



C.M.A.(MD)No.407 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.407 of 2014

and

M.P(MD) No.1 of 2014

Tamil Nadu Cements Corporation Ltd.,
Rep by its Deputy General Manager,
Ariyalur, Ariyalur District.

... Appellant / Respondent

-VS-

P.Kasinathan (Died)

2.Dhanalakshmi

3.Senthilkumar

4.Anulakshmi

5.Mangaiyarkarasi

... Respondents

(Respondents 2 to 5 are brought on record as LR's of the deceased sole respondent vide Court order dated 15.02.2024 made in CMP(MD)No. 2051 of 2024 in CMA(MD)No.407 of 2014 by PDBJ)

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, against the order passed by the Commissioner, Workmen's Compensation Act / Commissioner of Labour, Trichy dated 01.10.2013 and served on the appellant on 07.02.2014 in W.C.No.165 of 2010.



C.M.A.(MD).No.407 of 2014

For Appellant : Mr.L.Siva
for G.Mohan Kumar

For Respondents : Mr.K.Kumaravel – for R2 to R5

R1 died (Steps Taken)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant to set aside the order passed by the Commissioner Workmen's Compensation Act / Commissioner of Labour, Trichy, in W.C.No.165 of 2010, dated 01.10.2013 wherein, the deceased first respondent herein has filed a claim petition for claiming a compensation of **Rs.5,00,000/- (Rupees Five Lakhs only)**.

2. The Tribunal has awarded a sum of **Rs.3,30,674/- (Rupees Three Lakhs Thirty Thousand and Six Hundred and Seventy Four only)** towards compensation with interest at the rate of 12% p.a from the date of accident till the date of deposition of compensation amount. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant in the main petition.



C.M.A.(MD).No.407 of 2014

WEB COPY

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

The petitioner has been working as Machinery attendant in the respondent's Cement Manufacturing Mill. On 01.06.2009, at about 10.45 a.m, while the petitioner was in duty, he was cleaning Gypsum Hopper Belt, met with an accident and sustained injuries and his right hand was amputated. Immediately, he was taken to the hospital and admitted as in patient from 01.06.2009 to 29.06.2009. Thereafter, his right hand was amputated. At the time of accident, he was aged about 50 years and was earning a sum of Rs.12,000/-. The accident occurred during the course of employment. Thereby, the petitioner claimed compensation of sum of **Rs.5,00,000/- (Rupees Five Lakhs only)**.

4. The brief facts and counter filed by the respondent are as follows:

The petition is not maintainable either in law or on facts. The petitioner has not followed the rules while he was on duty. Without stopping the machine, he negligently cleaned the belt and sustained injury. Therefore, the respondent is not liable to pay compensation. After the injury, still he is



C.M.A.(MD).No.407 of 2014

working under the same employer. Therefore, the petition is liable to be dismissed.

5. Before the tribunal, on the side of the petitioner, the petitioner was examined as P.W.1 and also examined P.W.2 and marked Ex.P1 to Ex.P.7 and on the side of the respondent no one was examined and no document was marked.

6. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of **Rs.3,30,674/- (Rupees Three Lakhs Thirty Thousand and Six Hundred and Seventy Four only)** towards compensation with interest at the rate of 12% per annum from the date of accident till the date of deposit of compensation amount.

7. Aggrieved over the award passed by the Tribunal, the respondent / Corporation has preferred the present appeal on the ground that the petitioner is still working under the respondent as employee and thereby, he is not entitled to compensation. Further, the petitioner has willfully disobeyed the safety rules.



C.M.A.(MD).No.407 of 2014

8. At the time of admitting the appeal this Court has framed the following substantial questions of law:

1. Whether the workmen is entitled to claim compensation when he has willfully disobeyed the safety Rules as contemplated under Section 3(1) of W.C.Act ?

2. Whether the workmen is entitled to claim compensation when admittedly he continues in the same post without any loss of income after the accident?

9. This Court heard both sides and perused the records.

10. The learned counsel for the appellant would contend that the petitioner was working under the respondent factory. On the date of accident, he has not followed the safety rules and the accident was happened due to his negligence. Therefore, he is not entitled to any compensation. After the accident, the petitioner is still continues in the same post. Therefore, he has not claiming any compensation. But, the tribunal without considering the same aspect, awarded the compensation. Hence, the order passed by the tribunal is liable to be set aside.



C.M.A.(MD).No.407 of 2014

WEB COPY

11. The learned counsel appearing for the respondents 2 to 5 would contend that the first respondent after following the safety rules only cleaned the belt. However, unfortunately, he met with an accident and the appellant has not denied the employer and employee relationship. Thereby, the appellant is liable to pay compensation. The tribunal also after taking into considering the evidence adduced by both side, awarded the compensation. Even though, the first respondent is continuous his same post, there is no bar to award compensation. The tribunal failed to award the compensation with interest from the date of accident till the realization of compensation amount, and only awarded after the award.

12. To support of his contention, he has relied upon the following judgments:-

i) P.Ramesh Vs. Ravi reported in 2022 (1) TN MAC 123.

ii) Vivek and Co.Ltd., Vs. N.Ravi reported in 2022 (1) TN MAC 109.

iii) National Insurance Co.Ltd., Vs. E.Suseelamma reported in 2023 (2) TN MAC 311 (DB) (AP).

iv) Ajaya Kumar Das & Another Vs. Divisional Manager & Another reported in 2022 LiveLaw (SC) 102.



C.M.A.(MD).No.407 of 2014

v) *Shyama Devi Vs. Union of India and Another*
reported in (2005) 12 SCC 217.

vi) *Tamil Nadu Cements Corporation Ltd., Ariyalur*
Works, Ariyalur Vs. N.Jayapalan reported in 1993 – II
L.L.N.685.

13. Substantial Question of Law No.1 :

In this case, according to the first respondent, while he was working under the employee of the appellant, he sustained injury out of and during the course of employment and the same was not denied by the appellant. The only contention of the appellant is that the first respondent has not followed the safety rules and he has willfully disobeyed the safety rules by cleaning the belt while the machine was running. According to the first respondent, after adopting safety rules only, he cleaned the belt, however, he sustained injuries during the course of employment. In order to prove the case of the first respondent / petitioner, he examined P.W.1 and P.W.2 and marked Exs.P1 to P7. P.W.1, who is the injured has deposed about the manner of accident and followed the safety rules, however met with an accident. In order to substantiate the contention of the appellant, and to rebut the evidence of P.W.1, they have not adduced any contra evidence. In the absence of any



C.M.A.(MD).No.407 of 2014

rebutted evidence, the contention of the appellant is not acceptable. Accordingly, there is no willful disobedience on the part of the first respondent in handling the work. Therefore, the claim of the appellant is within purview of the Section 3(1) of Workmen Compensation Act. Thus, the substantial questions of law 1 is answered.

14. Substantial Question of Law No.2 :

According to the respondents 2 to 4, even after the injury, the first respondent till continuous in the same post without any loss of income, hence he is not entitled to compensation. In this context, the learned counsel for the respondent 2 to 4 has relied upon the judgments in the cases of *National Insurance Co.Ltd., Vs. E.Suseelamma* reported in 2023 (2) TN MAC 311 (DB) (AP), *Ajaya Kumar Das & Another Vs. Divisional Manager & Another* reported in 2022 LiveLaw (SC) 102, *Shyama Devi Vs. Union of India and Another* reported in (2005) 12 SCC 217 and *Tamil Nadu Cements Corporation Ltd., Ariyalur Works, Ariyalur Vs. N.Jayapalan* reported in 1993 – II L.L.N.685.



C.M.A.(MD).No.407 of 2014

WEB COPY

14.1. On careful perusal of the judgments, it is clear that merely because, the employer pays the same salary to the workman, it cannot be stated that there is no loss of earning capacity. If the law were to be so, the employer can easily evade the provisions of the Act by continuing the employment on the same terms as were enjoyed by the workman prior to the accident. Nor again can it be said that if in future the workman is compelled to seek employment at reduced wages, he can claim compensation.

14.2. In the case on hand also, it is admitted that the petitioner is continuous in the same post and drawing salary. Therefore, the said case laws are squarely applicable to this case. In view of the above judgments, the contention of the appellant is not acceptable and the first respondent is entitled for compensation. The tribunal also after taking into considering the evidence adduced on both sides fairly come to the conclusion that the first respondent is entitled to claim compensation. Thus, the substantial questions of law 2 is answered.

14.3. The learned counsel for the respondents 2 to 4 drawn the attention of this Court that the tribunal has not awarded the interest from the date of



C.M.A.(MD).No.407 of 2014

accident till the date of realization. The tribunal awarded the interest at the rate of 12%, if the appellant failed to pay the amount within 30 days from the date of receipt of a copy of the order. Therefore, the first respondent is entitled to interest after 30 days from the date of accident.

14.4. To support his contention, he relied upon the judgments of *P.Ramesh Vs. Ravi reported in 2022 (1) TN MAC 123* and *Vivek and Co.Ltd., Vs. N.Ravi reported in 2022 (1) TN MAC 109*.

14.5. On careful perusal of the judgments, it is clear that the first respondent is entitled to interest after 30 days from the date of accident till the date of realization. But, the tribunal awarded only interest at the rate of 12% from the date of petition till the date of realization of the amount if the appellant failed to deposit the amount within 30 days. Therefore, the award passed by the tribunal is to be modified in respect of interest.

15. In the result, this Civil Miscellaneous Appeal is **partly allowed** and the order passed by the tribunal is modified to the effect that the first respondent is entitled to sum of **Rs.3,30,674/- (Rupees Three Lakhs Thirty**



C.M.A.(MD).No.407 of 2014

WEB COPY

Thousand Six Hundred and Seventy Four Only) with interest at the rate of 12% after 30 days from the date of accident till the date of realization of the amount. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

28.03.2024

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

1. The Commissioner of Workmen's Compensation /
Commissioner of Labour, Trichy.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.407 of 2014

P.DHANABAL,J.

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C.M.A.(MD)No.407 of 2014
and
M.P(MD) No.1 of 2014

28.03.2024