
(1997) 01 MAD CK 0043

In the Madras High Court

Case No : A.A.O. No. 1284 of 1992 and C.M.P. No"s. 18214 of 1992 and 9165 of 1995

Century Chemicals and Oils Pvt. Ltd.

APPELLANT

Vs

Esther Maragatham and others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Workmens Compensation Act, 1923 — Section 12(1)

Citation : (1999) ACJ 1191 : (1997) 2 CTC 166

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; V. Nicholas, for the Respondent

Judgement

1. When the above C.M.Ps. came up for hearing, by consent of learned counsel on both the sides, the appeal itself was heard for final disposal.

The second respondent, on the file of Deputy Commissioner of Labour, Madurai, is the appellant before this Court.

The applicants before the Labour Court are claiming under one Kumar, who was a workman employed by one Pushparaj, third respondent before

this Court. It is their case that he died on September 29, 1988, in an accident which arose in the course of employment. It is said that on that date,

the second respondent/appellant engaged the deceased, Kumar, through the contractor, Pushparaj, for the purpose of doing boiler work under the

direct control of the appellant, and, while the deceased was working in electrical drilling work within the premises of the appellant, due to negligent

and improper arrangement of the electrical drilling machine, it broke and Kumar died on the spot as a result of electrocution. The accident took

place in the course of employment and, therefore, they claim compensation for

his death.

In the counter-statement of the appellant, it said that it did not employ the deceased, Kumar, at any time, and there was no employer and

employee relationship between them. It is said that Kumar was employed by the first respondent (before the Deputy Commissioner). It is said that

the work was entrusted only with a contractor and the appellant had nothing to do with the work thereafter, and they had no say either in the

technical or other details of work. It was further contended that the accident did not happen in the course of employment. The quantum of

compensation claimed was also disputed.

In the counter of the first respondent, Pushparaj, he also said that the deceased, Kumar, was not a workman. He said that he was only a casual

labourer and that he was employed to assist only on the previous day of the accident. It was also contended that the claim is excessive. It is further

said that the deceased was only a boiler attender in profession, and he was a Ceylon refugee. He was not a technician qualified to handle electrical

equipment, especially, drilling machine or boiler installation work. He disputed his liability to compensate the claimants.

By the impugned order, the authority held that Kumar was employed by the contractor for the purpose of the appellant, and all of them are liable

to compensate the claimants. An amount of Rs. 90,552 was awarded.

The authority under the Act took evidence regarding the same and, after consideration of all the materials, came to the conclusion that the

deceased was a workman as defined under the Workmen's Compensation Act, and that he died in the course of employment. It further found that

the dependents, the claimants before the authority, are entitled to compensation.

It further found that the appellant had engaged the deceased through the contractor and, therefore, it is also liable to compensate for the death of

the deceased.

The order is challenged in this appeal.

2. Learned counsel for the appellant submitted that the deceased was not an employee of the appellant, and there is no employer and employee

relationship between them. It is, therefore, contended that the direction given by the Deputy Commissioner for Workmen's compensation making

the appellant also liable for paying the compensation amount, cannot be sustained. Another contention was also raised, that the deceased was only a casual labourer under the first respondent before the Commissioner, and the compensation awarded is far in excess of the amount claimed by the claimants.

I do not think, any of these arguments can be sustained. The finding of the Commissioner for Workmen that the contractor was engaged by the appellant for doing certain works is not disputed. In fact, there is a finding by the Commissioner himself in that regard. The contractor, who is the first respondent in the claim petition also admits that to do certain works under the contract, the deceased was also engaged, and he was discharging his work. Even if there is no direct employer and employee relationship between the appellant and the deceased, in view of Section 12(1) of the Workmen's Compensation Act, both of them are to be made liable. Section 12(1) of the said Act reads thus :

Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where the compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

3. The above section has been judicially interpreted by the various Courts.

In one of the earlier decisions of the Kerala High Court in National Insurance Co. Ltd. v. Chandu, 1987 1 ACJ 68, 69, their Lordships held thus :

.... Section 12 of the Act clearly says that the principal employer is liable to compensate workmen employed by a contractor in the execution of work which is ordinarily part of the trade or business of the principal employer

Their Lordships followed an earlier decision of that Court in *M. J. George v. Sumathi* 1975 ACJ 513 wherein it was held thus :

.... The principle enunciated in the cases cited above shows that if a workman is killed or injured by the happening of an event, in the premises

where he is employed under orders of his master or in accordance with the contract of service, the accident necessarily arises out of and in the

course of the employment. It is immaterial if the event itself was caused by an act of God like storm, lightning or earthquake. What directly caused

the death of the workman in the present case was the capsizing of the boat in which he was working under orders of his employer. Being drowned

in such circumstances is one of the inherent dangers of fishing at sea. The accident arose out of a risk incidental to the employment. It was a risk

which his contract of service required him to face, and it is immaterial that it was a risk which was shared by all members of the public who chose

to go to sea. The remote cause of the storm was not the immediate or direct or proximate cause of his death; yet by the very nature of his

employment, the deceased was exposed in a special degree to suffer the consequences of what flowed from the perils of the sea such as storm and

such consequences were, as Lord Atkin puts it, "sufficiently associated with his employment" so as to make the employer liable under the Act.

Adopting that principle, their Lordships said that "'an employer is liable if his workman died by an accident arising out of and in the course of his

employment. This is the mandate of Section 3 of the Act. Section 12 makes the principal employer liable as if he was himself the employer of the

workman employed by the contractor and engaged in work connected with the trade or business of the principal employer at the principal

employer's premises at the relevant time".

In *Bhutabhai Angadbhai v. Gujarat Electricity Board* 1987 2 ACJ 987 (Guj) in paragraph 9 of the judgment, their Lordships have said that (page

198) : "'The object of enacting Section 12 of the Act is to give protection to the workmen and secure compensation from the persons who can pay

and in case of an accident such workman will not be dependant, sometimes upon a petty contractor who will not be able to pay compensation, on

account of his financial inability. In our opinion, the main object of enacting Section 12 of the Act is to secure compensation to the employees who

have been engaged through the contractor by the principal employer for its ordinary part of the business, which, in the ordinary course, the principal employer is supposed to carry out by its own servants". Their Lordships further went on and said that : "While imposing this liability on the principal employer, sub-section (2) of Section 12 of the Act has provided that the principal employer will be entitled to be indemnified by the contractor in case the principal employer is required to pay compensation to the employees of the contractor". The facts therein are similar to the facts on hand.

In *Manager, Century Minerals and Chemicals Pvt. Ltd. Vs. Koli Gordhan Laxmanbhai and Another*, it was held in paragraph 10 of the judgment

thus :

If any workman suffers any injury, as a result of an accident, arising out of or in the course of employment, obviously the employer is liable to pay

compensation to the workman under the provisions of Section 3 of the Act. There must be an employer and employee relationship between the

person against whom the compensation is claimed and the workman. But, in many case, persons who want to get the work done try to avoid their

liability by contracting with someone else to provide labour to execute the work and then to contend as it is contended before this Court in this

appeal that as there is no employer and employee relationship between the workman who suffered injury and, therefore, they are not liable to pay

any amount of compensation. To prevent such escape from liability from the payment of compensation, Parliament in its wisdom has designedly

provided special provisions u/s 12 of the Act.

4. In view of this legal position, the liability of the appellant cannot be disputed. The finding of the authority below making the appellant, also liable

to compensate for the death of the deceased is, therefore, to be confirmed.

The further contention of learned counsel for the appellant is that the deceased was only a casual labourer. On evidence, it has been found that the

said contention is not correct. The evidence is that the deceased was a skilled labourer employed by the contractor in the trade and business

activities of the appellant.

Learned counsel for the appellant further submitted that the compensation claimed by the claimants is much less than what has been awarded and,

therefore, the authority has exceeded in its jurisdiction. The said submission also cannot be accepted. Once it is found that he is a skilled labourer, the Act provides the formula under which the compensation has to be calculated. That compensation will have to be awarded irrespective of the claim. Even if a mistake has been committed by the claimants, the authority is bound to pay due compensation payable on account of the death of the deceased. None of the grounds urged by learned counsel for the appellant can be sustained. The appeal is, therefore, dismissed. No costs. Consequently, the connected C.M.Ps. are also dismissed.