

Amaravathy Vs. Binny Limited

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Court : Chennai

Decided On : Jul-11-1994

Reported in : II(1995)ACC42; 1996ACJ785

Judge : C.V. Govardhan, J.

Appeal No. : A.A.O. No. 699 of 1986

Appellant : Amaravathy

Respondent : Binny Limited

Advocate for Def. : P. Ranganatha Reddy, Adv.

Advocate for Pet/Ap. : T.S. Ramaswami, Adv.

Disposition : Appeal dismissed

Judgement :

C.V. Govardhan, J.

1. This appeal arises out of the order passed by Additional Commissioner for Workmen's Compensation, Madras, dated 15.10.1980 in W.C. Case No. 51 of 1980 filed under Section 10 of the Workmen's Compensation Act.

2. According to the petitioner, her son Munusamy was a workman employed as a welder by the opposite party on a monthly wage of Rs. 300/- and that on

11.1.1979, while he was discharging his duty as a welder doing electrical welding in a ship in the Madras Harbour, he slipped on account of an electric shock, fell in deep water and drowned. The petitioner has filed the application for lump sum compensation of Rs. 19,000/- as a dependant of the deceased.

3. Opposite party has filed a counter stating that the workman Munusamy was a casual worker from 11.1.1979 and he was required to work standing on the plank suspended about 3 feet above the water level and was provided with all safety equipment. The opposite party has also stated that the workman was covered under the Employees' State Insurance Act and, therefore, the petition under the Workmen 's Compensation Act is not maintainable under Section 53 of the Employees' State Insurance Act.

4. On the above pleadings, the Additional Commissioner for Workmen's Compensation has held that the deceased was a workman covered under the Employees' State Insurance Act and the applicant is, therefore, not entitled to claim any compensation under the Workmen's Compensation Act and dismissed the application.

5. Aggrieved over the same, the applicant has filed this appeal.

6. The point for consideration is: Whether the applicant is entitled to any compensation and if so, what is the quantum

7. The claim of the workman was negated by the Additional Commissioner for Workmen's Compensation on the ground that he is not entitled to claim compensation under the Workmen's Compensation Act since he is covered under the Employees' State Insurance Act and Section 53 of the Employees' State Insurance Act bars against receiving or recovery of compensation or damages under any other law. The learned Counsel appearing for the appellant would argue that the Kerala High Court in the decision reported in *Asokan v. Western India Plywoods Limited* 1987 ACJ 358 , has held that it is illegal to hold that in a suit against employer for compensation for injuries sustained by employer's negligence by an indigent person on the basis of sustainability of a statutory bar as prayed by the defendant. I have carefully gone through the above decision and I am of

opinion that the Kerala High Court has held that where the liability for negligence arose under the law of the tort under common law, the court cannot reject the plaint on the ground that it has been filed by an indigent person and the statutory modulation of the remedy did not deprive him of such compensation first for such tortious liability, Section 53 of the Employees' State Insurance Act notwithstanding.

8. In the present case, the claim made by the applicant on behalf of the deceased is not on the basis of any tortious liability of the employer. The claim made by the applicant is on the basis of the employment of the deceased under the opposite party. The death of the deceased cannot be said to have given rise to multiplicity of causes of action. Therefore, it cannot be said that the claim made by the applicant is not based on any enactment like the Workmen's Compensation Act as in the present case. When once the claim is based on the enactment, viz., Workmen's Compensation Act, the subsequent question whether the claim is sustainable in view of Section 53 of the Employees' State Insurance Act comes for consideration. When we consider the claim made by the applicant which is under the enactment, viz., under the Workmen's Compensation Act, the bar under Section 53 of the Employees' State Insurance Act comes into operation and it deprives the applicant the right to recover damages under the Workmen 's Compensation Act. In this connection, I wish to observe that since the applicant is entitled to the benefits under the Employees' State Insurance Act, she is debarred from claiming any compensation under any other law including the Workmen's Compensation Act. If the claim has not been made by the applicant under the Workmen's Compensation Act, but under any other law, the consideration may be different. and in such a case only the decision relied on by the learned Counsel appearing for the appellant, viz., *Asokan v. Western India Plywoods Limited* 1987 ACJ 358 , will come to her rescue and enable her to claim compensation. Therefore, I am of opinion that since the claim has been made by the applicant under the Workmen's Compensation Act, it is barred under Section 53 of the Employees ' State Insurance Act and, therefore, the finding of the Commissioner does not require any interference by this court. I hold the point accordingly.

9. In the result, the appeal is dismissed confirming the order of the Additional Commissioner for Workmen's Compensation, Madras.

