



C.M.A.(MD)No.1076 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **R.VIJAYAKUMAR**

C.M.A.(MD)No.1076 of 2017

1.V.Athilakshmi

2.V.Ramkumar

3.Minor V.Prathenan

... Appellants/Petitioners

vs.

1.The Deputy Commissioner of Labour,
(Employees Compensation Act),
Office of the Deputy Commissioner of Labour,
Trichirapalli, Trichirapalli District.

2.Ramasamy

3.The Manager (Administration),
M/s.BIS Engineering,
No.115/A, Kainankarai,
Maathur, Pudukottai District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of the Employee's Compensation Act, to set aside the impugned order, dated 31.03.2011 made in W.C.No.329 of 2008 on the file of the Deputy Commissioner of Labour (Employee's Compensation Act) at Trichirapalli.



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For Appellant :Mr.N.Sudhagar Nagaraj
For R1 :Mr. C.Satheesh
For R2 and R3 : No appearance

JUDGMENT

The instant appeal has been filed by the claimants in W.C.No.329 of 2008 on the file of the Deputy Commissioner of Labour, Tiruchirappalli, challenging the dismissal of their Claim Petition.

2.According to the claimants, the son of the claimants 1 and 2 was working in the first respondent factory as a Grinder-cum-Worker. On 09.05.2008, at about 08.00 pm., when he had left the factory in order to reach the home, he had travelled along with his co-worker one Kumar in a bicycle. At about 08.30 pm, a car, which came from behind, had dashed against them and went unnoticed. Due to the said accident, the victim Gowthaman had sustained serious injuries and he was admitted to KMC Hospital, Tiruchirappalli. Later, he had passed away. An FIR was lodged by the co-worker, namely, Kumar, in Cr.No.83 of 2008. The claimants further contended that the deceased was aged about 19 years at



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time of accident and he was receiving a monthly salary of Rs.5,000/-.

They have prayed for a compensation of Rs.10,00,000/-.

3.The first respondent has filed a counter contending that the Gowthaman used to work with them as a training employee on daily wage basis. He was asked to report duty on a day-to-day basis and there is no obligation on the part of the respondents to provide work daily. The first respondent further contended that on 09.05.2008, the said Gowthaman was not engaged by the first respondent. Therefore, the accident has not taken place either in the course of employment or inside the factory premises. They have further contended that the medical policy taken at KMC Hospital, Tiruchirappali, is for the trainees as well as for the regular employees. It was further contended that the deceased was admitted to KMC Hospital only on humanitarian grounds, though the accident did not occur during the course of the employment.

4.The Workmen Compensation Commissioner had proceeded to dismiss the Claim Petition on the ground that the accident had not taken place either in the course of employment or out of the employment. As



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per the Claim Petition, the accident has taken place, when the victim had left the factory and he was about to reach the house. The claimants have not examined the author of the FIR. Based on the aforesaid findings, the Commissioner concluded that the deceased was not an employee of the first respondent Management and he had not passed away during the course of employment and proceeded to dismiss the Claim Petition. Challenging the same, the present appeal has been filed by the claimants.

5.The appeal has been admitted raising substantial questions of law based upon the notional extension of work.

6.According to the learned Counsel for the appellants, Ex-P1, FIR lodged by a co-worker would clearly establish the employer-employee relationship between the deceased and the respondent factory. He further contended that Ex-P5, cheque issued by the Management for a sum of Rs.5,000/- would establish the monthly salary received by the deceased. He also relied upon Ex-P8, health club card issued by the Cauvery Medical Centre at Tiruchirappalli. He further contended that after completion of the work, when the victim was about to reach his house,



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this accident had taken place. Therefore, invoking the principles of notional extension theory, the accident should be construed as happened only arising out of employment. Hence, he prayed for allowing the appeal.

7. Though the respondents 2 and 3 have been served and their names are also printed in the cause list, there is no appearance either in person or through Counsel.

8. I have carefully considered the submissions made by the learned counsel for the appellants and the learned Government Advocate appearing for the first respondent and perused the materials available on record.

9. The Claim Petition has been dismissed by the Commissioner on the ground that the claimants have not established the employer-employee relationship between the victim and the respondent factory. The Commissioner has further found that the accident has taken place outside the factory premises and therefore, it is not happened in the



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course of the employment. The claimants had filed the FIR, as Ex-P1. A perusal of the FIR reveals that it has been lodged by a co-worker, namely, Kumar. In the FIR, it has been specifically stated that the deceased had come out of the factory premises after completing his work and he carried him in his bicycle. While, they were travelled in a bicycle, a car came from rear side and dashed against the bicycle and went unnoticed. Therefore, it is clear that the deceased was employed with the respondent Company on 09.05.2008 and while on his way back to his home, he has met with an accident. In the counter affidavit, the respondent factory has not raised any objection with regard to the contents of the FIR. Therefore, it is clear that the deceased met with an accident while on his way back to his home after completion of the work.

10.It is admitted in the counter that the deceased was employed with the respondent factory, but he was not employed on 09.05.2008. However, this is falsified by the contents of Ex-P1, FIR. Further, immediately after the accident, the respondent management had made arrangements for admitting the victim in KMC Hospital, Tiruchirappalli. Ex-P8, KMC Hospital health club card clearly reveals that it is meant for



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the employees of the respondent factory. It is only based upon the said medical policy, the victim was admitted to KMC Hospital at Tiruchirappalli by the respondent management.

11.A perusal of Ex-P8, health club card reveals that the deceased was aged 19 years at the time of accident. Ex-P5, cheque issued by the respondent Management reveals that the deceased was receiving a sum of Rs.5,000/- as salary. However, as per the Workmen Compensation Act, the salary should be taken at Rs.4,000/-.

12. In view of the above said deliberation, the compensation is fixed at Rs.4,55,440/- The award amount shall carry interest at the rate of 12% per annum from the expiry of 30 days from the date of accident. The award amount shall be deposited by the first respondent in the claim petition/second respondent in the appeal within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimants are entitled to withdraw the same by filing necessary petition. The 1st claimant/mother shall be entitled to Rs.3,00,000/- (Rupees Three Lakhs only) and the claimants 2 and 3/brothers will be



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entitled to Rs.77,720/- each (Rupees Seventy Seven Thousand Seven Hundred and Twenty only). All the substantial questions of law are answered in favour of the appellants.

13. Accordingly, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. There shall be no order as to costs.

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

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To

The Deputy Commissioner of Labour,
(Employees Compensation Act),
Office of the Deputy Commissioner of Labour,
Trichirapalli, Trichirapalli District.



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R.VIJAYAKUMAR, J.

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