

(1980) 12 MAD CK 0013
In the Madras High Court
Case No : A.A.O. No. 117 of 1979

Charag Chemical Industries

APPELLANT

Vs

R.G. Genesan

RESPONDENT

Date of Decision : 13-12-1980

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 11, 12, 13, 14

Citation : (1980) 12 MAD CK 0013

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ratnam, J.—This appeal coming on for hearing on Wednesday, the 10th day of December, 1980 and this day upon perusing the petition of

appeal, the orders of the lower Court, and the material papers in the case, and upon hearing the arguments of Mr. K.N. Balasubramaniam,

Advocate for the Appellant, and Mr. E.H. B. David, Advocate for the Respondent, the Court made the following orders:

2. The appeal is directed against the order of the Additional Commissioner for Workmen's Compensation II, Madras, in W.C. Case No. 106 of

1977, on an application filed by the Respondent herein u/s 10 of the Workmen's Compensation Act (hereinafter referred to as the Act). The case

of the Respondent was that his son Mr. G. Karunanidhi was a workman employed in the factory of the Appellant herein on a monthly wage of Rs.

150/- and that on 28.6.1977, G. Karunanidhi received injuries in the course of an accident arising out of and in the course of his employment,

which later resulted in his death on the same day. The injury, according to the Respondent, was sustained by his son while he fell down from the

ceiling in the said tube during the course of his employment. Claiming that the Respondent is a dependant of late G. Karunanidhi and as such

entitled to a lump sum compensation in a sum of Rs. 13,500/-, the Respondent herein filed an application in W.C. Case No. 106 of 1977 for an

order directing the Appellant herein to deposit the compensation.

3. That application was resisted by the Appellant on the ground that the Appellant had taken insurance policies in the name of the persons working

in the establishment of the Appellant including the deceased G. Karunanidhi and that his policy number was 9260900732 and that a sum of Rs.

10,000/- had been received by the Respondent as compensation from the New India Assurance Company for the death of G. Karunanidhi and

having received that amount, it is not open to the Respondent to claim any other compensation under the provisions of the Act, the further case of

the Appellant was that the deceased G. Karunanidhi was working only as a casual labourer and would not come within the language of clauses in

Schedule II of the Act, the Appellant also contended that the deceased G. Karunanidhi had done work which he was not authorised to do and,

therefore, no compensation can be claimed on the basis that the injuries arose out of and in the course of his employment by the Appellant. The

monthly wages of the deceased G. Karunanidhi, according to the Appellant, amounted to only Rs. 205/-. The objection that after receipt of

compensation from the New India Assurance Company under the Janata Insurance Scheme, it is not to open to the Respondent to maintain a

claim under the provisions of the Act was reiterated and the Appellant prayed for the dismissal of the application.

4. Before the Additional Commissioner for Workmen's Compensation-II, Madras, on 22.8.1978, the Appellant filed an application to implead the

New India Assurance Company as a party-Respondent and secondly to decide the quantum of compensation. On 25.8.1978, notice of this

application was ordered to the insurance company and in response to this, the insurance company in its reply dated 7.9 1978 stated that its

presence as a party to the proceedings is not necessary as the claims of the party under the policy in question had been settled at Rs. 12,000/- and

that the policy issued by it was not under the provisions of the Act. Ultimately, the insurance company was not impleaded as a party-Respondent

to the proceedings before the Additional Commissioner for Workmen's Compensation-II, Madras.

5. On a consideration of the merits of the claim, the Additional Commissioner for Workmen's Compensation-II, Madras, held that the deceased

G. Karunanidhi was a workman at the time of the accident as defined under the Act and that the accident arose out of and in the course of the

employment and, therefore, compensation is payable in respect of the death of G. Karunanidhi. Fixing the daily wage of the deceased G.

Karunanidhi at Rs. 3.10p. the deceased was held to fall within the wage group 60-90 under Schedule IV of the Act and a sum of Rs. 9,720/- was

computed as the compensation payable by the Appellant on account of the accident of G. Karunanidhi on 28.6.1977 resulting in his death. It is the

correctness of this order that is challenged by the Appellant.

6. What is urged by the learned Counsel for the Appellant is that having taken a policy in the name of all the workmen in the establishment including

the deceased G. Karunanidhi and paid the premium thereon with a view to cover any claim that may be made against the employer, the insurance

company should have been made a party to the proceedings in order to effectively adjudicate upon the claim made by the Respondent. That the

Appellant had insured the deceased G. Karunanidhi under the Janta Personal Accident Insurance Policy No. 9260900732 and had also paid the

premium therefor and that under the terms of that policy, the Respondent had already collected the amounts due, are not in dispute. The question

that has to be considered is, whether the presence of the insurance company is necessary as a party to the proceedings arising in a claim u/s 10 of

the Act. It will be useful in this connection to notice the intendment and the scheme of the Act. The preamble indicates that the object of the Act is

to provide for payment of compensation by the employer for the injury or death by accident caused to the employees arising out of and in the

course of such employment. Section 2 defines the several expressions used in the Act. Chapter 11 consisting of Sections 3 to 18-A deals with

workmen's compensation. Section 3 is in the nature of a charging section as it is which gives rise to the employer's liability for compensation. u/s 3

(I), the employer incurs a liability to pay compensation to a workman, who received personal injury in an accident arising out of and in the course

of his employment. The compensation has to be paid in accordance with the provisions of Chapter II of the Act by the employer, who however, shall not be liable to pay compensation, if the case falls within any of the exceptions mentioned under the proviso to Section 3 of the Act. A bar is imposed u/s 3(5) of the Act on a workman or his dependant from instituting a suit in a civil Court for damages, if a claim to compensation in respect of an injury has been filed before the Commissioner or if an agreement has been entered into between the parties for payment of compensation in respect of the injury. Section 4 of the Act provides for the determination of the amount of compensation payable to the injured workman or to the dependants of a deceased workman. Section 4-A directs the payment of compensation as soon as it falls due and provides for a penalty for default in such payment of the compensation awarded. The method of calculation of wages in order to decide the quantum of compensation is provided for u/s 5 of the Act. u/s 6, the Commissioner is empowered to review the order passed by him or the agreement entered into between the parties, on the application of either the employer or the workman. Section 7 deals with commutation of half-monthly payments, while Section 8 of the Act deals with the distribution of compensation. Section 9 of the Act prohibits the attachment, assignment or the creation of a charge on the lump sum or half-monthly payment payable under the Commissioner from entertaining a claim for compensation unless notice in the manner provided under the Act as soon as practicable is given and unless the claim is preferred within two years from the date of the accident and in case of death, within two years from the date of death. u/s 10-A of the Act the Commissioner is entitled to require the employers to file a statement regarding the fatal accidents where information is received by him from any source that a workman has died as a result of the accident arising out of and in the course of his employment. The employer has to file a statement indicating the reason or the grounds on which he disclaims such liability. Section 11 of the Act provides for the medical examination of an injured workman at the request of the employer before the enquiry of three days from the time of the service of notice on him u/s 10 of the Act and the workman has to get himself examined by a qualified medical practitioner either on the request of the employer or as directed by the Commissioner. Section 12 of the Act is divided into four Sub-sections.

Section 12(1) fastens liability on a principal to pay compensation to any injured workmen employed in the execution of the work undertaken by a contractor under the principal or a sub-contractor. u/s 12(2), a provision for identity is made. The principal, who has to pay compensation to the injured workman or the dependents of a deceased workman employed by the contractor or sub-contractor, as the case may be for the execution by or under the contractor or sub-contractor of the whole or any part of any work which is ordinarily part of the trade or business, is entitled under Sub-section (2) of Section 12 of the Act to be indemnified by the contractor or the sub-contractor, as the case may be, from whom the workman could have recovered compensation. Likewise, if the contractor under the principal was obliged under Sub-section (1) to pay compensation to the injured workman or the dependents of a deceased workman employed by his sub-contractor, he shall be entitled to be indemnified by the subcontractor from whom the workman could have recovered the compensation but for the provisions of Sub-section (1). Disputes arising between the principal and the contractor and his sub-contractor have to be resolved by the Commissioner and such questions may include the right to as well as the amount of such indemnity. If there is an agreement between the parties those terms would prevail, but otherwise, the matter has to be decided by the Commissioner. From Sub-section (3), it is clear that the workman may proceed to recover compensation from the contractor who is his immediate employer instead of the principal. u/s 13 of the Act, provision is made for remedies of employer against strangers. The principal or the contractor, who had either to pay compensation or called upon to pay an indemnity u/s 12 in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof shall be entitled u/s 13 to be indemnified by such person who is liable to pay damages. Section 14 of the Act deals with the insolvency of an employer and provides for a case where an employer who has entered into a contract with any insurer in respect of any liability under the Act to any workman, becomes an insolvent. Section 18-A of the Act provides for levy of penalties on the grounds specified in Clauses (a) to (d) thereof.

7. Then we come to Chapter III which consists of Sections 19 to 31 which provides for the appointment and powers of the Commissioners and

the procedure to be adopted by them in the disposal of applications filed under the Act. Section 30 provides for an appeal in cases referred to in

Clauses (a) to (d) of that Act and Section 31 provides for the mode of recovery of the amount of compensation just as an arrear of land revenue.

Chapter IV comprising of Sections 32 to 36 relates to the framing of the rules to carry out the purposes of the Act by the State as well as the

Central Governments. Schedule 1 provides the list of injuries deemed to result in total disablement as well as partial disablement. Schedule II

catalogues the list of persons included in the definition of "Workmen" provided u/s 2(1)(a) of the Act. In Schedules III and IV are given a list of

occupational diseases and table of compensation payable in certain cases. This, in short, is the scheme and the intendment of the Act.

8. The only ground upon which the learned Counsel for the Appellant contends that the presence of the insurance company is necessary as a party

to the proceedings is to secure an indemnity ; as otherwise, the dependents of the deceased workman, as in the present case, will be enabled to

secure a double advantage, as it were to themselves arising out of the same accident, giving rise to a claim for compensation. It must be

remembered that a case under the provisions of the Workmen's Compensation Act is not one under the general law and any claim for indemnity in

the course of such a proceeding must be referable to some provision of the Act. It is in this connection that Sections 12, 13, 14 and 19 of the Act

have to be closely and carefully examined to find out whether those provisions would in any manner support the claims of the Appellant.

Section 12 (1) enables the injured workman or the dependants of a deceased workman to claim compensation against the principal although

injured or the deceased workman, as the case may be, was actually employed by the contractor who had undertaken to execute the work of the

principal. Statutorily, the liability to pay compensation for the personal injury caused to the workman is fastened on the principal. The principal, for

purposes of claiming compensation under the Act, is deemed to be the employer of the concerned workman. In order to attract Section 12(1) of

the Act, the principal must have availed himself or engaged the contractor in the course of or for the purpose of his trade or business for the

execution of the whole or any part of his work. But as regards the amount of compensation payable by the principal, it has to be on the basis of

wages of"" the workman under the employer by whom he is immediately employed. The provisions of Section 12 of the Act would not be attracted where the accident occurs elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes to execute the work or which are otherwise under his control or management. Though primarily the principal is the person liable to pay compensation to the workman, the injured workman or the dependants of a deceased workman appear to have been given a choice to proceed against the principal or the contractor or sub-contractor, as the case may be. There is no prohibition enacted imposing a bar on a workman from recovering compensation from the employer instead of the principal. The object of enacting Section 12 appears to be to provide for cases where intermediaries between the principal and the injured or deceased workman are there in the execution of the work of the principal. Section 12 of the Act does not appear to have any application to a case where there is no contractor or sub-contractor working under the principal. u/s 3 of the Act, the injured workman or dependants of a deceased workman can clear compensation against the employer and the question of indemnity by the insurance company to the assured does not arise under section 12 (2) of the Act. The principal or the contractor obliged to pay compensation to the injured workman or the dependants of a deceased workman on the application of the provisions of Section 12(1) of the Act, is entitled to claim indemnity under Sub-section (2) to Section 12 of the Act. The immediate and actual liability to pay compensation to an injured workman is on the immediate employer of such workman and whoever pays for and on behalf of such employer by virtue of the statutory provisions of Section 12(1) will be entitled to be indemnified under Sub-section (2) thereof. In the present case, there is no contractor or sub-contractor and admittedly, the deceased died in the accident while he was discharging his duties and the Appellant is liable to pay compensation u/s 3 of the Act and the dependant of the deceased workman had also filed an application before the Commissioner for compensation only against the Appellant, as an employer. The insurer was, therefore, rightly not made a party Respondent by the dependent of the deceased workman in the main application before the Commissioner claiming compensation.

9. Section 13 enables an employer who had to pay compensation to workman or the dependants of a deceased workman u/s 3 or u/s 12 of the

Act by way of indemnification to proceed for recovery of damages against the insurer who is liable to pay the same as per the terms of the policy

to the assured, that provision does not specify any particular mode or form for enforcing the right of the principal contractor or the person who had

to indemnity u/s 12 against the third person who is liable to pay damages. The right, therefore, recognised u/s 13 of the Act can only be enforced

by resort to civil proceedings. Under this section, the insurance company which is liable to pay damages in respect of any injury caused to the

workman by an accident arising out of and in the course of his employment has to indemnify the person who had paid the compensation or had to

pay indemnity u/s 12 of the Act. The section by itself does not create any right in the workman or the dependants of a deceased workman to

proceed for the recovery of a damage against the insurance company. May be, as per the terms of the policy the insurance company is primarily

liable to pay damages to the assured in respect of personal injury caused to a workman by accident arising out of and in the course of his

employment. But this would not enable the Appellant to claim an indemnity against the insurer by filing an application before the Commissioner for

Workman's Compensation u/s 12(2) of the Act or otherwise.

10. Section 14 provides for the contingency when the employer becomes an insolvent or the employer being a company is in the process of being

wound up. In such a situation, the rights of such employer against the insurers in respect of the liability should be protected and the section provides

that such rights shall be transferred to and vest in the workman. The insurers stand substituted in the place of the employer having the same rights

and remedies and subject to the same liabilities of an employer. The insurer's liability, however, would be governed and restricted as per the terms

of the policy. In such a case, the injured workman or the dependants of a deceased workman can have recourse directly against the insurers for

the recovery of the compensation due and payable by them under the Act, but only if the circumstances specified in Section 14 exist, and not

otherwise. Section 14 operates only when the employer becomes an insolvent or the employer, if it is a company, has commenced to be wound up

and in such an event, the claimants may be entitled to compensation directly from the insurer, who, in the circumstances, shall stand in the shoes of

the employer having the same rights and remedies and also subject to the same liabilities as if it was the employer. Section 14 of the Act cannot,

therefore, be invoked by the Appellant to insist that the insurer must be made a party to the proceedings.

11. Section 19 of the Act may next be adverted to and that requires that the Commissioner has to decide the matters or questions specified

therefor. The question to be decided by the Commissioner must be one arising in any proceedings under the Act and must relate to the liability of

any person to pay compensation or as to the amount or duration of compensation. Questions which would fall within the purview of the

Commissioner for Workmen's Compensation for his decision are excluded from the jurisdiction of a civil Court u/s 19(2) of the Act. In the

process of exercising the powers u/s 19 of the Act, the Commissioner is no doubt invested with all the powers of a civil Court for the purpose of

taking evidence on oath and enforcing the attendance of witnesses and compelling the production of documents, etc. Power to register agreements

relating to the payment of compensation and to submit any question of law for the decision of the High Court and to review orders in appropriate

cases have been conferred. But even so, such powers do not contemplate a decision on the question of the employer securing an indemnity from

the insurance company. Indeed, any amount that would be realised by the employer or the assured from the insurer by virtue of the terms of the

policy cannot strictly be termed to be compensation within the meaning of the Act. The liability of the insurer to pay the amount to the assured

under the policy cannot be said to arise under the provisions of this Act. Therefore, it appears that the provisions of the Act do not permit the riling

of an application by the employer to implead the insurance company as a party to the proceedings in order to enable him to secure an indemnity

against the insurance company. An examination of the provisions of the Act read in the light of the scheme and its intendment would disclose that in

proceedings before the Commissioner for Workmen's Compensation, an employer like the Appellant cannot file an application praying for

impleading the insurance company with a view to secure an indemnity.

12. The second contention of the learned Counsel for the Appellant is that since the dependant of the deceased workman had already received the amount from the insurance company under the terms of the policy referred to earlier, it is not open to him to make a second claim as it were under the provisions of the Act in relation to the same circumstances giving rise to a claim for compensation. In other words, the submission is that though the employer has to pay the insurance premium for the injured workman working in his establishment, yet it would be incongruous that such an employer should be fastened with liability for injury to the workman. This is countenanced by the learned Counsel for the Respondent who contends that any payment made even by an employer except through the Commissioner for Workmen's Compensation cannot be taken into account. No doubt, on general principles of insurance law, it is most inapt that a person who has insured himself against loss by taking a policy in the name of the workman should nevertheless remain liable for the same, despite such insurance. But even so, such insurance is not statutory, nor is there any provision under the Act which enables the employer in such cases either to deny his liability or even to plead a payment by the insurers to the injured workman or the dependants of a deceased workman towards a reduction of his liability with reference to the compensation ascertained as a result of the application of the provision of the Act. Indeed, it is also necessary to note that u/s 8 of the Act, no payment of compensation in respect of a workman whose injury has resulted in death shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation. This section, as it stands declares that payments except through the Commissioner for Workmen's Compensation are not recognised at all for purposes of the Act, and this has also been so, interpreted in State of Madras and Another Vs. B.G.P. Lorry Service and Another, . The payment of amounts under the policy to the dependant of the deceased can be at best equated to a payment by the insurance company on behalf of the employer without reference to the Commissioner for Workmen's Compensation and, therefore, such a payment cannot be recognised at all for purposes of the Act. No doubt, the provisions of Section 8, as they stand, are rather harsh in that even an employer who, with a view to safeguard the interests of his workmen, insures them against the risk they are

exposed to in the course of their employment, continues to be nevertheless liable for payment of compensation in respect of a claim made by the workman against him despite such insurance and a payment made by the insurer is also no payment for purposes of the Act. The amount secured by the injured workman or the dependants of a deceased workman does not even go towards production of the liability of the employer, though such employer pays the premium on the policies. But that is the effect of Section 8 of the Act, as it is, and in the absence of any provision in the Act to give effect to those payments, any payments made by the insurance company to the injured workman or the dependants of a deceased workman cannot be recognised for the purpose of the Act at all. Under these circumstances, it is not possible to accept the contention of the learned Counsel for the Appellant. The result is, the civil miscellaneous appeal fails and is dismissed. No costs.