

The Management, Vs. 1.Shanthi

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Court : Chennai

Decided On : Mar-01-2013

Judge : C.S.Karnan

Appellant : The Management,

Respondent : 1.Shanthi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

01. 03/2013 CORAM THE HON'BLE MR.JUSTICE C.S.KARNAN C.M.A(MD) No.1118 of 2011 and M.P.(MD).No.1 of 2011 The Management, Vinayakam Chalk Industries, 137/14, Arunjunai Nagar, Avaniapuram, Madurai

012. .. Appellant vs 1.Shanthi 2.Minor.T.Ramya 3.Minor.T.Manikandan (2nd and 3rd minor respondents through the 1st respondent who is their mother and natural guardian) .. Respondents Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the Judgment and Decree dated 07.03.2011, made in W.C.No.77 of 2009, on the file of the Deputy Commissioner of Labour for Workmen's Compensation, Madurai, as amended by the erratum order dated 14.07.2011 . !For Appellant ... M/s.R. Sivamanogaran ^For Respondent ... M/s.V.Kannan for R1 :JUDGMENT The appellant/1st opposite party has preferred the present appeal in C.M.A.(MD)No.1118 of 2011, against the order passed in W.C.No.77 of 2009, on the file of the Deputy Commissioner of Labour for Workmen's Compensation, Madurai.

2. The applicants, who are the wife and minor children of the deceased Thangaraj have filed the claim in W.C.No.77 of 2009, claiming compensation of Rs.1,97,080/- from the 1st opposite party for the death of the said Thangaraj in an accident arising out of and during the course of doing his work under the employment of the 1st opposite party. It was submitted that the deceased Thangaraj was working under the 1st opposite party for a period of fifteen years and that the residential place of the deceased Thangaraj and the applicants were situated in the company complex. It was submitted that on 07.03.2001, when the (deceased) Thangaraj was doing his work under the employment of 1st opposite party, he had a Heart attack due to breathlessness caused by mental stress in doing his work and died. It was submitted that the applicants had sent a letter to the 1st opposite party on 30.08.2004, to pay compensation for the death of the (deceased) Thangaraj and that the 1st opposite party had not sent a reply letter. At the time of accident, the deceased Thangaraj was aged 35 years and was getting a salary of Rs.3,000/- per month. Hence, the applicants have filed the claim against the 1st opposite party who is the employer of the (deceased) Thangaraj.

3. The 1st opposite party had denied the averments in the claim that the (deceased) Thangaraj had worked as an employee under him for fifteen years. It was submitted that the (deceased) Thangaraj had not worked as an employee under the 1st opposite party and that no employer-employee relationship existed between them. It was submitted that the applicants had not produced any documentary evidence to show that the (deceased) Thangaraj had died due to a Heart-attack caused by the mental stress in doing his work under the employment of the 1st opposite party. It was submitted that the working hours of the 1st opposite party firm was from 09.00 a.m., to 05.00 p.m., and that as the (deceased) Thangaraj had died at Midnight, it was evident that he had died only due to natural causes and that as the deceased had not been employed as a worker under them, the applicants are not entitled to get any compensation as per the Workmen's Compensation Act. It was submitted that the applicants should prove that they are the legal heirs of the deceased through documentary evidence.

4. On the applicants side, three witnesses were examined as Pws.1 to 3 and seven documents were marked as Exs.P1 to P7 namely: Ex.P1-letter sent by

applicant to 1st opposite party; Ex.P2-death certificate; Ex.P3-legal heir certificate; Ex.P4-copy of receipt showing deposit made at Tamil Nadu Merchantile Bank; Ex.P5-Insurance Policy; Ex.P6-Copy of ID card of Amirthapandi; Ex.P7-family ration card. On the 1st opposite party's side, two witnesses were examined as RWs.1 and 2 and no documents were marked.

5. The Deputy Commissioner of Labour framed four issues for consideration in the case namely: (1) Was the (deceased) Thangaraj employed as a "worker" under the 1st opposite party as per the workmen's compensation act?; (2) If so, did die due to injuries sustained in an accident arising out of and in the course of doing his duty under the employment of the 1st opposite party?; (3) If so, what is the quantum of compensation which the applicants are entitled to get?; (4) Who is liable to pay the said compensation?.

6. PW.1, D.Shanthi, the 1st applicant and wife of the deceased Thangaraj had adduced evidence which is corroborative of the statements in the claim regarding manner of accident and in support of his evidence, she had marked as Exs.P1 to P7.

7. PW.2, Thangavelu, had adduced evidence that he is engaged in bread business and that he had come to know that the husband of the 1st applicant had sustained a Heart-attack at 09.00 p.m., and that he had been taken to hospital and had died subsequently. He deposed that he does not know the hospital where the deceased was admitted and that when he had enquired of the 1st opposite party whether a complaint should be lodged with Police, the 1st opposite party had informed him that it was not necessary to do so as he was taking care of the applicants. He deposed that the 1st applicant had informed him that they had stayed in the quarters given by the 1st opposite party for only a period of 3 to 4 months and had subsequently vacated the place. He deposed that the (deceased) Thangaraj had died due to a Heart-attack sustained while he was doing his work under the course of employment under the 1st opposite party.

8. PW.3, Amirthapandi, the brother of the deceased Thangaraj had adduced evidence that he had been informed by one Saravanan that his brother, i.e., the deceased Thangaraj had been admitted at the hospital by his employer, i.e., the

1st opposite party as he had sustained a Heart-attack at 05.30 a.m., and that the said Saravanan asked him to show where the house of the wife of the (deceased) Thangaraj was situated. He further deposed that as his sister-in-law, i.e., wife of the deceased Thangaraj had gone to Puthur to attend a function and that he had informed his sister-in-law that her husband had suffered a Heart-attack. He deposed that he was not aware, at that time, that his brother had already died and that when he visited the 1st opposite party's house, he had seen that his brother had already died. He deposed that as his brother had worked for 15 years under the 1st opposite party, the applicants are entitled to get compensation.

9. RW.1, Jayakumar, had adduced evidence that he is residing near Avaniapuram Chalk Piece Company and that presently he is staying at Karpagam Nagar. He deposed that he is acquainted with the deceased Thangaraj and as he was residing in the opposite house to where he was staying. He deposed that the deceased had died in his house only and that it was in the late evening and that prior to his death, the deceased had informed him that he was not feeling well. He deposed that the deceased Thangaraj had not died while doing his work under the employment of the 1st opposite party.

10. RW.2, A.Murugan, the owner of the 1st respondents firm had adduced evidence that the deceased had not been employed as a worker by him and that on 07.03.2001, the deceased had not been doing any overtime work as alleged by the applicants. It was submitted that the working hours of their firm was from 09.00 a.m., to 06.00 p.m., and that the deceased had not died in their office complex and that he had died, when he had visited the house of RW.1. He deposed that the deceased was a contract labourer and that he would be paid while he does the contract work. He further deposed that the deceased had not resided in their company complex and that his residence was situated at a distance of 200 to 300 feet from their office complex. He deposed that no documentary exhibits had been marked to prove that the deceased had been employed as a 'worker' under him. He deposed that he was running a cottage industry and that 4 to 5 persons were only under his employment and as such there was no necessity maintaining salary records and attender register. He deposed that the (deceased) Thangaraj had

stopped working as a contractor under them from November 2000 and that the (deceased) had died only in the year of 2001. He deposed that as the deceased had not been employed by him, he is not liable to pay any compensation.

11. The Deputy Commissioner of Labour observed that RW.1, during his cross examination had admitted that the (deceased) Thangaraj had worked on the 1st opposite party's company and that he was not sure that the deceased had died while he was working under the employment of the 1st opposite party. Further, the Deputy Commissioner of Labour observed that RW.2 in his evidence had admitted that the (deceased) Thangaraj had left his services in November 2001 and that he died in the year of 2001. The Deputy Commissioner observed that RW.2 had not produced any documentary evidence to show that the deceased had left his services in the year of 2000. The Deputy Commissioner further observed that in the cross examination of RW.2, he had admitted that it was the usual practice that "Parattas" were to be given to employers who had worked overtime and that on the date of occurrence of the accident, he was not sure of how many "Parottas" had been ordered. He had stated that the deceased Thangaraj had vomited after consumption of "Parottas". Hence, the tribunal held that on the day of his death, the deceased had worked overtime in the 1st opposite party's firm and that he had been employed as a worker and that he had died in an accident arising out of and during the course of doing his work under the employment of the 1st opposite party.

12. The Deputy Commissioner on scrutiny of Ex.P3, copy of legal heir certificate observed that the age of the deceased was 35 years. The Deputy Commissioner on holding that the notional income of the deceased was Rs.3,000/- per month and on adopting a multiplier of 192.14 as was relevant to the age of the (deceased) as 35 years awarded a sum of Rs.2,88,210/- (Rs.3,000/- x 50/100 x 192.14) as compensation to the applicants under the head of loss of income; Rs.2,500/- was awarded towards funeral expenses. In total, the Deputy Commissioner of Labour awarded a sum of Rs.2,90,710/- as compensation to the applicants and directed the 1st opposite party to pay the said sum by way of demand draft, within 30 days from the date of its order, failing which the 1st opposite party was directed to deposit the said sum together with interest at the rate of 12% per annum from the

date of occurrence of accident till date of payment of compensation.

13. Aggrieved by the award passed by the Deputy Commissioner of Labour, the respondent/Management of Vinayakam Chalk Industries, Madurai, has preferred the present appeal. The learned counsel for the appellant has contended that the Commissioner erred in arriving at the conclusion that the deceased died due to stress in his work as there was no post mortem report marked on the side of the applicants and no doctor was examined to certify that the deceased died due to Heart-attack. It was contended that the Commissioner had never held that the deceased died of Heart-attack and on the contrary, the Commissioner held that the deceased vomited after eating "Parotta" during his work. There was no medical evidence that the death was due to such vomiting or any poisoning and as such there is no co-relation between the Heart-attack as alleged by the respondent and the vomiting as held by the Commissioner. It was contended that the Deputy Commissioner of Labour failed to see that no evidence had been let in to show that any steam, mechanical power or electrical power was used in the manufactory process of chalk. It was contended that the Commissioner had held that the deceased was employed by the appellant, but failed to decide the issue No.1, framed in his order viz., whether the deceased was a workman within the meaning of section 2(n) of the Workmen's Compensation Act. It was contended that the Deputy Commissioner of Labour awarded a sum of Rs.2,90,710/- as compensation to the applicants, when the applicants had filed a claim claiming compensation of only Rs.1,97,080/- and that no opportunity was given to the appellant to put forth his views against grant of additional compensation. Hence, it was prayed to set aside the order.

14. The learned counsel for the respondent submitted that the deceased was working under the appellant company which has been registered under the small scale industries. The Co-workers were examined as Pws.2 and 3 and they have stated that due to breathlessness caused due to respiration problems, the (deceased) had expired due to Cardiac arrest. Since the appellants company is manufacturing chalk, the chemical used in manufacture of chalk had caused the said breathlessness and as such he had expired. The proprietor of the company came to the hospital and informed the 1st claimant that there is no need to file a

police complaint regarding the incident and he had assured her that he would take care of them. The learned counsel further submits that the employer/employee relationship had been established and the cause of death had also been established due to breathlessness, since he was involved in manufacturing chalk which contains chemical components. The learned counsel further submits that the deceased age was 35 years and his salary was Rs.3,000/- per month and that the Deputy Commissioner of Labour had assessed a compensation of Rs.2,90,710/- even though the claimant had filed the claim for a lesser amount, as it was found to be fair and equitable.

15. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned award of the Deputy Commissioner of Labour, this Court does not find any discrepancy in the said award. This Court further opines that the deceased had worked as an employee under the appellants company and that he had died to breathlessness as he was involved in the manufacture of chinks, which contains chemical components. Further, the quantum of compensation awarded is reasonable. Hence, this Court declines to interfere with the impugned award.

16. Now, the 1st claimant is permitted to withdraw her apportioned share amount with accrued interest thereon, if any, as per the order passed by the Deputy Commissioner of Labour, after filing a memo, along with a copy of this order and after identification of the 1st applicant by her counsel. This Court directs the Commissioner of labour to deposit the minor's share amount with accrued interest thereon in a nationalized bank, as fixed deposit in the cumulative deposit scheme until such time that the minors attain the age of major and hand over the fixed deposit certificate to the 1st applicant viz., Mrs.Shanthi.

17. In the result, the above appeal is dismissed. Consequently, the Judgment and Decree passed in W.C.No.77 of 2009, on the file of the Deputy Commissioner of Labour for Workmen's Compensation, Madurai, dated 07.03.2011, 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.

