

C.M.A.(MD)No.666 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED : 25.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.666 of 2024

and

C.M.P.(MD)No.7897 of 2024

Senthilkumar

... Appellant

Vs.

1. J.Pandiammal

2. Suresh

3. Balamurugan

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 30 of Workmen Compensation Act, to set aside the order dated 05.12.2023 made in E.C.No.105 of 2021 on the file of the Commissioner for Employees Compensation, Madurai.



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For Appellant : Mr.R.Subramanian

For Respondents : Mr.S.Abdul Muthalif

JUDGMENT

The Civil Miscellaneous Appeal is filed challenging the order dated 05.12.2023 made in E.C.No.105 of 2021 passed by the Commissioner for Employees Compensation, Madurai.

2. For the sake of convenience, the parties herein are referred to as per their rank before the Commissioner for Employees Compensation, Madurai.

3. The brief facts in a nutshell are as follows:

(i) The appellant herein was the respondent in the original E.C.No. 105 of 2021, and the petitioners in the aforesaid case are the respondents herein. The respondents are the legal heirs of one deceased, namely,



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Jayaraj, who passed away on 09.10.2019 during the course of his employment. On 09.10.2019, after arranging laborers for the next day's work, while the deceased Jayaraj was travelling back for his night duty as night watchman at the construction site along the Madurai-Theni main road while nearing the cremation ground at about 06.00 PM, a two-wheeler bearing registration No.TN-59-AW-9001, dashed against him, as a result of which he sustained grievous injuries and was taken in a 108 ambulance to Madurai Rajaji Government Hospital, where he passed away on 11.10.2019. The respondent is the contractor under whom he was working.

(ii) Claiming that the death of the deceased occurred only during the course of his employment as a worker of the respondent contractor, the workmen's compensation application was filed under Section 22 of the Employees Compensation Act. The Commissioner for Employees Compensation, Madurai, examined three witnesses on the side of the petitioner and marked Ex.P.1 to Ex.P.11. However, no witnesses were examined on the side of the respondent contractor and no documents were also marked.

(iii) The Joint Commissioner observed in paragraph No.9 of the order that, though the petitioners claimed that the deceased worked under



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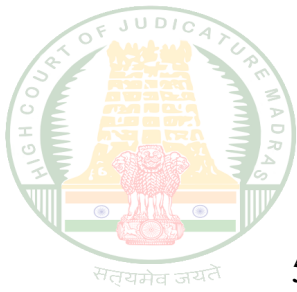
the respondent contractor and the death occurred due to an accident during the course of his employment, other than filing a counter, the respondent did not examine himself as a witness or prefer to bring in any witnesses to disprove the pleadings of the petitioners. When the petitioners' application was perused in conjunction with all the other documents marked on the side of the petitioners, the learned Commissioner came to a conclusion that the death occurred in the course of his employment and passed an award of Rs.4,74,640/-. Challenging the same, the present appeal is filed.

4. The learned Counsel appearing for the appellant submitted that the First Information Report was registered based on the complaint made by one J.Pandiammal, the wife of the deceased Jayaraj, on 11.10.2019, which was marked as Ex.P.1. A careful perusal of the said FIR would make it clear that on 09.10.2019 at about 05:00 pm., the deceased had left home for his job as a night watchman in the new building situated near Kasi Theatre at Nagamalai Pudukottai. Since he did not return home the next morning, the complainant and her son searched for him, and it was brought to the notice of the son of the deceased by a staff member of Madurai Government Rajaji Hospital that the deceased had been admitted



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in the aforesaid hospital pursuant to an accident met by him on the earlier day. This itself would suffice to prove the fact that it was a case of road accident and not a case that could be filed under the Workmen Compensation Act. Nowhere in the FIR, it is stated that the deceased worked for the respondent contractor or that the accident occurred walking along the road for work related purpose. The learned Counsel further relied upon Ex.P.8, a letter sent by the petitioner to the Director General of Police, Chennai. A careful perusal of the same would throw light on the fact that the wife of the deceased tried to establish the fact that the FIR registered in Crime No.472 of 2019 did not indicate that the death of the deceased occurred during the course of his employment. However, the letter does not disclose the name of the employer. Nowhere, in the Ex.P.8, the name of the respondent is mentioned as the employer of the deceased. That apart, the learned Counsel categorically contended that either in the cross-examination of P.W.1 or in the cross-examination of P.W.2, not even in one instance, they have uttered a word to substantiate their pleading that the deceased was employed under the respondent or that the respondent is a building contractor, who had engaged the deceased as a laborer.



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5. Per contra, learned Counsel for the respondent categorically submitted that, the findings of the learned Commissioner has made it clear that it is the responsibility of the respondent contractor to bring in appropriate evidence to prove the fact that the deceased was not employed under him, and that the death had no connection to the employment of the deceased, and that he was never ever engaged by the respondent as a laborer. Having failed to do so and not preferred to mark even a single document to that effect before the Tribunal, the appeal on the said grounds cannot be sustainable.

6. Heard the learned Counsel appearing for the appellant, the learned Counsel appearing for the respondents and carefully perused the materials available on record.

7. No doubt, as pointed out by the learned Commissioner, except for filing a counter, the respondent, who is the appellant herein, had not preferred to examine himself or any other person as witnesses and did not mark any document. However, a careful perusal of the counter would make



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it clear that the appellant had pleaded that the deceased was a stranger and had never worked as a laborer or Night watchman under the respondent at any point of time, which contradicts the story of the petitioners. It was also pleaded that the respondent is a civil engineer, who designs architecture for overseas construction projects and has not engaged any laborer, more particularly the deceased, at any point of time. On careful perusal of the documents marked on the side of the petitioners, Ex.P.3 is a notice sent by the wife of the deceased through her advocate on the respondent, requiring to pay a compensation of Rs.6,75,000/- since the death of the husband occurred during the course of his employment as a night watchman at a building at V.K. Street, Ganesh Nagar, Keelkudi Vilaku, Nagamalai Pudukottai, which is a work site of the respondent. After receiving the said notice, the acknowledgement for acknowledging of its receipt by the respondent is marked as Ex.P.4. Later, the wife of the deceased also sent a letter to the Director General of Police, communicating the fact that the FIR registered with respect to the accident in which her husband passed away, the jurisdictional police did not disclose the name of the real offender. The said letter was received by the Director General of Police and the same is marked as Ex.P.9. Other than the said documents, no other documents have been marked to substantiate the fact that the deceased was

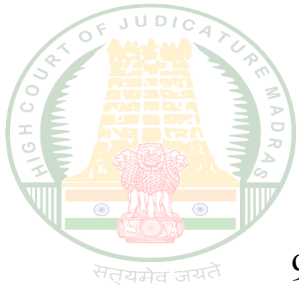


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working under the respondent as a contractor.

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8. However, the legal notice issued by the wife of the deceased on the respondent, which is marked as Ex.P.3, was duly received by the respondent and the said acknowledgement card has also been marked as Ex.P.4. A careful perusal of the counter filed by the respondent before the Workman Compensation Tribunal would prove that the petitioner is not a layman but a civil engineer, who designs buildings and is responsible for overseeing construction projects. Being an educated man, he ought to have duly responded to the legal notice issued by the petitioner, J.Pandiammal, the wife of the deceased and denied the facts substantiated in that legal notice. Having failed to do so and having filed only a counter affidavit without any supporting documents to prove that he was never a contractor at any point of time and was only a civil engineer, who has nothing to do with India, but who is employed in doing construction in overseas project, and recording the fact that ignorance of law is no excuse and that the respondent is an educated man, I do not find any merit in interfering with the impugned order.



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9. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed

25.02.2025

NCC : No
Index : No
Internet : Yes

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To

1. The Commissioner for Employees Compensation,
Madurai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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