs.R.1 to R.8 were marked. The Tribunal, after considering the evidences adduced on both sides awarded compensation by directing all the respondents to pay the said amount.

8.Aggrieved by the said order the present appeal has been preferred by the respondents 2 and 3.



C.M.A. (MD) No. 358 of 2014

WEB COPY

9. The learned counsel appearing for the appellants would contend that the deceased was not worked under these appellants and they called for tender for the work and tender was awarded to the fifth respondent/fourth respondent in this appeal and in turn the sub contract was awarded to the fourth respondent/first respondent. The deceased was worked under the fourth respondent/first respondent. Therefore, there was no employer and employee relationship between the deceased and the appellants. But, the Tribunal failed to consider the same and awarded to pay compensation by directing all the respondents including these appellants. Therefore, the order passed by the Tribunal is liable to be set aside.

10. The learned counsel appearing for the respondents 1 to 3 would contend that the deceased who was working under the fourth respondent/first respondent engaged in the deepening work of the panchayat well in which the appellants/second the third respondents are principal employers. While the deceased was working on 19.04.2003 he sustained injury and then he died. The said incident happened out of and in the course of employment. Therefore the respondents are liable to pay the compensation to the legal heirs of



C.M.A. (MD) No. 358 of 2014

the deceased/workman. Before the Tribunal on the side of the petitioner P.W. 1 and P.W. 2 were examined and marked Exs.P.1 to Ex.P.9. On the side of the respondents they have examined and marked exhibits Exs.R.1 to R.8. After careful perusal of the evidences adduced by both sides the Tribunal correctly awarded compensation. Hence the appeal is liable to be dismissed.

11. At the time of admitting the appeal the following substantial question of laws were framed.

1) Whether the appellants are coming under the definition of employer under the provision of Section 2(a) of the Workmen's Compensation Act, 1923?

2) Whether the claim petition is maintainable against the appellants in view of Section 12 of the Workmen's Compensation Act?

3) Whether the appellants are liable to pay compensation, even assuming they are considered to be Principal employe, when the execution of work was not done for the purpose of their trade or business?

12. **Substantial Question of law No.1:** As far as first substantial question of law is concerned, according to the appellants the place where the deceased was working in the well belongs to the



C.M.A. (MD) No. 358 of 2014

appellant/second respondent and the tender was also called for by the appellants/respondents 2 and 3. The employment of the deceased on the date of accident has not been denied by either the appellants or by other respondents. In order to prove the case of the petitioner in main petition they examined P.W.1 and P.W. 2 and they categorically deposed about the employment of the deceased on the date of accident. There is no dispute that the tender was awarded to the fourth respondent and he engaged the first respondent for the said work for deepening the panchayat well. The P.W.1 and P.W.2 have categorically deposed that the deceased was working at the instruction of the fourth respondent/first respondent and the fourth respondent is the original auction bidder for the work. The well belongs to the panchayat i.e., appellants /respondents 2 and 3. Therefore from the above said evidence it is clear that the deceased was working at the instigation of the fourth respondent/first respondent and the fifth respondent/fourth respondent is the contractor. The appellants/respondents 2 and 3 are the principal employers and thereby the appellants are coming under the definition of employer as per Section 2(e) of the Workmen Compensation Act. Thus, the Substantial question of law No.1 is answered.



C.M.A. (MD) No. 358 of 2014

Substantial Question of law No.2

WEB COPY

13. According to the appellants they are not liable to pay any compensation since they are not employers and there was no relationship as employer and employee between the deceased and the appellants. It is admitted fact that the appellants' well where the deceased worked is belongs to the second appellant and they called for tender and the fourth respondent was awarded tender and the first respondent engaged the deceased for working. As per Section 12 of Workmen Compensation Act the appellants are the principal employers. Since the fifth respondent/fourth respondent was awarded tender to do the panchayat work and the deceased was working as per the instructions of the first respondent the appellants are the principal employers and thereby the claim petition is maintainable as against the appellants in view of the Section 12 of Workmen's Compensation Act. Thus the substantial question of law is answered

Substantial Question of law No.3

14. In the previous points, this Court has decided that the appellants are the principal employers as per Section 12 of Workmen's Compensation Act. Now, the point for determination, is whether the work was done for the purpose of their part of business.



C.M.A.(MD)No.358 of 2014

At this juncture it is relevant to extract here under the provision of
Section 12 of Workmen Compensation Act.

12. Contracting.— ?

(1)Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the employee under the employer by whom he is immediately employed.

(2)Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the employee could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the employee could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3)Nothing in this section shall be construed as preventing an employee from recovering compensation from the contractor instead of the principal.

(4)This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

15. In this case, the tender was called for to execute the work for deepening the well belongs to panchayat of appellant and contract was entered into between the appellants and the fifth



C.M.A. (MD) No. 358 of 2014

respondent/fourth respondent. Therefore the said work certainly comes under the definition of business.

16. The Tribunal after considering the evidences adduced on either side awarded compensation by directing all the respondents jointly or severally. Since the appellants are principal employers they can pay the amount to the claimants and then they have to be indemnified by the fifth respondent/fourth respondent and thereby they can recover from the fifth respondent/fourth respondent.

17. In view of the said discussions this Court is of the opinion that the appeal is liable to be allowed in part.

18. In the result, the Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal is modified to the effect that the appellants after satisfying the award amount have to be indemnified by the fifth respondent/fourth respondent. No costs. Consequently connected miscellaneous petition is closed.

15.02.2024

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



C.M.A. (MD) No. 358 of 2014

To:

WEB COPY

1. The Commissioner
Uthamapalayam Panchayat Union
Cumbum Main Road
Uthamapalayam Taluk
Theni District
2. The District Collector(Development)
O/o. District Collector,
Theni
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A. (MD) No. 358 of 2014

P. DHANABAL, J.

aav

C.M.A. (MD) No. 358 of 2014

15.02.2024