



C.M.A.(MD).No.365 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.365 of 2014

and

M.P(MD) No.1 of 2014

The Senior Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Tiruvarur.

... Appellant/Respondent

-VS-

1. Vasuki
2. Minor. Vigneswaran

... Respondents/Petitioners

(2nd respondent is represented through her mother
and natural guardian the 1st respondent)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the award dated 18.10.2013 made in W.C.No.271 of 2012 on the file of the Commissioner Workmen's Compensation (DCL), Tiruchirappalli.

For Appellant : Mr.Z.Siva
for Mr.C.Mohan Kumar
For Respondents : No appearance



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in W.C.No.271 of 2012 on the file of the Commissioner Workmen's Compensation (DCL), Tiruchirappalli, wherein, the respondents 1 and 2 filed a claim petition before the Tribunal for claiming compensation of Rs.10,00,000/- (Rupees Ten Lakhs only). The Tribunal has awarded a sum of Rs.3,91,239/- (Rupees Three Lakhs Ninety One Thousand Two Hundred and Thirty Nine only) towards compensation. As against the award passed by the Tribunal, the appellant/respondent has preferred the appeal.

2. The brief facts of the averments made in the petition before the Tribunal are as follows:

The deceased was working as a Loadman in the respondent Corporation at Sundarakottai. While so, on 07.02.2012, when he was working as a Loadman under the respondent in the Modern Rice Mill premises, due to his continuous work, he became unconscious and fell down. Immediately, he was taken to the Government Hospital, Mannargudi. There, the Doctor said



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that he died. At the time of death, he was aged about 45 years and he had drawn a salary of Rs.15,000/- (Rupees Fifteen Thousand only) per month. Therefore, the respondent is liable to pay compensation of Rs.10,00,000/- (Rupees Ten Lakhs only) to the petitioners.

3. The brief averments in the counter filed by the respondent are as follows:

The averments made in the petition are denied as false. The compensation claimed by the petitioners is not true. The deceased was not employee in the respondent's Corporation and there is no relationship of employer-employee between the deceased and the respondent. The deceased was not a permanent employee and he is a temporary employee, who engaged his employment on leave of regular employee. The deceased was not getting salary and his death is not related due to the employment and it is a natural death. Therefore, this appeal is liable to be dismissed.

4. Before the Tribunal, on the side of the petitioner, the 1st petitioner was examined as P.W.1 and Ex.P.1 to Ex.P.8 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Ex.R.1 was marked. After



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hearing both sides and perusing the records, the Deputy Commissioner of Labour has passed an award of Rs.3,91,239/- (Rupees Three Lakhs Ninety One Thousand Two Hundred and Thirty Nine only) by directing the respondent to pay the amount to the petitioners within a period of 30 days.

5. Aggrieved over the above said order, the present appeal is filed by the respondent on various grounds including the substantial question of law.

6. At the time of admission, this Court has admitted the appeal on the following substantial questions of law:

1. Whether the deceased is a Workman as defined under Section 2(1) (n) of the WC Act?

2. Is not the claim barred under Section 3(1) of the W.C Act as the deceased had not suffered any injury which is arising out of and in the course of employment?

3. Whether the Court below is right in taking the wages prescribed under the Minimum Wages Act when the same is not applicable to the deceased and when the Management had established his wages through evidence?



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7. The learned counsel appearing for the appellant would contend that the deceased was not working in the regular employment under the appellant/respondent and he was engaged as labour on the leave of the regular employee. The deceased was not earning monthly salary from the respondent and he has not died due to the employment. The death was not related to the employment and his death is a natural death. Therefore, the appellant/respondent is not liable to pay the compensation.

8. The deceased who is not a workman and did not come under the “Workman” as defined under Section 2(1) (n) of the Workmen's Compensation Act and the deceased had not suffered any injury arising out of and in the course of employment. But, the Tribunal without any basis awarded, based on the Minimum Wages Act. Therefore, the award passed by the Tribunal is liable to be set aside.

9. No representation on the side of the respondents.

10. This Court heard the learned counsel for the appellant and perused the materials on record.



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11. In this case, the appellant/respondent admitted that the deceased died during the course of employment. The contention of the appellant/respondent is that the deceased was not a permanent employee and he was engaged as casual employee when the regular employee is on leave. In this case, on the date of death of the deceased, he was engaged as labour under the respondent. The respondent only denied that he will not come under the definition of “Workman” and his death is natural death and the death had not occurred in the course of employment. Now, in this context, the 1st petitioner has examined P.W1 and marked Exs.P.1 to P.8. PW.1, who is the legal heir of the deceased categorically stated that the deceased was working under the employment of respondent on the date of accident. On 07.02.2012, he was working as loadman. Due to his continuous work, he fell down after unconscious. The same was also not denied by the respondent. But, according to the appellant/respondent, the deceased had not died due to the employment due to his work and his death is natural death. In this context, it is relevant to refer to Ex.P.1 – F.I.R and Ex.P.2- Post Mortem Certificate. They revealed that the deceased died when he was working under the employment of the respondent in the Course of employment.



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12. As far as the substantial question of law No.1, “Whether the deceased is a Workman as defined under Section 2(1) (n) of the WC Act”, is concerned, the respondent side witnesses themselves admitted that the deceased was working under the employment on the date of death, but, he is not a regular employee and also admitted that the deceased died while he was working in the Mill and he was paid wages. Therefore, the deceased was a workman as defined under the Workmen Compensation Act.

13. As far as the substantial question of law No.2, “Is not the claim barred under Section 3(1) of the W.C Act as the deceased had not suffered any injury which is arising out of and in the course of the employment”, is concerned, P.W.1, the petitioners' side evidence clearly stated that the deceased was working under the employment of the respondent. The respondent's side witnesses also during the cross examination admitted that the deceased died during his work and the deceased died in the Mill where he was working. Therefore, the deceased died in the course of employment and within meaning of Section 3(1) of the W.C.Act. Therefore, the claim is not barred under Section 3(1) of the W.C.Act.



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14. As far as the another substantial question of law No.3, “Whether the Court below is right in taking the wages prescribed under the minimum wages Act when the same is not applicable to the deceased and when the Management had established his wages through evidence”, is concerned, the Tribunal has taken minimum wages along with dearness allowance and thereby, fixed the monthly income. The respondents themselves admitted that the deceased was working under the Corporation and thereby, Minimum Wages Act would apply to the deceased. Therefore, the Tribunal taking into consideration, and after considering all the aspects, fairly awarded the fair compensation. Therefore, the monthly income of the deceased fixed by the Tribunal is in order and thus, the substantial question of law is answered.

15. In view of the above said discussion and the answer made in substantial questions of law, this Civil Miscellaneous Appeal has no merit and is liable to be dismissed.



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16. In the result, this Civil Miscellaneous Appeal is dismissed. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

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

1. The Commissioner Workmen's Compensation (DCL),
Tiruchirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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