

The Management, Vs. 1.The Commissioner of Workmen's Compensation

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Court : Chennai

Decided On : Apr-01-2013

Judge : C.S.Karnan

Appellant : The Management,

Respondent : 1.The Commissioner of Workmen's Compensation

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:01/04/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN
C.M.A(MD) No.1682 of 2010 and M.P.(MD).No.1 of 2012 The Management,
Ashok Sizing, Chettiarpatti Village, Mugavoor, Virudhunagar District. .. Appellant
vs 1.The Commissioner of Workmen's Compensation Authority under the
Workmen's Compensation Act, No.142/1, Sundaram Theatre Road, K.K.Nagar,
Madurai

020. 2.Tmt.Selvarani 3.Minor.Karthik 4.Minor.Pugazhal (Minor respondent 2nd and
3rd represented by 2nd respondent mother and nature of guardian)
5.A.S.P.G.Ramasamy .. Respondents Civil Miscellaneous Appeal filed under
Section 30 of the Workmen's Compensation Act, 1923, against the order dated
12.10.2010, passed in W.C.No.249 of 2006, on the file of the Deputy
Commissioner of Labour for Workmen's Compensation, Madurai, received by the
appellant on 18.11.2010. !For Appellant ... Mr.Karthik for M/s.Profexs Associates
^For Respondent ... Court for R1 Mr.T.R.Jeyapalam for R2 to R4 :JUDGMENT
The respondent herein/applicants have filed in W.C.No.249 of 2006, on the file of

the Deputy Commissioner of Labour for Workmen's Compensation, Madurai, stating that the 1st applicant's husband one Mr.Kalidas, was working as loadman under the appellant herein, for the past 5 years and he was paid a sum of Rs.6,000/- per month as salary including batta on 25.01.2006, in the night hours, the said Kalidas was involved in doing his duty as loadman under the appellant's management and thereafter he did not turn up at his residence. On 27.01.2005, at about 04.30p.m., one Alagirisamy, who was the accountant in the appellant's management informed the applicants that the said Kalidas had expired by talking into a well which is situated within the premises of the opposite party's sizing mill. Hence, the applicants have filed the claim petition for claiming compensation of a sum of Rs.4,00,000/-.

2. The Management/appellant herein had filed a counter statement and denied the averments made in the claim. The opposite party stated that the deceased was not an employee and he does the loading and unloading and when the lorry comes to the factory. Actually, there is no nexus between the opposite party and the deceased Kalidas. On 25.01.2006, in the night, the (deceased) Kalidas and another loadman were doing unloading of goods from the vehicle bearing registration not TN-67Q-9480 and after furnishing the work, they had left the factory. The opposite party further submitted that the well is far away from the factory and the deceased has no business to go to the well. Further, the well is surrounded by a 3 feet parapet wall and unless the deceased had voluntarily jumped into the well, the question of accidentally talking into the well does not arise. The opposite party further denied the averments regarding the age and income of the deceased.

3. The 2nd opposite party has also filed a counter statement stating that he is not the owner of the said sizing mill unit, but he has given the land to the 1st opposite party on rental basis. As such, the relationship between the 1st and 2nd opposite party is that of a tenant and a landlord. Therefore, the 2nd opposite party has been included in the said compensation application is a mis-joinder.

4. On verifying the averments of both the parties, the Deputy Commissioner of Labour had framed four issues for consideration in the case namely: (1) Whether

the deceased was employed as a "worker" as per the workmen's Compensation Act?; (2) If so, whether the employer had died in the accident arising out and during the course of doing his duty?; (3) If so, what is the quantum of compensation, which the claimants are entitled to get?; (4) Who is liable to pay the compensation?. On the side of the claimants, the wife of the deceased was examined as PW.1 and seven documents were marked namely: F.I.R; post mortem report; ration card; advocate notice; acknowledgment card; copy of voucher and expenditure particulars. On the side of the opposite party, one Ashok Kumar, the Proprietor of the factory was examined as RW.1 and he had marked three documents namely rental agreement, copy of Take book and electricity bill.

5. PW.1, had adduced evidence that her husband Kalidas, was working under the 1st opposite party for the past five years, as workman. On 25.01.2006, he went to the 1st opposite party's factory for unloading the goods. Thereafter, he had not turned up in the house. Hence, she sent her son to find out the whereabouts of her husband and finally on 27.01.2006, at about 04.30 p.m., one Alagirisamy, who is an accountant of the 1st opposite party management, informed that her husband expired after falling in a well, which is situated within the premises of the 1st opposite party.

6. RW.1, had adduced evidence that he is running the factory but the land belongs to the 2nd opposite party. The deceased Kalidas was not an employee under him. Further, only and when the lorry with load comes to the factory. The (deceased) used to sign the vouchers and get payment. The voucher payments had been noted in the take book. The said Kalidas, had fallen in the well belongs to one Subbiah and the incident had not occurred during the course of his work.

7. After considering the evidence of both sides and on verifying the exhibits marked by them, the Deputy Commissioner of Labour had awarded a sum of Rs.3,94,120/- (Rs.4,000/-x50/100x197.06) under the head of loss of income. Besides, the Deputy Commissioner had awarded a sum of Rs.2,500/- towards funeral expenses and directed the 1st opposite party to pay the said amount within 30 days from the date of receipt of the said order failing which the 1st opposite party has to deposit the said sum together with interest at the rate of 12% per

annum from the date of accident till date of deposit.

8. Against the said order, the 1st opposite party has filed the above appeal. The highly competent counsel contended that the impugned order passed by the Deputy Commissioner of Labour is arbitrary and illegal. The accident did not occur during the course of employment. The PW.1, had openly admitted that her husband was a loadman, on contract basis and as such, he was not a workman within the meaning of section 2(1) (N) of Workmen Compensation Act. The deceased was working as a casual labourer on a piece rate basis. The learned counsel further submits that a casual labourer does not come under the purview of section 2(1) (N) of the Workmen Compensation Act. The said award runs against the case laws reported in JT 200.(10) SC 48.in Central Mine Planning and Design Institute Limited V. Ramu Pasi and Another. The Deputy Commissioner of Labour had fixed the income of the deceased as Rs.4,000/- and age of the deceased as 35, without appropriate records. As per minimum wages act for the relevant period, the income should be taken only as Rs.2,500/- per month. The learned counsel further submits that the place of occurrence of accident i.e., does not belong to the 1st opposite party. The issues framed by the Deputy Commissioner of labour are relevant but the same had been decided against the 1st opposite party in an arbitrary manner. The learned counsel has raised the question of law which are as follows: (1) Whether, the deceased was a load man with in the ambit of Section 2(1) (n) of the Workmen Compensation Act, at the relevant time of ill-fated accident?; (2) Whether the relationship of employer-employee existence between the 6th respondent and the deceased at the time of accident?; (3) The learned Commissioner has miserably failed to take note that the claimant did not take occurrence evidence i.e., Co-worker evidence? Hence, the learned counsel entreats the Court to dismiss the above appeal.

9. The highly competent counsel for the claimant submits that the Tribunal had framed four necessary issues and decided on the basis of oral and documentary evidence. The opposite party had admitted that the issued to come to his factory for unloading the goods as and whenever the loaded lorry comes. Further, the 1st opposite party had maintained the voucher books and take book regarding payments made. There is absolutely no nexus between the deceased and the

loaded lorries which are coming to the 1st opposite parties factory. All payments are made by the 1st opposite party. The deceased was working for about five years in the factory premises. The occurrence took place in the course of employment and it had happened in the premises of the factory belonging to the 1st opposite party. The age and income had been decided on the basis documentary evidence. Therefore, there is no lapse on the part of the Deputy Commissioner in the decisions taken by him regarding compensation and liability. The learned counsel further submits that employer-employee relationship had been proved and also proved that the occurrence took place in the course of employment. Hence, the highly competent counsel has prayed the Court to dismiss the appeal.

10. On going through the entire records of the case and on hearing the arguments advanced by the learned counsel on either side and on perusing the impugned order of the Deputy Commissioner of labour, this Court does not find any discrepancy in the conclusions arrived at regarding employer-employee relationship and that the accident had occurred during the course of employment. This Court is of the further view that the voucher books and take book, which are maintained by the employer clearly shows that there is nexus between the deceased and 1st opposite party as employer and employee. Hence, this Court is not inclined to interfere with the said order. As per records, the entire compensation amount has already been deposited and the claimants were permitted to withdraw 50% of the award amount. Now, it is open to the 1st claimant to withdraw her balance of apportioned share amount, with accrued interest thereon, if any, lying in the credit of W.C.No.249 of 2006, on the file of the Deputy Commissioner of Labour for Workmen's Compensation, Madurai, after filing a memo and after identification of the applicant by her counsel. The 2nd and 3rd applicant's apportioned share amount is to be deposited in a nationalized bank, as fixed deposit in the cumulative deposit scheme, till they attain the age of major and the fixed deposit certificates are to be handed over to the mother of the minors by the learned Deputy Commissioner of Labour.

11. In the result, the above appeal is dismissed. Consequently, the order passed in W.C.No.249 of 2006, on the file of the Deputy Commissioner of Labour for

Workmen's Compensation, Madurai, dated 12.10.2010, is confirmed. Consequently, connected miscellaneous petition is closed. No costs. ub To 1.The Deputy Commissioner of Labour for Workmen's Compensation, Madurai. 2.The Section Officer, VR Section, High Court, Madras.

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