



C.M.A(MD)No.88 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

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The Managing Director,
Dev Aqua Product and Company,
No.5/184, Building Owner,
Sriragavendra Nagar,
Madurai Byepass, Veppampalayam,
Mochakottanpalayam Post,
Karur Taluk, Karur District.

... Appellant/2nd Respondent

Vs.

1.Perumal

2.Pachaiammal

... Respondents 1&2/Claimants

3.Balu

... Respondent/1st Respondent

4.J.B.Fabricator

... Respondent/3rd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 30 of the Workmen Compensation Act, to set aside the order passed by the Workmen Compensation Commissioner, Dindigul in W.C.No.26 of 2013, dated 22.07.2019 and dismiss the same as against the appellant.

For Appellant : Mr.M.P.Senthil

For Respondents : Mr.V.Karuna



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JUDGMENT

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The present appeal has been filed by the principal employer challenging the award passed by the Workmen's Compensation Commissioner, Dindigul in W.C.No.26 of 2013.

2. The principal employer, namely the appellant herein had engaged the 4th respondent herein as a contractor for the purpose of putting up false ceiling in his office. While the deceased Ilangovan was working under the 4th respondent Contractor, he got electrocuted and he passed away. The parents of the deceased have filed the claim petition as against the contractor as well as the principal employer seeking compensation to a sum of Rs.10,00,000/-.

3. The contractor has not filed any counter. But the principal emmployer had filed a counter admitting the fact of engagement of the 1st respondent as a contractor and further admitting that the deceased was employed under the 1st respondent contractor for the purpose of fixing of Aluminium false ceiling. The principal employer had further contended that the contractor is the master of the deceased person and therefore, they alone are responsible for the accident and for payment of compensation.



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4. The Workmen's Compensation Commissioner after considering the submissions on either side, has arrived at a finding that under Section 12 (2) of the Employee's Compensation Act 1923, the appellant herein as principal employer is liable to pay the compensation when he has extracted work through the contractor and has proceeded to pass an award of Rs.6,64,792/-. This award is put to challenge in the present appeal.

5. The learned counsel appearing for the appellant had raised the following substantial questions of law:

“1. Whether the finding rendered by the tribunal that there existed an employer-employee relationship between the deceased and the appellant without appreciating the evidence and other materials is sustainable in law?

2. Whether the finding of the tribunal is correct by ordering pay and recovery even though there is no evidence to prove that the appellant is the principal employer?”

6. The learned counsel appearing for the appellant relying upon Section 12 of the Employee's Compensation Act 1923 had contended that the contractor was not engaged for the purposes of ordinary part of trade or business. But the contractor was engaged only for the purpose of putting up false ceiling in the office premises. Unless a contractor is engaged for the purpose of trade or business, Section 12 of the Employee's Compensation Act 1923 cannot be invoked for mulcting



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liability upon the principal employer. According to him, the Workmen's Compensation Commissioner had not considered the said fact and has proceeded to mulct the liability upon the principal employer erroneously. He has also questioned the quantum of compensation.

7. Per contra, the learned counsel appearing for the respondent herein had contended that the deceased person was employed for the purposes of construction and maintenance of the office building of the principal employer. Therefore, the principal employer is liable in view of Clause (viii) of Schedule II of the Employee's Compensation Act, 1923. It is not necessary that the deceased person should have been employed only in the course of trade or business. Hence, he prayed for sustaining the award passed by the Workmen's Compensation Commissioner.

8. I have carefully considered the submissions made on either side and perused the material records.

9. The primary contention on the part of the learned counsel appearing for the appellant is that when the deceased person was not engaged in the course of trade or business through the 4th respondent Contractor, the question of mulcting liability upon the principal employer could not arise. A perusal of the Clause (viii) of Schedule II of Employee's Compensation Act, 1923 makes it clear that any employee



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engaged in the construction, maintenance, repair or demolition of any building would be covered as workmen under the Act. Our High Court in a judgment reported in 2015 (1) TN MAC 734 (***C.Arumughan @ Raj Vs. Revathi & Others***) in paragraph no.10 has categorically found that the employment of any person even not in the course of trade or business, would be covered by the provisions of the Employee's Compensation Act, 1923 after the amendment Act 45 of 2009. In the present case, the accident having taken place on 17.03.2011 after Act 45 of 2009, the deceased would be covered under the Employee's Compensation Act and the Workmen's Compensation Commissioner was right in invoking the said Act for mulcting the liability upon the Principal Employer.

10. In view of the above said deliberations, both the substantial questions of law are answered as against the appellant. There are no merits in the appeal. Hence, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.04.2024

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

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- 1.The Workmen Compensation Commissioner,
Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.88 of 2020

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