



C.M.A.(MD).No.928 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.928 of 2014

Balan @ Balraj

... Appellant/Petitioner

-VS-

1. Sheik Dawood

2.Mohammed Dhaheer

... Respondents/Respondents

PRAYER:Civil Miscellaneous Appeal filed under Section 30 of Workmen's Compensation Act, to set aside the judgment and decree passed in W.C.No. 283 of 2003 dated 21.10.2013 on the file of the Commissioner of Workmen Compensation Tribunal, Trichirappalli.

For Appellant : Mr.N.Mohan
For R1 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in W.C.No.283 of 2003 on the file of the Commissioner of Workmen Compensation Tribunal, Trichirappalli, wherein, the appellant has preferred the claim petition before the Tribunal for claiming



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compensation due to the injury sustained during the course of employment under the respondents. The Tribunal has dismissed the claim petition on the ground of non-impledement of the immediate employer. As against the same, the appeal has been preferred by the appellant/petitioner.

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

The petitioner was working as 'Mason' in the building belongs to the respondents. Whiles, on 09.07.2022, at about 02.00 p.m, the petitioner fell down due to breaking of slab. Thereby, he sustained injuries all over the body. Immediately, he had taken to Government Hospital, Kantharvakottai. Thereafter, he was shifted to Government Medical College Hospital, Thanjavur. Thereafter, he had taken further treatment in a private hospital. Due to the accident, he sustained injuries during the course of employment and he was working under the respondents. At the time of accident, he was aged about 22 years and was earning a sum of Rs.4,500/- per month. Due to his permanent disability, he is unable to do his work. Thereby, the petitioner is claiming a sum of **Rs.2,00,000/- (Rupees Two Lakhs only)** towards compensation.



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

The averments made in the petition are all false and the petition is not maintainable either in law or on facts. The petitioner is bound to prove the averments made in the petition except the admitted facts herein. The petitioner was not working directly under the first respondent and one Mundasu Kothanar @ Rajaram is the immediate employer of the petitioner and the said Mundasu Kothanar @ Rajaram was not impleaded as party. The first respondent denied the permanent disability caused to the petitioner. The age and income of the petitioner are all denied as false. Therefore, the first respondent is no way liable to pay compensation to the petitioner and the petition is liable to be dismissed.

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

The petition is not maintainable either in law or on facts. The building, where the petitioner was working belongs to the three persons and the respondent is the owner of one portion. All the share holders of the building were not impleaded as party. Therefore, the petition is not maintainable. The



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petitioner was not working under the second respondent as 'Mason'. One Mundasu Kothanar @ Rajaram was a contractor. The petitioner was working under him. Therefore, without impleading him, this petition is not maintainable. There is no permanent disability. Hence, this petition is liable to be dismissed.

5. Before the Tribunal, in order to prove the case of the petitioner, he was examined as P.W.1 and marked Exhibits P.1 to P.9. On the side of the respondents, no witness was examined and no document was marked.

6. After hearing both sides and perusing the records, the Tribunal has dismissed the petition on the ground that non-impleadment. of Mundasu Kothanar @ Rajaram.

7. Aggrieved over the above said order, the present appeal has been preferred by the appellant/petitioner, on various grounds including the substantial questions of law.



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8. The learned counsel appearing for the appellant would contend that the appellant was working under the respondents, who are the owners of the building. The petitioner was working as 'Mason' in the building belongs to the respondents. Whiles, on 09.07.2022, when he was doing construction work, he fell down due to breaking of slab. Thereby, he sustained injuries and he suffered by permanent disability. Thereafter, he filed a claim petition before the tribunal and the petition was dismissed for non-impleadment of the immediate employer namely, Mundasu Kothanar @ Rajaram. In fact, the petitioner was not working under the socalled Mundasu Kothanar @ Rajaram and the petitioner was directly engaged as 'Mason' by the respondents and thereby, implement of Mundasu Kothanar @ Rajaram as a party would not arise. Even assuming that the Mundasu Kothanar @ Rajaram is an immediate employer, the respondents have not taken any steps to implead him as party. When they categorically pleaded that he is an immediate employer. Therefore, non-impleadment of the said Mundasu Kothanar @ Rajaram is no way affected the case of the appellant. But, the Commissioner of Workmen Compensation Tribunal, Trichirappalli, has dismissed the claim petition for that reason. The said reason is not in accordance with law. Thereby, the order passed by the Commissioner of Workmen Compensation Tribunal,



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Trichirappalli, is liable to be set aside.

9. Even though, the names of the respondents were printed in the cause list, none appeared on behalf of them.

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

11. In this case, the appeal was admitted on the following substantial question of law:

“a. Whether the Principals of the appellant are liable to pay compensation to the appellant under Section 12 of the Workmen Compensation Act when he was immediately employed to them?

b. Whether the Tribunal is correct in dismissing the claim petition for non-impleadment of Mundasu Kothanar @ Rajaram while the respondent failed to prove he is contractor to the appellant?



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c. Whether the claim petition is liable to be dismissed on the ground of non-impleadment of Mundasu Kothanar @ Rajaram as contended by the respondents?"

12. Substantial question of law No.1:- *Whether the Principals of the appellant are liable to pay compensation to the appellant under Section 12 of the Workmen Compensation Act when he was immediately employed to them?*

In this case, the appellant has filed a petition before the Commissioner of Workmen Compensation Tribunal, Trichirappalli, stating that he was working as 'Mason' in the building belongs to the respondents and while he was in the course of employment, he sustained injuries. The said injuries sustained by the appellant are not denied by the respondents. The respondents contended that the petitioner was not directly employed by them. The Principal employer was one Mundasu Kothanar @ Rajaram. In order to prove the case of the appellant, the appellant himself examined as P.W.1 and he stated that he was working as 'Mason' under the respondents' building and he nowhere stated about the Mundasu Kothanar @ Rajaram. The respondents only stated that they engaged the contractor Mundasu Kothanar @ Rajaram and the appellant was employed under him. Whiles, the respondents have to prove that the contract was given to Mundasu Kothanar @ Rajaram and the



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appellant was employed under him. But, they have not examined as witnesses to prove the same.

12.1. Per contra, the appellant himself stated that he was working under the respondents as 'Mason'. Once the respondents alleged that they engaged the contractor, it is for their duty to prove the same. But, they have not proved. Per contra, the respondents admitted that the appellant was working in the building belongs to them on the date of the accident and he sustained injuries out of and in the course of employment.

12.2. The second respondent filed a counter stating that the building is not exclusively belongs to them but also belongs to some other persons. But, the respondents have not mentioned the names of the persons, who are the share-holders of the building. Therefore, the respondents being the principal employer, they are liable to pay compensation to the appellant under Section 12 of the Workmen Compensation Act. The Commissioner of Workmen Compensation Tribunal, Trichirappalli, has failed to consider the same and simply dismissed the petition on the ground of non-impleadment of principal employer, Mundasu Kothanar @ Rajaram and the same is unsustainable. Thus, the substantial question of law is answered.



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13. Substantial Question of Law No.2:- *Whether the Tribunal is correct in dismissing the claim petition for non-impleadment of Mundasu Kothanar @ Rajaram while the respondent failed to prove he is contractor to the appellant?*

According to the appellant, he directly working as 'Mason' in the building of the respondents. But, the respondents only raised the plea that they engaged a contractor Mundasu Kothanar @ Rajaram. But, already, this Court in the previous point, decided that the respondents failed to prove their contention that the appellant was working under the contractor. The tribunal without considering the above aspect, erroneously dismissed the claim petition for non-impleadment of Mundasu Kothanar @ Rajaram. Even assuming that the Mundasu Kothanar @ Rajaram is a contractor, the respondents are the principal employer. The Commissioner of Workmen Compensation Tribunal, Trichirappalli, has dismissed the petition by referring the judgment Division Bench of this Court in **Deen Agricultural College and Research Institute Vs.Tmt.S.Sakilabanu and Another** reported in **(2003)3MLJ712** wherein, this Court has held that the principal employer is liable to pay compensation and they could get reimburse by the sub contractor, who is the immediate employer. But, the Commissioner of labour



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misunderstood the above said case and wrongly dismissed the petition. Therefore, the dismissal order passed by the Commissioner of Workmen Compensation Tribunal, Trichirappalli is liable to be set aside. Thus, the substantial question of law is answered.

14. Substantial Question of Law No.3:- *c. Whether the claim petition is liable to be dismissed on the ground of non-impleadment of Mundasu Kothanar @ Rajaram as contended by the respondents?*

This Court already in the previous points decided that the appellant was not employed under the Mundasu Kothanar @ Rajaram and the respondents being principal employers, they are liable to pay compensation to the appellant/petitioner. However, the claim petition can not be dismissed on the ground of non-impleadment of Mundasu Kothanar @ Rajaram. Thus, the substantial question of law is answered.

14.1. In the previous points, this Court while analyzing the substantial question of law, decided that the order passed by the Commissioner of Workmen Compensation Tribunal, Trichirappalli is unsustainable and the same is liable to be set aside.



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15. Now, the point is in respect of quantum of the amount. There is no dispute in respect of the employee and employer relationship and the appellant has sustained injuries out of and in the course of employment. Thereby, the respondents are liable to pay compensation to the petitioner.

16. According to the appellant, he was aged about 25 years on the date of accident and was earning a sum of Rs.4,500/-. To prove the same, he has not produced any document. However, considering the nature of work, taken the monthly income of the appellant as Rs.2,000/- per month. In order to prove the disability, he has produced the disability certificate, but not examined the doctor, who issued the disability certificate. However, the respondents have not denied the injuries sustained by the appellant and not denied the disability sustained by him. Therefore, this Court is inclined to take the disability as mentioned in the disability certificate as '55%'. Therefore, the award would come to **Rs.2,38,590/- (2000 x 216.91 x 55 / 100)**. But, the petitioner himself in the petition restricted to sum of Rs.2,00,000/-. Therefore, the petitioner is entitled to the amount of **Rs.2,00,000/- (Rupees Two Lakhs Only)** from the respondents.



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17. In the result, the Civil Miscellaneous Appeal is allowed. The judgment and decree passed by the Commissioner of Workmen Compensation Tribunal, Trichirappalli, in W.C.No.283 of 2003 dated 21.10.2013, is hereby set aside and W.C.No.283 of 2003 is partly allowed. The respondents are directed to pay a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** to the appellant/petitioner within a period of one month from the date of receipt of a copy of this order with interest at the rate of 7.5% per annum after 30 days from the date of accident till the date of realization. There shall be no order as to costs.

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

1. The Commissioner of Workmen Compensation Tribunal,
Trichirappalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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