

D. Kumar Vs. V. Gayathri Devi and ors.

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Court : Chennai

Decided On : Dec-16-2004

Reported in : 3(2005)ACC599; [2005(105)FLR678]

Judge : P. Sathasivam and; A.R. Ramalingam, JJ.

Appellant : D. Kumar

Respondent : V. Gayathri Devi and ors.

Advocate for Pet/Ap. : Mr. Section Manimaran

Judgement :

P. Sathasivam, J.

1. The applicant in W.C. No. 71 of 1994 on the file of Commissioner for Workmen's Compensation-I, Madras-6, against the dismissal of his petition for compensation, has filed this appeal under Section 30 of Workmen's Compensation Act, 1923 (herein referred to as 'the Act').

2. The brief facts are as follows:

The appellant herein filed a claim under Section 10(1) of the Act against proprietrix by name V. Gyathri Devi first respondent herein, the Secretary, Lotus Colony Flat Owners' Association-2nd respondent herein and Perumal Maistry-third respondent herein claiming compensation for the injuries said to have been sustained by him

in an accident arising out of and in the course of employment on 19.5.1993. According to him, he was a mason and was employed through the 3rd respondent by 1st and 2nd respondents to do masonry and repair work at the Housing Board Ownership Flats situated at Lotus Colony, Nandanam, Madras-35. On 19.5.1993 at about 3.00 p.m., when the applicant and three others including the third respondent were doing masonry work by standing on a scaffolding at Flat No. 7, third floor of 'L' Block, the said scaffolding suddenly broken and the applicant fell down from the third floor and met with an accident in the course of his employment. Due to the accident, he sustained multiple grievous injuries on his head, right side body, right leg and other parts of body. Initially he had treatment at Government Royapettah Hospital from 19.5.1993 to 27.5.1993 and again on 4.6.1993, thereafter he went to Stanley Medical College Hospital and then to Government Eye Hospital, Egmore from where he was referred to Government General Hospital for admission as in-patient till 28.6.1993. He became a disabled person and his permanent disability is assessed at 55 per cent. He was earning Rs. 50/-per day and his age was 35 years at the time of accident. It is his claim that since the accident occurred during the course of employment under first and second respondents through third respondent, all of them were jointly and severally liable to pay compensation to an extent of Rs. 1,97,000/-. Since they failed to comply with his notice dated 17.7.1993, he approached the Commissioner for workmen's compensation for necessary relief.

3. The first respondent in his counter has stated that she wanted to make some minor alterations and the work was entrusted to third respondent. It was the third respondent who carried out the work and long after the completion of work, she came to know that the applicant who was engaged as a helper by the third respondent fell down from the scaffolding and suffered a minor injury. The applicant cannot claim compensation on the basis of permanent disability suffered by him. There was no privity of contract between the first respondent and the applicant. The repair work undertaken at the instance of the first opposite party was of casual nature and it was not for any business or trade and as such the applicant is not a workman as contemplated under Section 2(1)(n) of the Act. The claim is not maintainable under law.

4. The 2nd respondent has filed a counter wherein it is stated that Clause 8(1) of bye-law of Association states that it shall be the exclusive responsibility of the member to maintain in good condition the flat allotted to them and as per Clause F(3), the Association will be responsible only for general maintenance. The second respondent did not engage the applicant for any repair or masonry work to be taken up or carried out at the premises of the first respondent, nor was there a complaint in the nature of general maintenance from 'L' Block or the first respondent. The second respondent is a total stranger to the third respondent and the applicant and, as such, they are not liable to pay any compensation.

5. The third respondent has filed a separate counter stating that the applicant is not a workman under Section 2(1)(n) of the Act and he was neither engaged for the purpose of the employer's trade or business nor comes under the category of the workmen defined in Schedule II of Workmen's Compensation Act. The third respondent was not having any contract with principal employer and he was also a worker. There is no relationship of master and servant between the applicant and the third respondent and he is also a labourer and not even a Maistry. The scaffolding from where they were working did break only due to the unexpected fall of balcony of the upper floor and the applicant fell down and met with the accident. The injury and the permanent disability alleged to have been suffered by the applicant are not true and the applicant is all right now and even now he is attending the same work. The petition is liable to be dismissed. Before the Commissioner, the injured applicant was examined as A.W. 1, Dr. Theagarajan as A.W. 2 and one Govindan as A.W. 3 and Exs. A-1 to A-10 were marked in support of his claim. The first respondent/house owner was examined as R.W. 1 on the side of first respondent. One Athmaram, Committee Member of the Association was examined as R.W. 1 on the side of the second respondent and one Perumal was examined as R.W. 1 on the side of the third respondent. The Commissioner, on consideration of the stand taken by the applicant and the respondent, after relying on a judgment of Calcutta High Court and after holding that the applicant is not a workman within the meaning of Section 2(1)(n) of the Act, dismissed the claim petition; hence the present appeal.

6. The appeal papers show that by order dated 31.1.1997, notice of motion was ordered by this Court. By virtue of the same, except third respondent, other respondents were represented by Counsel. The following substantial questions of law arose for consideration:

(1) Whether the appellant is a workman as defined in Section 2(1)(n) of Workmen's Compensation Act, 1923 (as amended) on the facts and circumstances of this case, or not?

(2) Whether the ruling reported in , is applicable to this case, or not?

(3) Whether the dismissal of the above claim petition by the Commissioner for Workmen's Compensation relying on the judgment passed in Gopal Das Nandy case , is correct or not?

Since the above questions of law find place in the grounds of appeal and the same having been duly served on the respondents, we have heard Mr. Section Manimaran, learned Counsel for the appellant; Mr. V. Karthick for first respondent; and Mr. C. Franco Louis for 2nd respondent. None appeared for 3rd respondent.

7. The main contention of the learned Counsel for the appellant is that the Commissioner, without reference to the definition given under Section 2(1)(n) of the Act and the materials placed, and without discussing the same, by merely extracting the decision of the Calcutta High Court, dismissed the petition of the workman, holding that he is not a workman under the Act. We have already referred to the claim of the applicant/appellant, and the defence taken by the three respondents. Apart from the said plea, the applicant himself was examined as A.W. 1 and he has also examined two more witnesses as A.Ws. 2 and 3, besides marking documents as Exs. A-1 to A-11. In order to substantiate their defence, the owner of the house, Committee member of the Association and the contractor were examined before the Commissioner. In the light of the materials in the form of oral and documentary evidence, it is but proper for the Commissioner to give a specific finding whether the applicant is a workman, as defined under Section 2(1)(n) of the Act. He also failed to consider whether the applicant is a person employed in a capacity specified in Schedule II of the Act. As rightly pointed out by

the learned Counsel for the appellant, though the Commissioner has narrated the pleadings of both parties in several pages, after framing necessary issues, he has not adverted to the case of the applicant as pleaded. It is the specific claim of the applicant that the first respondent has admitted that the work was entrusted to the third respondent, who carried out the same and settled the issue. In such a circumstance, it is his claim that there is an implied contract between the first respondent and the third respondent. It is also his case that since the third respondent employed the applicant, there is privity of contract between the first respondent and the third respondent. It is also his claim that the word 'business' is a word of large and wide import, capable of a variety of meanings. It is also his claim that he is a person employed in a capacity specified in Schedule II of the Act. It is equally true that all the three respondents in their separate counter statements highlighted their stand and the same was reinforced by their evidence. Their defence was also not properly considered as pleaded by them. Though the procedure that is contemplated under the Workmen's Compensation Act for disposal of cases is summary in nature, since the Commissioner is exercising his statutory powers conferred on him, it is but proper for him to analyse the materials with reference to the statutory provisions and give a specific finding both on the eligibility and quantum of compensation. The Commissioner has failed to follow the said course while dismissing the petition. Mere reproduction of decision, without a comparative analysis as to whether the principle laid down therein is applicable to this case or not, eligibility of the applicant, and the objections taken by the respondents, we are of the view that the conclusion cannot stand for scrutiny. The Commissioner is also expected to give a specific finding whether the applicant is a person employed in a capacity specified in Schedule II of the Act. The Commissioner is also expected to find whether there is any privity of contract between the respondents 1 and 3 and whether the Association-2nd respondent has any rule in the work done at the instance of first respondent. All these questions have not been considered and answered by the Commissioner. For these reasons, we are of the view that ends of justice would be met by remitting the matter to the Commissioner for fresh disposal. As the case was remitted back, we are not expressing our opinion on the merits of the claim of the applicant as well as the defence taken by the respondents.

8. In the light of what is stated above, the order of the Commissioner for Workmen's Compensation-I, Madras-6 dated 2.7.1996, made in W.C. No. 71 of 1994 is set aside and the Commissioner is directed to restore the claim petition on its file and dispose of the same afresh on merits within a period of three months from the date of receipt of a copy of this order, after affording opportunity to all the parties concerned. Civil miscellaneous appeal is allowed to this extent. No costs.

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