

Devaky and Others Vs. Santhosh

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Court : Kerala

Decided On : Jan-16-2015

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appellant : Devaky and Others

Respondent : Santhosh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR FRIDAY,THE16H DAY OF JANUARY201526TH POUSHA, 1936 MFA.No. 129 of 2010 () -----
AGAINST THE

ORDER

IN WCC3572000 OF COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER),THRISSUR DATED810-2009 APPELLANTS/OPPOSITE PARTIES: -----

----- 1. DEVAKY W/O. LATE DAMODHARAN, PULIKUNZHI HOUSE, VALLISSERY, AVINISSERY THRISSUR TALUK, THRISSUR DISTRICT.

2. SURESH BABU, S/O.LATE DAMODHARAN, PULIKUNZHI HOUSE, VALLISSERY, AVINISSERY THRISSUR TALUK, THRISSUR DISTRICT.

3. SUNIL, S/O.LATE DAMODHARAN, PULIKUNZHI HOUSE, VALLISSERY, AVINISSERY THRISSUR TALUK, THRISSUR DISTRICT.

4. BABY, S/O.LATE DAMODHARAN, PULIKUNZHI HOUSE, VALLISSERY, AVINISSERY THRISSUR TALUK, THRISSUR DISTRICT.

5. SUMESH, S/O.LATE DAMODHARAN, PULIKUNHZI HOUSE, VALLISSERY, AVINISSERY THRISSUR TALUK, THRISSUR DISTRICT. BY ADVS.SRI.G.SREEKUMAR (CHELUR) SMT.PREETHI KARUNAKARAN RESPONDENT(S)/APPLICANT: ----- SANTHOSH, S/O.KARANKUTTY, CHIRAPPAD HOUSE, P.O. AVINISSERY, ABABDASALA THRISSUR- 680313. BY ADVS. SRI.T.C.SURESH MENON SRI.A.R.NIMOD THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON1601-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: SHG/ P.B.SURESH KUMAR, J.

===== M.F.A.(W.C.C.)No.129 of 2010 ===== Dated this the 16th day of January, 2015

JUDGMENT

The order in W.C.C.No.357 of 2000 on the file of the Commissioner for Workmen's Compensation, Thrissur is under challenge in this appeal. Opposite parties 2 to 6 in the proceeding before the Commissioner are the appellants.

2. The respondent instituted the proceeding under Section 22 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act" for short) claiming a sum of Rs.1,90,611/- by way of compensation, alleging that he sustained personal injuries in the course of his employment under the first opposite party namely Damodaran. The appellants are the legal representatives of Damodaran, who are impleaded in the proceeding on the death of Damodaran. The case of the respondent before the Commissioner was that on 22.8.2000, while he was under the employment of the first opposite party, he sustained personal injuries in an accident arising out of and in the course of his employment. According to him, he was cutting wooden planks in the saw mill run by the first M.F.A.(W.C.C.)No.129 of 2010 2 opposite party and while doing so, his hand slipped into the rasar machine. It is stated that he sustained laceration of thumb and traumatic amputation of right index finger. He claimed that his monthly wages was around Rs.3,500/-.

3. The opposite parties contested the application contending inter alia that the applicant was not a workman at all under the first opposite party. The accident was also disputed.

4. On the part of the respondent, he examined himself as AW1. A witness is also examined on his side as AW3 who stated before the Commissioner that he had seen the accident occurred to the respondent at the premise of the opposite parties. The opposite parties have examined their supervisor as MW2 who had deposed that the respondent was not a person employed in the establishment at all.

5. The Commissioner, on an appraisal of the materials on record, found that the accident occurred in the establishment of the opposite parties and that in the accident the respondent had sustained personal injuries. As far as the quantum of compensation, the Commissioner found that the respondent is entitled to a sum of Rs.25,415/- by way of compensation. Accordingly, the impugned order was passed directing the appellants to pay compensation determined as due with interest to the respondent. It is aggrieved by the said order that this appeal has been filed. M.F.A.(W.C.C.)No.129 of 2010 3 6. The following are the substantial questions of law framed in the appeal:- "1. Is it not a wrong procedure adopted by the commissioner in deciding the claim even without there being no evidence of any employer employee relationship and without finding the same, the award being passed? 2. Was it not for the commissioner to dismiss the original application at the threshold itself for non compliance of the statutory provisions as contained in Section 22 of the Workmen's Compensation Act, 1923? 3. Is it not a case of wrong appreciation of facts and perverse findings thus constituting a question of law since there are substantial discrepancies in the evidences tendered which will entail a dismissal of the original application?" 7. Heard the learned counsel for the appellants as also the learned counsel for the respondent.

8. The learned counsel for the appellants contended that there is no acceptable evidence to establish that the respondent was employed in the establishment of the opposite party. Therefore, the impugned order is one passed without jurisdiction. Per contra, the learned counsel for the respondent contended that the materials on record are sufficient for this Court to infer that the respondent was employed in the establishment of the opposite party and therefore, the impugned order does not call for interference. He has also pointed out that the appeal against the order can be entertained by this Court only on specific substantial questions of law and that no substantial questions of law arise for consideration in this matter. M.F.A.(W.C.C.)No.129 of 2010 4 9. At the outset, as is evident from the questions framed for decision in this appeal, it is evident that there is no substantial questions arise for consideration in this appeal and the questions raised are purely factual. As such, according to me, the appeal is not maintainable. That apart, there is no document before the Commissioner to indicate as to whether the respondent was an employee engaged in the establishment of the opposite party. The respondent had only given oral evidence to establish his case that he was an employee under the opposite party. He has also examined a witness to prove the said fact, who had stated that he witnessed the accident as alleged by the respondent. As against the evidence tendered by the respondent, the opposite parties only examined their Manager as MW2. MW2 has only stated that the respondent was not an employee under the first opposite party. In the aforesaid view of the matter, especially when there is no substantial question of law to be decided in this matter, I am not inclined to interfere with the decision impugned in this appeal. The appeal is, accordingly, dismissed. Sd/- P.B.SURESH KUMAR JUDGE

/true copy/ P.A. to Judge vpv

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