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Proprietor, Vs. V.Palanivel

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Court : Chennai

Decided On : Mar-23-2015

Judge : D.Hariparanthaman

Appellant : Proprietor,

Respondent : V.Palanivel

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 23.03.2015 CORAM THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN C.M.A.(MD)No.1013 of 2014 and M.P.(MD)Nos.1 of 2014 & 1 and 2 of 2015 Proprietor, Alagar Blue Metal (Crusher).Town Palayam, Ariyalur Road, Perambalur District.Appellant Vs V.Palanivel .Respondent Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 05.08.2013 in W.C.No.244 of 2010 on the file of the Commissioner for Workmen's Compensation Tribunal, Tiruchirappalli.

!For Appellant : Mr.G.S.Asok Adithyan ^For Respondent : Mr.R.Nandakumar :

JUDGMENT
The appellant is Alagar Blue Metal Crusher Unit.

It is a stone crushing unit.

According to the respondent, he was working as crusher operator on daily wages basis on 08.10.2009.

On 08.10.2009, while he was working at 2.00 a.m., a belt broke down during the employment and the hand of the respondent got struck up in the wheels and he was serious injured.

He was immediately taken to M/s.KMC Hospital, Tiruchirappalli and he was treated as in-patient from 08.10.2009 to 13.10.2009 and thereafter he was treated in a Government Hospital, Chennai and also at M/s.CMC Hospital, Vellore.

He was also treated as in-patient in the Ganga Hospital, Coimbatore.

The doctor certified that he suffered 60% partial permanent disability.

Since the appellant failed to pay compensation, the respondent filed W.C.No.244 of 2010 claiming compensation for the injuries suffered out of and in the couRs.of employment.

The claim was resisted by the appellant on the ground that he was not employed by the appellant.

However, the appellant admitted that the accident took place within his factory premises.

According to him, the victim was employed as menial by the workers who are employed by him.

It is also stated that the workmen who are employed by the appellant are related to the respondent and those workmen engaged him as a menial servant to look after their needs.

No further details are given in the counter statement.

2.It is admitted that the accident took place in the factory premises.

It is the case of the appellant that the respondent was a menial servant employed by the workmen who are employed by the appellant for carrying out the crushing

operations.

The respondent examined himself as P.W.1 and he was extensively cross-examined.

Thereafter, he examined another witness who is his brother.

He was also said to have been employed in the appellant - Crushing Unit.

The respondent also examined a Doctor to prove the disability.

Exs.A1 to A16 were marked on the side of the respondent-claimant.

Thereafter, the son of the Proprietor of the appellant was examined.

It is stated so by Mr.Sathyaraj, who was examined as a witness on behalf of the appellant that he is the son of the Proprietor of the Stone Crushing Unit.

He also spoke in terms of the pleadings already made.

The evidence of the appellant also states that the appellant spent a sum of Rs.1,00,000/- towards medical expenses.

After hearing both the sides, the Commissioner for Workmen's Compensation, Tiruchirappalli passed an order dated 05.08.2013 directing the appellant to pay a compensation of Rs.2,34,835/-.

The appeal is filed as against the aforesaid order.

3.Notice of motion was ordered and the respondent entered appearance.

Though five questions of law have been raised in the appeal, the learned counsel for the appellant has confined his submission and submitted that the finding of the Tribunal is totally perveRs.and the respondent failed to establish that he was a workman employed by the appellant particularly when the appellant categorically stated that he was not employed by the appellant.

4.Heard the learned counsel on either side and perused the materials available on record.

5.The learned counsel for the appellant has vehemently contended that the respondent failed to establish that he was a workman employed by the appellant in the Crusher Unit.

According to him, nobody could be permitted to enter the crusher unit, but he admitted that the accident took place within the factory premises.

But according to him, he was not a workman and he was there in the working site as menial servant employed by the workmen employed by the appellant.

The learned counsel for the appellant has heavily relied on the insurance policy that was marked before the Tribunal.

According to him, while the appellant has insured 98 workmen employed by the appellant, there was no reason to omit his name and since the name of the respondent was not included in the insurance policy, the Tribunal should have inferred that he was not a workman employed by the appellant.

The learned counsel for the appellant has also submitted that though one Rengan who was a workman employed by the appellant took the respondent to the hospital after he got injured, the said Rengan was not examined by the respondent to establish his case.

Hence, the non-examination of the said Rengan is fatal to the claim of the respondent.

The learned counsel for the appellant has relied upon Section 3 of the Workmen's Compensation Act and submitted that compensation is payable only when the injury was caused out of and in the couRs.of employment and since the respondent was not a workman employed, the appellant is not liable to pay compensation.

Hence the learned counsel for the appellant found fault with the Commissioner for not referring to the self- serving evidence of P.W.2 who was none else than the

brother of the respondent.

6.On the other hand, the learned counsel for the respondent has submitted that the Commissioner has rendered the factual findings after going through the evidence let in before him.

He has taken me through Page No.5 of the order of the Commissioner wherein the learned Commissioner has recorded that in the Accident Register it was recorded that the accident took place in the premises of the appellant.

The learned Commissioner has also submitted that there was a workman by name Rengan and that during the cross examination, the appellant has admitted that the said Rengan was a workman employed by them and Rengan took the respondent to the hospital.

The appellant failed to examine any of its workmen to establish its plea that the respondent was employed by the workmen of the establishment as a menial servant by them.

Thus, the appellant failed to discharge the burden of proof vested on them.

Hence, it was a factual finding recorded by the Commissioner and the same need not be interfered under Section 30 of the Workmen's Compensation Act.

The counsel has also submitted that the findings of the Commissioner could not be termed as perveRs.as there is enough evidence to come to the conclusion that he was employed by the appellant.

7.I have considered the above submissions.

8.In this case, the appellant has admitted that the accident took place within his factory.

According to the respondent, he was not a permanent workman, but he was a daily paid crusher operator.

9.The defence of the appellant was that the respondent was employed by the workmen of the appellant as a menial servant to bring coffee and tea, and the respondent was not employed by the appellant.

The line of cross examination of P.W.1-claimant by the appellant is that he was working as menial servant to bring coffee and tea for the workmen employed by the appellant.

The following passage in the cross-examination of P.W.1 is extracted as under: ?.vjph;kDjhuh;fs; fpurh; a[dpl;oy; vdJ brhe;jf;fhuh;fs; ntiy ghh;j;J te;jhh;fs; vd;Wk;> mth;fSf;F o> fhgp kw;Wk; gpw bghUl;fis thq;fpf; bfhLg;gjw;fhf jhd; ehd; ,Ue;njd; vd;why; rhpay;y.?.

10.It is very relevant to note the significant admission made by the witness examined on behalf of the appellant in this regard.

The witness of the appellant admitted that tea and coffee are prepared within the factory premises itself.

The following significant admission made by the witness examined on behalf of the appellant is as follows: ?.vd;Dila fpurh; a[{dpl;oy; cs;s ve;jpukhdJ ,af;fg;gl;L gzp eilbgWk;nghJ bjhHpyhsh;fSf;fhd jdpahf czt[neuKk; njdPh; neuKk; xJf;fg;gltpy;iy vd;W brhd;dhy; rhpjhd;.

bjhHpyhsh;fspd; tpUg;gg;go ,ae;jpuk; ,aq;fpf;bfhz;oUf;Fk;nghJ mth;fSf;Fj; njitahd czt[fis jdpaplj;jpy; mUe;jpf; bfhs;th; vd;W brhd;dhy; rhpjhd;.

vdJ fpurh; a[{dpl;oy; bjhHpyhsh;fSf;Fj; njitahd czt[kw;Wk; njePh; Mfpatw;iw mth;fns cw;gj;jp bra;J vLj;Jf; bfhs;th; vd;W brhd;dhy; rhpjhd;.?.

The further significant admission made by the witness examined on behalf of the appellant is as follows: ?.jpdf;Typ bjhHpyhsh;fis tha;bkhHpahf gzpf;fkh;j;JtJ cz;L.?.

?.ehd; jhf;fy; bra;Js;s vk3y; Mgnul;lh; kw;Wk; nkyhsh; tUifg; gjpntL kl;Lk; cs;sJ vd;why; rhpjhd;.

ehd; jhf;fy; bra;Js;s vk3 Mtzj;jpy; cs;s egh;fisj; jtpu ,ju bjhHpyhsh;fSf;F jdp gjpntL vJt[k; guhkhpj;J tutpy;iy vd;W brhd;dhy; rhpjhd;.?.

11.It is also brought to the notice of this Court by the learned counsel for the respondent that this portion was not taken note of by the Commissioner and therefore, in addition to the reasons given by the Commissioner, this portion should also be taken into consideration, to sustain the order of the Commissioner.

12.The Commissioner has held that the Accident Register discloses that the accident took place in the site of the appellant Factory.

The Accident Register also discloses that he was taken to the hospital by Mr.Rengan.

The learned Commissioner has also found that the witness examined on behalf of the appellant admitted that the said Rengan was employed by the appellant.

The following passage from the order of the Commissioner is extracted: ?.Mdhy; ,t;tHf;if bghWj;jtiu kDjhuh;> vjph;kDjhuhplk; xU bjhHpyhspahf ntiy ghh;j;jjw;fhd Mtzkhf k.rh.M.1> jpUr;rp> nf.vk;.rp kUj;Jtkid tpgj;J mwpf;if jhf;fy; bra;ag;gl;Ls;sJ.

me;j mwpf;ifapy; Alleged Cause - vd;w ,lj;jpy; Work spot injury vd;Wk;> Occurred on - vd;w ,lj;jpy; 08.10.2009 ,ut[2.30 kzp vd;Wk;> Site - vd;w ,lj;jpy; Alagar Blue Metals, Perambalur vd;Wk; bjspthf Fwpg;gplg;gl;Ls;sJ.

nkw;go Mtzj;jpd; Kyk; kDjhuh; tpgj;J ele;j rkak; vjph;kDjhuhplk; gzpg[hpe;Js;sJ bjspthfpwJ.

,e;j Mtzj;ij ,j;jPh;g;ghaj;jpy; Fwpa PL bra;a[k;nghJ vjph;kDjhuh; jug;gpy; Ml;nrgiz VJk; bjhptpf;ftpy;iy.

nkw;go Mtzj;jpd; Brought by vd;w ,lj;jpy; Rengar vd;W Fwpg;gplg;gl;Ls;sJ.

vjph;kDjhuh; jdJ FWf;F tprhuizapy; ?.vd;Dila a[{dpl; fpu\hpy; buq;fd; vd;gth; gzp bra;J tUfpwhh;.

tpgj;jpd;nghJ kDjhuiu kUj;Jtkidapy; bfhz;L nrh;j;jJ buq;fh; vd;W brhd;dhy; rhpjhd;.?.

vd;W rhl;rpakspj;Js;shh;.?.

13.In view of the aforesaid categorical finding on facts by the Commissioner, I am of the view that the order of the Commissioner could not be termed as a perveRs.one.

However, the learned counsel for the appellant has vehemently contended that the Commissioner did not refer to the evidence of P.W.2 who is the brother of the respondent.

14.The learned counsel for the appellant is not able to point out anything against the respondent in the evidence of P.W.2.

It is brought to my notice that P.W.2 admitted during the cross examination that he is the brother of the respondent.

Just because he is the brother of the respondent, his evidence could not be discarded.

However, the Commissioner even without reference to the evidence of P.W.2, recorded a finding of fact that the respondent was employed by the appellant in his Crusher Unit.

P.W.2 also stated that he is also employed in the appellant Crusher Unit.

15.I have read the cross-examination of P.W.2.

The learned counsel for the appellant is not able to cite anything in his favour except stating that he is the brother.

16.The learned counsel for the appellant has also taken me through the insurance policy and submitted that while 98 persons were covered, there is no reason for not covering the respondent.

When this Court put a question as to whether the said Rengan, who was admittedly a workman employed by the appellant, is covered under the Insurance Policy, he submitted that his name is also not found in the insurance policy.

Therefore, the submission of the learned counsel for the appellant has no substance.

Furthermore, I am of the view that the Insurance Policy covered permanent workmen, while not covering those workmen who were on daily wage basis like that of the respondent, because, it was the categorical case of the respondent that he was a daily wage workman.

Under the Workmen's Compensation Act, even a daily wage workman is covered.

17.The learned counsel for the appellant has relied upon Section 3 of the Workmen's Compensation Act and submitted that the accident did not arise out of the employment.

The prime contention of the appellant was that the respondent was not employed by him.

Having taken such a defence, the appellant is estopped from contesting that the accident did not arise out of and in the couRs.of employment.

18.Hence, I am of the considered view that as to whether the respondent was a workman employed by the respondent is concerned, it is purely the findings of the Commissioner on facts and no question of law, much less a substantial question of law is involved in this appeal.

19.The learned counsel for the appellant has relied upon the following judgments: (i)2008 ACJ412(Jaidevi Ganesh Bind v.

Union of India) of the Bombay High Court: In that case, the deceased was run over by a passing local train.

The legal heirs of the deceased person made a claim under the Workmen's Compensation Act.

The Commissioner recorded a finding that they failed to prove that the deceased person was employed by the Railways and he was not a workman under the Railways.

The claimants filed an appeal.

The Bombay High Court found that the Commissioner recorded his finding based on the evidence let in before him and the same cannot be termed as perverse.

The Bombay High Court confirmed the order of the Commissioner on the factual finding.

In fact, the said judgment far from supporting the case of the appellant, supports the case of the respondent since hereagain I am of the view that the factual finding recorded by the Commissioner could not be termed as a perveRs.one and the same could not be interfered with.

(ii)The next judgment relied on the learned counsel for the appellant is the judgment of this Court reported in (2009) 3 MLJ1097 in J.Rajasulochana v.

Mehapoop Bai Rice Mill.

In that case, according to the claimant, while the workman concerned in the case was operating the machine in the rice mill, the accident took place on 13.07.1998 and the workman fell on the conveyor belt and consequently died due to shock and hemorrhage.

The legal heirs of the deceased person made a claim under the Workmen's Compensation Act.

The Commissioner came to the conclusion that the claimant was not able to establish that the deceased was employed in the Rice Mill.

The said finding was upheld by this Court in (2009) 3 MLJ1097 Here again, as stated above, with regard to the judgment reported in 2008 ACJ412(Jaidevi Ganesh Bind v.

Union of India) of the Bombay High Court, this Court has declined to interfere in the factual finding recorded by the Commissioner.

Hence, this judgment also supports the contention of the learned counsel for the respondent and not the learned counsel for the appellant, who has placed reliance upon it.

(iii)The next judgment relied on by the learned counsel for the appellant is the judgment of this Court in Bhaskar v.

G.Selvaraj and otheRs.reported in 2009-4-L.W.600.

In that case, the person claimed to have employed by the appellant therein, removed the blocks in the sewage channel.

While clearing the blocks, he died.

The claimants filed a claim under the Workmen's Compensation Act and the same was allowed, but the same was reversed in the judgment of this Court.

It is relevant to extract paragraphs-20 and 21 of the said judgment as under: ?.20.At the outset it may look like a pure question of fact in which this court cannot interfere in exercise of its appellate powers under Section 30 of the Workmen's Compensation Act.

However, it has been repeatedly held in a number of cases that a question of fact will assume the character of a substantial question of law if the finding is perverse.

If a finding of fact is based on no evidence or based on inadmissible evidence alone or on the basis of the evidence, no reasonable person would have arrived such a conclusion, then such finding, though a finding of fact, shall be elevated to the level of a substantial question of law.

21.In this case, though there is oral evidence to the effect that the deceased was under the employment of the appellant/second opposite party, most parts of the evidence seem to be hearsay.

There is no document, not even a scrap of paper to show that the deceased was employed under the appellant and he was in receipt of wages from the appellant.

However, the respondents 1 and 2/claimants have produced Ex.A11 - a copy of the alleged statement of the fiRs.respondent/fiRs.claimant given to the police attested by a number of persons.

The same seems to be a self-serving document created for the purpose of showing that the deceased was under the employment of the appellant.

The fiRs.respondent/fiRs.claimant, while deposing as PW-1, would state that after the accident, pursuant to the mediation of panchayatdars the appellant paid a sum of Rs.20,000/- as compensation to the respondents 1 and 2/claimants.

The said version of PW-1, was also supported by the parole evidence of PW-3, which was also supported by PW-2.

In order to substantiate the same Ex.A11 - statement has been produced.

But it is pertinent to note that the same does not contain the signature of the appellant, who is said to have paid a sum of Rs.20,000/- as compensation to the fiRs.claimant.

The said amount was paid according to PW-1 and Ex.P11 on 04.10.1996, namely a day after the death of the deceased.

If at all it is true that the appellant paid such an amount, then there won't be any occasion for the respondents 1 and 2/claimants to make a claim for compensation before the Commissioner for Workmen's Compensation.?.

This Court came to the conclusion that there was absolutely no evidence to come to the conclusion that the deceased was employed by the appellant to remove the blocks.

In those circumstances, this Court held that the defence of the Commissioner was a perveRs.one and hence the findings were reversed under Section 30 of the Workmen's Compensation Act.

In the present case, the learned counsel for the appellant is not able to point out any perversity in the findings rendered by the Commissioner.

In fact, it is his own admission that the accident took place within the factory premises and the fact that the workman Rengan admitted the respondent in the hospital would go a long way against the appellant.

Hence, I am of the view that this judgment would not render any assistance to the appellant.

(iv)The last judgment that has been relied on by the learned counsel for the appellant is the judgment of this Court in Devarajan v.

N.Appuswamy, reported in 2012-2-L.W.648.

In that case, the concerned workman was doing polishing work on cuddapah stones.

During polishing, a cuddapah stone fell on his leg and caused grievous injuries.

He made a claim under the Workmen's Compensation Act before the Commissioner and the learned Commissioner allowed the claim.

The employer filed an appeal and the appeal was allowed on the ground that the claimant does not come under any of the clauses set out in the Schedule-II of the Workmen's Compensation Act.

This Court has recorded a finding that the workman does not come under the Schedule-II of the Workmen's Compensation Act.

Paragraphs-15, 16 and 17 are extracted hereunder: ?.15.Schedule II of the Workmen's Compensation Act gives the list and it has to be seen whether the claimant comes under any of the clauses set out in Schedule II.

Clause (iii) of Schedule II deals with sale of any article and it reads as follows:- "iii.Employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article in any premises wherein or within the precincts whereof twenty or more persons are so employed."

16.According to item(iii).a person employed for the purpose of transport or sale of any article in any premises wherein or within the precincts whereof, twenty or more persons are so employed is included in the definition of "workman".

Therefore, in order to come within the definition of workman as per Schedule of Section 2(1)(n).twenty or more persons should have been in employment.

17.In the instant case, there is no material/evidence to show that twenty or more persons were working.

In fact, PW.1's evidence indicated that there was no other worker in the shop.

According to RW.1, usually only two persons were working on daily cooly.

There is absolutely no evidence to show that the claimant was working at the time of accident i.e.in the year 2005 and was receiving wages as claimed by him.?.

This Court came to the conclusion that the concerned workman was not under the employment set out in Schedule-II of the Workmen's Compensation Act and answered the question of law in favour of the employer.

I am not able to understand as to how this judgment would be of any use to the appellant.

20.In view of the aforesaid reasons, this Civil Miscellaneous Appeal deserves to be dismissed and accordingly it is dismissed.

No costs.

Consequently, the connected miscellaneous petitions are closed.

The respondent is permitted to withdraw the amount deposited by the appellant.

Index : Yes/No 23.03.2015 Internet : Yes/No KM To The Workmen's Compensation Tribunal, Tiruchirappalli.

D.HARIPARANTHAMAN, J.

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