



C.M.A. No.2196/2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.01.2025	28.01.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 2196 OF 2021

AND

C.M.P. NO. 12151 OF 2021

The Manager
Ponni Sugars (Erode) Ltd.
Odapalli Post
Cauvery R.S. Pallipalayam
Namakkal District.

.. Appellant

- Vs -

1. Tmt. Vijaya
2. Selvi Nadhiya
3. Selvi Nithya
4. Selvi Sathya
5. Rangasamy Gounder

.. Respondents

Civil Miscellaneous Appeal filed u/s 30 (1) of the Workmen's Compensation
Act praying to set aside the order of the Commissioner for Employees



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Compensation, Coonoor dated 24.5.2021 in E.C. No.253 of 2015 and allow the appeal.

For Appellant : Mr. S.Ravindran, SC
For M/s. S.Bazeer Ahamed

For Respondents : Mr. R.Nalliappan for RR-1 to 4
No Appearance for R-5

ORDER

Aggrieved by the order passed by the Commissioner for Employees Compensation (for short 'the Commissioner') in E.C. No.253 of 2015 awarding compensation in a sum of Rs.3,79,120/- and in default of payment within 30 days thereof, awarded interest of 12% p.a., the appellant is before this Court through the present appeal.

2. The brief facts necessary for the disposal of this appeal are as under :-

The appellant and the 5th respondent had entered into an agreement on 21.7.2006 in and by which the sugarcane raised in the land of the 5th respondent, upon harvest, is delivered to the appellant at tonnage price payable by the appellant to the 5th respondent. It is the further averment of the appellant that



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the sugarcane becomes the property of the appellant only upon its delivery by the 5th respondent and till then, it is the property of the 5th respondent.

3. In this regard, it is the averment of the appellant that on 30.8.2007, the husband of the 1st respondent, viz., Ganesan, who was under the employ of the 5th respondent was coming to the house of the 5th respondent at about 2.30 p.m., for the purpose of taking his lunch. At that time, he found one Mari had come in contact with a live electric wire and on seeing this, the said Ganesan, acting on instinct, tried to save the said Mari, thereby resulting in his electrocution leading to his death.

4. The legal heirs of Ganesan, filed claim petition for compensation before the Commissioner for Workmens' Compensation, Salem in E.C. No.253/2015 contending that the deceased was employed on behalf of the appellant by the 5th respondent and got electrocuted for which the appellant and the 5th respondent were jointly liable to pay compensation.



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5. The appellant countered the said averment contending that the claim for compensation against the appellant is not maintainable in terms of the provisions of the Employees Compensation Act (for short 'the Act') as the employment of the deceased was under the 5th respondent and, therefore, no liability can be fastened on the appellant and emphasis was laid on Section 2 (f) of the Act to contend that the term 'Managing Agent' defined therein would not be the 5th respondent within its ambit and that the appellant would not fall within the ambit of employer as defined u/s 2 (e) of the Act. It was further contended that the death of the deceased would not fall within the scope of accident arising out of and in the course of his employment, as his death could not be connected with his employment as the death had not occurred in the sugar cane cutting field of the 5th respondent. It was further contended that the deceased was not an employee in any capacity as specified in Schedule II of the Act as provided u/s 2 (1)(dd) of the Act and, therefore, the claim for compensation is not maintainable.

6. On behalf of the 5th respondent, it was contended that there exists no relationship of employer-employee between the deceased and the 5th respondent as the deceased was working under the supervision of the Inspector



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employed by the appellant and that the death was not arising out of and in the course of his employment.

7. Based on the materials and contentions, the Commissioner determined the compensation payable by the appellant at Rs.3,79,120/- along with interest, totalling to a sum of Rs.10,09,941/-, which has since been deposited. However, aggrieved by the said award of compensation, the appellant is before this Court by filing the present appeal.

8. Learned senior counsel appearing for the appellant at the outset submitted that the contractual obligation is between the appellant and the 5th respondent, whereas there is no employment obligation between the appellant and the deceased. It is the further submission of the learned senior counsel that it is admitted that the relationship of employer-employee is between the 5th respondent and the deceased and even it is admitted by the 5th respondent that the wages are paid by the 5th respondent. That being the case, the appellant not being the employer of the deceased, no compensation would be payable from the hands of the appellant towards the death of the deceased.



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9. Learned senior counsel, placing reliance on the definition of 'employer' and 'managing agent' submitted that to bring the services of the 5th respondent under the definition of 'managing agent' and, thereby, to rope in the appellant as the 'employer', would be wholly erroneous as the appellant had not appointed the 5th respondent as the representative of the appellant to act on behalf of the appellant, as the 5th respondent is in no way connected to the business activities of the appellant.

10. It is the further submission of the learned senior counsel that even it is the admitted case of the 5th respondent that the deceased was working in the sugarcane field belonging to the 5th respondent and, therefore, there exists no employer-employee relationship between the deceased and the appellant. In this regard, learned senior counsel vehemently submitted that the expression 'contract of service' determines the employer-employee relationship and in the present case, there is no contract of service between the appellant and the deceased and the 5th respondent not being the managing agent of the appellant in terms of Section 2 (f) of the Act, the deceased, employed by the 5th respondent



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cannot be said to be the employee of the appellant, holding the appellant to be the principal employer as the 5th respondent was not representing the appellant's trade or business. The 5th respondent merely being the supplier of sugarcane to the appellant, the deceased having been under the contract of work with the 5th respondent, the appellant cannot be made the principal employer to fasten the duty of payment of compensation to the deceased at the hands of the appellant.

11. It is the further submission of the learned senior counsel that an employer is liable to pay compensation in respect of an accident caused to an employee only if it was in the course of employment and the theory of notional extension can be invoked only if there is an implied continued employment when the accident took place. In this regard, placing reliance on the decision of the Apex Court in ***Leela Bai & Anr. – Vs – Seema Chouhand & Anr. (2019 (2) LLJ 148)***, it is the submission of the learned senior counsel that the presence of the deceased at the place of occurrence should be by way of compulsion and necessity and not by choice and in the present case, the deceased having been at the place of his choice and not on account of compulsion or necessity, the said presence cannot be extended to be of compulsion or necessity and, therefore,



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would not bring the death of the deceased within the scope of the Employees' Compensation Act so as to fasten payment of compensation on the appellant, muchless the 5th respondent.

12. In the backdrop of the aforesaid submission, it is the submission of the learned senior counsel that Section 3 prescribes that the accident should be out of employment, which effectively means that there should be connection between the employment and the accident. However, in the present case, the deceased met his death on account of electrocution when he went to save another person, which was not in the course of his employment, even in a casual manner and this is not in the sugarcane field, where the deceased was working and, therefore, this would not fall within the scope of the definition in the course of employment and, therefore, the representatives of the deceased cannot claim compensation by invoking the provisions of the Employees Compensation Act.

13. In the light of the aforestated submissions, it is prayed by the learned senior counsel that the order passed granting compensation to the legal



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representatives of the deceased is not in consonance with the provisions of the Act and, therefore, the said order deserves to be set aside

14. In support of the aforesaid submissions, learned senior counsel placed reliance upon the following decisions :-

- i) *Malikarjuna G.Hiremath – Vs – Branch Manager, Oriental Insurance Company &Anr. (2009 (13) SCC 405); and*
- ii) *Daya Kishan Joshi & Anr. – Vs – Dynemech Systems Pvt. Ltd. (2018 (11) SCC 642)*

15. Per contra, learned counsel appearing for the claimants, who are the legal representatives of the deceased submitted that it is the admitted case of the 5th respondent that the growing of sugarcane is only vested with the 5th respondent and whatever is grown there is under the supervision of the appellant and that the appellant had been paid only the amount towards the crop on tonnage basis and insofar as the salary towards the cutting of sugarcane, which is to be paid to the persons, who cut the sugarcane, the said amount is deducted



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from the amount paid to the 5th respondent and is directly paid by the appellant to such of the persons employed.

16. In the aforesaid backdrop, it is the submission of the learned counsel that the payment towards the cutting of sugarcane for which the deceased has been employed, being receivable from the appellant, the appellant is the employer and the deceased is the employee and merely because there is no specific written contractual terms between the deceased and the appellant, that cannot be the reason for the appellant to disown the relationship when the materials available on record stares writ large on the face of the appellant to establish the employer-employee relationship between the appellant and the deceased.

17. It is the further submission of the learned counsel that the amount towards the wages for the persons employed for cutting the sugarcane, inclusive of the deceased being deducted from the amount fixed between the appellant and the 5th respondent, the appellant would squarely fall within the definition of 'employer' as defined u/s 2 (e) of the Act and merely because, the deceased was



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employed by the 5th respondent would not absolve the appellant from the rigours of Section 2 (e) of the Act as the appellant would be deemed to be the principal employer, as the employment of the deceased is for the purpose of cutting the sugarcane. Rightly appreciating the aforesaid facts, the Commissioner had passed the impugned order, ordering compensation, which does not require any interference at the hands of this Court.

18. In support of the aforesaid submissions, learned counsel for respondents 1 to 4 placed reliance on the following decisions :-

- i) *Leela Bai & anr. – Vs – Seema Chouhan & anr. (2019 (1) TN MAC 504 (SC);*
- ii) *Managing Director, M/s.Sakthi Sugars Pvt. Ltd. – Vs – V.Muthurakku & Ors. (CMA (MD) No.805/2011 – Dated 27.04.2022 (MHC));*
- iii) *The Chairman/Executive Director, Bhima Sahakari Sakhar Karkhana & Anr. – Vs – Sunil & Ors. (First Appeal No.2838/2018 – (Bombay HC)); and*
- iv) *Shobha & Ors. – Vs – The Chairman, Vithalrao Shinde Sahakari Sakhar Karkhana Ltd. & Ors. (CA No.1860/2022 – Date 11/03/2022 (SC))*



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19. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on behalf of the respective parties.

20. Before entering into the factual issues, Sections 2 (e) and (f) of the Act, which defines the term 'employer', which is the pivotal provision which governs the case, is quoted hereunder for better appreciation :-

“Section 2 (e) – “Employer” includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a (employee) are temporarily lent or let on hire to another person by the person with whom the (employee) has entered into a contract of service or apprenticeship, means-such other person while the (employee) is working for him.

Section 2 (f) “Managing Agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person’s trade or business, but does not include an individual manager subordinate to an employer.”



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21. It is the admitted case of the appellant that the lands on which the sugarcane crops are grown belongs to the 5th respondent. It is the further admitted case of the parties, viz., the appellant and the 5th respondent that an agreement was entered into between the appellant and the 5th respondent that the sugarcane would be raised by the 5th respondent in his land and upon harvest the crops would be delivered to the appellant for tonnage price, which would be paid upon such delivery.

22. From the above, it is clear that the owner of the sugarcane field, viz., the 5th respondent is to grow the sugarcane and upon harvest is to deliver it to the appellant on the accepted and agreed tonnage price basis. It is further evident from the records that the appellant and the 5th respondent had entered into an agreement whereby the wages towards the cutting of sugarcane would be retained from out of the total amount payable to the 5th respondent on tonnage basis and the amount would be paid by the appellant to the workers.

23. There is no quarrel with the fact that the deceased was under the employ of the 5th respondent, but the above record, viz., the agreement between



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the appellant and the 5th respondent proves beyond a pale of doubt that the principal employer insofar as cutting of sugarcane from the fields of the 5th respondent is the appellant.

24. In this regard, a careful perusal of Section 2 (e) of the Act reveals that the definition of 'employer' includes within itself any employee, whose services are lent temporarily or let on hire to another person by the person with whom the employee has entered into a contract of service.

25. It is the specific case of the appellant that the deceased is under the employee of the 5th respondent. Though there is no stark admission on this aspect, crucially, there is also no specific denial with regard to the same. In such circumstances, the deceased could safely be held to be under the employ of the 5th respondent. However, the agreement entered into between the appellant and the 5th respondent as also the acceptance of the 5th respondent to deduct the wages of the persons, who are employed for the purpose of cutting the sugarcane, by the appellant and to pay the said wages directly by the appellant to the said persons, clearly bring the act of the appellant within the ambit of Section



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2 (e) of the Act. In effect, the services of the deceased, who is admitted to be under the employ of the 5th respondent, had been lent to the appellant, by means of the agreement entered into between the appellant and the 5th respondent by permitting the appellant to deduct the wages payable to such employees including the deceased from the tonnage price payable to the 5th respondent and pay it directly to such persons, who are employed for the said purpose. Meaning thereby, the services of the deceased were lent to the appellant by the 5th respondent temporarily for the purpose of cutting the sugarcane crops at the time of harvest and with regard to the said services, the payment of wages was paid directly by the appellant to the deceased, as would be evident from the agreement between the appellant and the 5th respondent. Therefore, for all intent and purposes, the deceased, though could be held to be under the employ of the 5th respondent, but insofar as the present work is concerned, the principal employer would be the appellant and, therefore, there exists a relationship of employer-employee between the appellant and the deceased and, therefore, the claim for compensation at the hands of the appellant would stand fully covered under the provisions of the Act.



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26. Now the only issue that requires determination is whether the fatality of the deceased occurred in the course of employment of the deceased with the appellant as providing under the Act.

27. There is no dispute that harvesting was going on in the lands of the 5th respondent under the supervision of the person employed by the appellant. On the fateful day, viz., 30.8.2007, it is averred that when the deceased and Mari, who were engaged for harvesting the sugarcane were coming to the house of the 5th respondent for the purpose of having their lunch, the said Mari came in contact with a live wire and when the deceased went to save the said Mari, the deceased also suffered electrical shock and on coming to know of the said incident, the supervisor of the appellant was informed and he had provided a vehicle for taking the deceased to the hospital, where he was pronounced dead.

28. In the above backdrop of the facts, it is the specific case of the appellant that the deceased was not doing the work in the sugarcane field; rather he was going to have his lunch at the residence of the 5th respondent and, therefore, the said period cannot be said to be during the course of employment



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and, therefore, the deceased cannot be said to have met his death during the course of employment so as to receive compensation from the appellant.

29. In this regard, reliance has been placed on the decision in *Leela Bai case (supra)*, wherein the Apex Court has held as under :-

“8. The deceased did not remain at the bus stand living in the bus as a member of the public or by choice after arrival at Burhanpur till departure for Indore the next morning. It is not the case of the Respondent that the deceased was at liberty to proceed home and return at leisure the next morning after parking the bus at the Burhanpur bus stand at night. The Act being a welfare legislation, will have to be interpreted in the facts of each case and the evidence available, to determine if the accident took place in the course of employment and arose out of the employment. In Agnes (supra) it was observed:

...The man's work does not consist solely in the task which he is employed to perform. It includes also matters incidental to that task. Times during which meals are taken, moments during which the man is proceeding towards his work from one portion of his employers' premises to another, and periods of rest may all be included.



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9. *In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of "notional extension" of the employment considered in Agnes (supra) as follows:*

It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this theory of notional extension."

(Emphasis Supplied)

30. The aforesaid case squarely addresses the issue raised in the present case. In the present case, the deceased had left the sugarcane field for the purpose of going to have his lunch at the house of the 5th respondent. Lunch recess during which an employee takes lunch is an integral part of the



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employment and would squarely fall within the term 'course of employment'. It is not necessary that the deceased should bring the lunch and have the same at the place of his work. Any reasonable extension of time, inclusive of the time when a person leaves his place of work to consume work would fall under the reasonable extension of time to bring the period within the period of employment by applying the theory of notional extension and any issues arising during the said period would squarely fall within the course of employment and the said workman would be entitled to compensation at the hands of the employer by invoking the provisions of the Act.

31. In the present case, the deceased was proceeding to have his lunch at the house of the 5th respondent, which is around the vicinity of the lands where the sugarcane is grown, as it is the normal practice in villages. When proceeding for having lunch, fate had intervened with the deceased thereby robbing him of his life and the period being the period of employment, as laid down by the Apex Court in *Leela Bai case (supra)*, the respondents 1 to 4 would be entitled to receive compensation from the appellant, who is the employer as per the provisions of the Act.



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32. Though certain other decisions have been relied on by the learned counsel appearing for the appellant, however, the said decisions, more particularly the decision in *Daya Kishan Joshi case (supra)* would even lend a hand to the case of the respondents, as therein, the Apex Court had laid down that though “in the course of employment” suggests that the injury must be caused during the currency of employment, whereas the expression “out of employment” conveys the idea that there must be a casual connection between the employment and the injury caused to the workman as a result of the accident.

33. In the case on hand, though the accident had not been strictly “*in the course of employment*”, nevertheless it clearly falls within the four corners of “*out of employment*” as the accident had happened during the period when the deceased had gone for his lunch recess which would be a period that would stand included within the terminology “out of employment” as the same has a casual connection with the currency of employment as, as aforesaid, lunch forms an



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integral part of the work schedule of every individual, who is employed, irrespective of the nature of his employment.

34. Insofar as the other decision relied on by the learned senior counsel for the appellant, the same is not applicable to the facts of the present case and, therefore, this Court has not discussed about the said decision. Though other decisions have been relied on by the learned counsel for respondents 1 to 4, however, in view of the decision aforesaid, this Court is not inclined to multiply the said decisions and, therefore, the said decisions have not been discussed in detail, though a reference to the same is shown above.

35. The Commissioner, appreciating all the details in proper perspective had passed the impugned order with which this Court is in complete agreement and the same does not deserve any interference at the hands of this Court for the reasons aforesaid. Accordingly, this appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs in this appeal.



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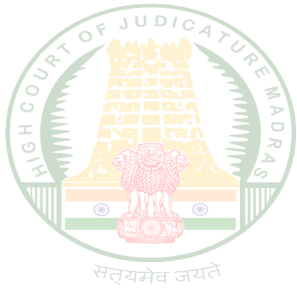
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GLN

To

The Commissioner for Employees Compensation
Coonoor.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
C.M.A. NO.2196 OF 2021**

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28.01.2025