

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Superintending Engineer and anr. Vs. C. Jothi and ors.

Superintending Engineer and anr. Vs. C. Jothi and ors.

SooperKanoon Citation : sooperkanoon.com/827355

Court : Chennai

Decided On : Apr-28-2008

Reported in : (2008)IIILLJ471Mad

Judge : G. Rajasuria, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 20 and 21; Workmen Compensation Act, 1923 - Sections 4A; Workmen Compensation (Amendment) Act, 2000

Appeal No. : C.M.A. No. 1462/2006 and M.P. (MD) Nos. 1/2008 and 2006

Appellant : Superintending Engineer and anr.

Respondent : C. Jothi and ors.

Advocate for Def. : K.K. Senthil, Adv.

Advocate for Pet/Ap. : M. Suresh Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

G. Rajasuria, J.

1. This appeal is focussed as against the order dated March 6, 2006 passed in W.C. No. 541/2004 by the Court of Workmen's Compensation (Deputy

Commissioner of Labour), Tiruchirappalli.

2. Heard both sides.

3. The Court of Workmen's Compensation (Deputy Commissioner of Labour), Tiruchirappalli vide order dated March 6, 2006 awarded compensation to a tune of Rs. 3,69,620/- (Rupees three lakhs sixty nine thousand six hundred and twenty only) to the claimants.

4. Animadverting upon the liability fixed on the appellants/Electricity Board and also the quantum of compensation awarded by the lower authority relating to the death of one Chinnadurai, this civil Miscellaneous Appeal has been filed on various grounds; the gist and kernel of them could be portrayed thus:<

Even though the Electricity Board in the counter had taken a specific stand that the deceased did not adhere to the safety standards prescribed by the Electricity Board at the time of performing the work, nonetheless the lower 1 authority simply held as though the Electricity Board was responsible without even discussing the plea raised by the Electricity Board. The quantum of compensation arrived at by the lower authority is on the higher side as there is 2 no evidence to prove that the deceased was earning such a huge sum of Rs. 200/- (Rupees two hundred only) per day as wages/salary.

5. The following substantial question of² law was framed by my learned Predecessor at the time of admitting this Civil Miscellaneous Appeal:

Whether the quantum of compensation awarded by the lower authority in the absence of any acceptable evidence is sustainable both in law and on facts?

6. Heard both sides. I am of the considered opinion that the substantial questions of law - could be reframed in replacement of the above:

(i) whether the deceased had not followed the safety standards prescribed by the Electricity Board, while performing the 4 work and if so whether the Electricity Board could wriggle out of its liability to pay compensation? and

(ii) whether the compensation awarded is on the higher side?

Substantial Question of Law (i):

7. The learned Counsel for the appellants/Electricity Board would develop his arguments to the effect that the workman did not wear glows and he did not get tied the rope around his waist by way of attaching him with the pole so as to protect himself. Whereas the learned Counsel for the respondents/claimants would submit that there was no specific plea taken in the counter and no evidence was also adduced.

8. At this juncture, I would like to refer to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. A mere reading of Section 20 of the said Act would amply make the point clear that it is the duty of the employer to see that the workman is provided with safety measures/equipments. It is also the duty of the employer to see to it that in the event of the contractor not supplying such safety equipments, the principal employer himself should provide. Here, in the counter there is nothing found highlighted as to what sort of safety measures, the deceased was expected to adhere to and as to how he allegedly failed to violate the same. There is also nothing to demonstrate that such safety equipments were provided to the deceased. Hence, in the absence of specific pleading and proof, I could see no infirmity in the conclusion arrived at by the lower authority to the effect that the occurrence took place in the course of employment and the principal employer, viz., the appellants herein was liable.

9. For comprehensively deciding the 5 issue, I would like to scrutinize further the genuineness of the case. The First Information Report emerged at the earliest point of time. The neighbouring land owner would clearly highlight that while the deceased was performing his work at the electricity pole, pertaining to power house, the de facto complainant saw him falling down with burn injuries due to electrocution. As such I could see that this is a genuine case, in which the deceased employee died while discharging his duty as an employee under the principal employer, viz., the Electricity Board. Hence, no interference is required with regard to the finding of the lower authority and accordingly, this point is decided in favour of the respondents/claimants and as against the appellants/Electricity Board.

Substantial Question of Law (ii):

10. At the outset itself, I would like to refer to Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 and it is extracted hereunder for ready reference:

21. Responsibility for payment of wages. (1)A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

2. Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

3. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

4. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

(emphasis supplied)

A mere perusal of the cited Section and more specifically the underlined portion would leave no doubt in the mind of any one that it is the duty on the part of the principal employer to monitor as to what is the amount of wage paid to the employee concerned and in such a case the employer cannot be heard to contend that the legal heirs of the deceased should have proved as to what was the quantum of wages/salary of the deceased. It is a trite proposition of law that a person having knowledge about a particular fact has to divulge it before the Court and he cannot expect the other party to prove it. Here, the Electricity Board admittedly the principal employer cannot simply demand the legal heirs of the

deceased employee to prove by documentary evidence as to what was the rate of wages, the deceased was earning per day. In fact, the lower authority adhered to Section 4-A of the Workmen Compensation Act, 1923 correctly did choose the minimum amount of Rs. 4000/- (Rupees four thousand only) as the monthly wages of the employee as the accident occurred during the year 2004, after the Amendment Act of 2000. Hence, I could see no infirmity in the order passed by the lower authority.

11. I, therefore do not find any merit in this Appeal and accordingly it is dismissed, by confirming the award of the lower authority. No costs. Consequently, the connected MPs. are also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com