

The Manager, Vs. 1.Asaithambi

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Court : Chennai

Decided On : Mar-27-2015

Judge : C.T.Selvam

Appellant : The Manager,

Respondent : 1.Asaithambi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 27.03.2015 CORAM THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN C.M.A.(MD)No.1082 of 2006 and M.P.(MD)No.2 of 2006 The Manager, The Oriental Insurance Company Limited, Broadway, Chennai.Appellant Vs 1.Asaithambi 2.The Administration, Sankaranarayana Construction Co., Bangalore, Karnataka State.

3.The Scheme Manager, Chennai Railway Transport Scheme, Tharamani, Chennai-600 113.

4.The Administration, Irkkan International Ltd., T.Nagar, Chennai.

5.A.V.Doss .Respondents Appeal under Section 30 of the Workmen Compensation Act, 1923, against the order passed in W.C.No.165/2000 dated 30.01.2005 on the file of the Deputy Commissioner for Workmen's Compensation, Trichy.

!For Appellant : Mr.C.Jawahar Ravindran ^For Respondents : Mr.T.A.Ebenezer for R1 Mr.G.Bhagavath Singh for R2 No appearance for R5 :

JUDGMENT

The appellant is the Insurance Company.

The fiRs.respondent was a casual labourer employed by the second respondent.

There was a Central Scheme.

The third respondent herein is the Railways.

The third respondent gave some work in contract to the fourth respondent.

The fourth respondent, in turn, gave the said work assigned to them by the Railways to the second respondent.

The fifth respondent is the sub-contractor of the second respondent, when the second respondent carried out the work to the Railways.

The fiRs.respondent herein got injured.

The other details are not necessary for the purpose of this case.

2.The fiRs.respondent filed W.C.No.165 of 2000 claiming a compensation of Rs.2,22,710/- for the injuries suffered by him.

3.The second respondent herein filed a counter statement admitting that the fiRs.respondent workman was its casual labourer.

The second respondent also admitted that the accident arose out of and in the couRs.of employment.

It was also admitted that on 11.01.2000, when the fiRs.respondent was climbing in a ladder for carrying out construction activities, he fell down and got injured in the spinal cord.

The other details are not necessary for the purpose of this case.

The second respondent herein took up the insurance policy and that was also marked before the Commissioner.

4. Before the Commissioner, the fiRs.respondent-claimant examined himself as P.W.1 and documents Exs.P1 to P5 were marked.

The doctor was examined as P.W.2, and the disability certificate was marked through the doctor.

Another witness was examined by the fiRs.respondent claimant, who was the occurrence witness.

No witness was examined by the other parties.

However, documents Exs.R1 and R2 were marked.

Ex.R1 is the insurance policy.

In fact, the insurance policy is also marked as Ex.P3.

Ex.R2 is the letter dated 17.03.2001 written by the second respondent to the appellant.

Considering the entire materials on record, particularly taking into account the admission made by the second respondent about the employment, the Deputy Commissioner of Labour passed the order dated 30.01.2005 directing the Insurance Company to pay a compensation of Rs.2,01,600/-.

This appeal is filed against the aforesaid order.

5. On 14.09.2006, this Court admitted the appeal on the following substantial questions of law: (1) Whether the learned Commissioner was erred in holding that the appellant company was liable to pay compensation?.

(2) Whether the learned Commissioner has failed to consider the terms and conditions of the Insurance Policy marked as Ex.R1 from which it is evident that the appellant company is not liable and responsible for the claim of the sub-contractor's employees?.

(3)Whether the order of the learned Commissioner is contrary to the evidence on record, particularly Ex.R2?.

(4)Whether the learned Commissioner has failed to hold that the fiRs.respondent / claimant is not a workman under the second respondent and the appellant is not liable to pay compensation to the fiRs.respondent / claimant?.

(5)Whether the learned Commissioner has failed to consider that the workman policy marked as Ex.R1 is a limited policy and the limit of liability is only Rs.27,000/-?.

(6)Whether the determination of the learned Commissioner with regard to loss of earning power is contrary to the provisions of Workmen's Compensation Act?.

6.Now the learned counsel for the appellant states that he would confine his argument to the questions of law 2, 3 and 5.

7.The learned counsel for the appellant has vehemently contended that in view of Ex.R1-insurance policy, the Insurance Company is liable to pay compensation only to the employees of the second respondent and not to the employees of the sub-contractor.

According to the learned counsel for the appellant, in Ex.R2-Letter, the second respondent has stated that the fiRs.respondent-claimant was employed under the fifth respondent-Sub contractor.

Hence, the second question of law referred to above, has to be answered in his favour and for these reasons, the third question of law also has to be allowed.

8.In any event, the learned counsel for the appellant has submitted that the limited liability is only up to Rs.27,000/- as per Ex.R1-Insurance Policy and hence the Commissioner was not correct in fixing the liability over and above Rs.27,000/- and hence, the fifth question of law also has to be answered in favour of the appellant.

9.On the other hand, the learned counsel for the second respondent as well as the fiRs.respondent-claimant sought to sustain the order.

They took me through the evidence as well as the records and sought for dismissal of the appeal.

10.I have considered the submissions made by the learned counsel on either side.

11.The learned counsel for the appellant has placed heavy reliance on Ex.R2.

Ex.R2 is the letter written by the second respondent to the appellant- Insurance Company stating that the fiRs.respondent is working under the fifth respondent-Sub contractor.

Therefore, the learned counsel for the appellant states that he was the workman employed by the fifth respondent.

12.I am not able to come to the conclusion as canvassed by the learned counsel for the appellant.

I have perused Ex.R2.

Ex.R2 only states that these workmen are under the employment of the sub-contractor of the second respondent.

Nowhere it is stated that these workmen were appointed by the sub-contractor.

On the other hand, it is stated that the labourers were working under the sub-contractor.

Ex.R2-Letter shows that the fiRs.respondent was the workman of the second respondent and he was working under the fifth respondent -Sub Contractor.

The same has to be seen along with the counter statement filed by the second respondent before the Deputy Commissioner of Labour.

Before the Deputy Commissioner of Labour, the second respondent has categorically stated that the fiRs.respondent-claimant is their workman.

However, the second respondent has stated in the counter that he was employed as a casual labourer.

Hence, I am not able to agree with the submission made by the learned counsel for the appellant that the fiRs.respondent-claimant was a workman employed by the fifth respondent and therefore, the appellant is not liable to pay the compensation based on the insurance policy.

Hence, the questions of law 2 and 3 are answered against the appellant.

13.As far as the fifth substantial question of law is concerned, it is the case of the appellant that the very liability is limited up to Rs.27,000/-.

I have perused the insurance policy.

Nowhere it is stated that the liability is limited up to Rs.27,000/-.

Under the policy, it is seen that EngineerRs.Supervis ORS.Skilled Workers and Unskilled Workers are covered.

The monthly salary of a unskilled worker is stated as Rs.2,700/-.

10 unskilled workmen are covered under the policy.

For 10 unskilled workeRs.the yearly salary is stated as $\text{Rs.27,000/-} \times 12 = \text{Rs.3,24,000/-}$.

This Rs.27,000/- is relied upon by the appellant to show that there is limited liability for the Insurance Company.

I am not able to agree with the submission made by the learned counsel for the appellant.

There is no limited liability up to Rs.27,000/-.

Hence, the fifth question of law is also answered against the appellant.

14.In the result, the compensation awarded by the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour).Tiruchirappalli is confirmed and the Civil Miscellaneous Appeal is dismissed.

No costs.

Consequently, the connected miscellaneous petition is closed.

The fiRs.respondent-claimant is permitted to withdraw the compensation that has already been deposited by the appellant Insurance Company.

Index : Yes/No 27.03.2015 Internet : Yes/No KM Note to the Registry: Registry is directed to send back the records forthwith to the Commissioner for Workmen's Compensation (Deputy Commissioner of Labour).Tiruchirappalli.

To The Commissioner for Workmen's Compensation (Deputy Commissioner of Labour).Tiruchirappalli.

D.HARIPARANTHAMAN, J.

KM C.M.A.(MD)No.1082 of 2006 and M.P.(MD)No.2 of 2006 27.03.2015

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