
(2002) 06 AP CK 0056
In the Andhra Pradesh High Court
Case No : CMA No. 564 of 1995

Larsen and Toubro Limited

APPELLANT

Vs

Bogalakshmi and Others

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 12

Citation : (2003) 2 ALD 624 : (2003) 97 FLR 736

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : C.R. Sridharan, for the Appellant; P.B. Vijayakumar, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—The appeal is filed by M/s. Larsen and Toubro Limited u/s 30 of the Workmen's Compensation Act challenging the Order passed by the Commissioner, Workmen Compensation in WC No. 91 of 1994, dated, 14-3-1995.

2. Relevant facts leading to the filing of the case can be referred to herein.

3. Appellant-company has a branch at Visakhapatnam. For the purpose of making upper deck roofing and false ceiling work it was entrusted to the Contractor M/s. Air Cooled Insulations, the 4th respondent herein. The deceased-workman was working as a Carpenter under the 4th respondent While so, he was attending to the work at the Branch Office of the Appellant, he met with an accident on 26-12-1993 and consequently he was shifted to the hospital, where he succumbed to the injuries. The dependants of the deceased laid a claim under the provisions of the Workmen's Compensation Act before the Commissioner for Workmen Compensation. The claim was resisted by the appellant herein stating that the deceased was not a workman as defined u/s 2(m) of the Workmen's Compensation Act and that the accident has not arisen out of and in the course of employment. That M/s. Larsen and Toubro, the appellant is not liable for

payment of compensation. Alternatively also they pleaded that if any amount awarded as principle employer against the appellant, indemnification ought to have been made against the 4th respondent-Contractor, which is mandatory u/s 12 of the Act.

4. The wife of the deceased was examined before the Commissioner for the claimant and marked certain documents. So also one witness on behalf of M/s. Larsen and Toubro was examined. The learned Commissioner found that the deceased was employed as workman by the M/s. Air Cooled Insulation to whom the contract was entrusted by the Appellant-Company herein and that he died out of and in the course of employment. Accordingly, allowed the claim for a Compensation of Rs. 83,192/- jointly and severally against the appellant and also the Contractor M/s. Air Cooled Insulation. The present appeal is filed by the principal employer challenging the said order.

5. The learned Counsel for the appellant Mr. Sreedharan would submit that the deceased was not a workman within the meaning of Section 2(m) of the Act and therefore, the Commissioner for Workmen Compensation has no jurisdiction to entertain the claim, and adjudicate the same. He further submits that he was not employed in any capacity as specified in Schedule-II as contained in Section 2(n) (ii) and therefore, the compensation ought not to have been awarded. He takes this Court to the Schedule and submits that the accident had taken place in the Branch Office and that is not covered in any of the Schedules. This contention though appears to be appealing in the initial stage cannot stand for scrutiny. The Branch office is an establishment covered by the provisions of the Shops and Establishments Act. In fact, the witness examined on behalf of the appellant himself has accepted that they have branch office at Dwarakanagar in Visakhapatnam. Therefore, any person employed in connection with such establishment is covered by the definition of "employee" under the said Act.

6. The provision of Workmen's Compensation Act are made applicable. u/s 12 of Workmen's Compensation Act if the principal employer engages a Contractor for the purpose of his trade or business, the workmen employed by the Contractor are treated as the workmen engaged by the principal employer for the purpose of his trade or business and he shall be liable for payment of compensation in case of accident. However, the principal employer is entitled to claim right of indemnification. Section 12 reads thus:

"Section 12 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 contract 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 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 the compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this Section, he shall be entitled to be indemnified by the Contractor or any other person from whom the workman could have recovered compensation and where a Contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this Section he shall be entitled to be indemnified by any person standing to him in the relation of a Contractor from whom the workman could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this Section shall be construed as preventing a workman from recovering compensation from the Contractor instead of the principal.

(4) This Section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management."

7. Therefore, a conjoint reading of Section 74 of A.P. Shops and Establishments Act and Section 12 of Workmen's Compensation Act would lead to inescapable conclusion that the appellant is the principal employer and 4th respondent is the Contractor and that the workman employed by the Contractor is by legal fiction, treated as the employee of the principal employer. The learned Counsel albeit fairly argued that it had not taken place during the course of employment, the same cannot be accepted in wake of categorical finding of fact by the Court to the effect the accident arisen out of and in the course of employment. Hence, even without reference to the definition of workman u/s 2(n)(1) of Workmen's Compensation Act with reference to Schedule II, it can be safely held that the appellant is liable for payment of compensation.

8. The learned Counsel would however alternatively submits that the learned Commissioner is enjoined upon to indemnify principal employer in the event of any liability being fastened on the principal and appropriate Orders ought to have been passed directing the 4th respondent to indemnify the appellant.

9. The learned Counsel would submit that having recorded a finding that the appellant is the principal employer and when a specific plea was raised in the counter that assuming that the appellant is the principal employer, he is entitled for indemnification against the Contractor and that duty was not discharged. Therefore, to that extent the Order is liable to be set aside.

10. Even though he relies on certain decisions of the High Court, I am not inclined to go into this aspect as the provision is very clear that in case of an accident arising during the course of employment, while the work is being carried on by any Contractor on behalf of the principal employer, principal employer is

primarily responsible for complying with the provisions of the Workmen's Compensation Act, and he is required to claim indemnification u/s 12. Admittedly, in the instant case, the learned Commissioner having found that the appellant is the principal employer failed to pass appropriate Orders u/s 12. Thus, he has failed to exercise the jurisdiction vested in it. Even though appeal is filed, notice could not be served on the 4th respondent-Contractor as the cover was returned stating that he left the place. Therefore, no relief could be granted to the appellant. But, this situation could have been avoided had the learned Commissioner passed the Orders of indemnification in the main Order itself. Therefore, it is necessary that whenever matters are dealt with by the learned Commissioners for Workmen Compensation u/s 12, they should pass appropriate Orders of indemnification keeping in view the respective contention of the parties and ignoring that aspect would place the principal employer in a very immobile position, wherein they will not be able to recover from the Contractor the compensation paid to the accident victim. It is hoped that the officers who are discharging the statutory duty under the provisions of the Workmen's Compensation Act will meticulously follow this requirement in future.

11. With the above observations, the Appeal is dismissed. No costs.