

(1987) 10 MAD CK 0034
In the Madras High Court

N. Sellappa Gounder

APPELLANT

Vs

Dy. Commissioner of Labour and Another

RESPONDENT

Date of Decision : 08-10-1987

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)(n)

Citation : (1989) 1 ACC 42 : (1988) 2 LW 147

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Judgement

Sethuraman, J.—Opposite Party is the appellant. This is an appeal against the order passed by the Deputy Commissioner of Labour Commissioner for Workmen"s Compensation, Salem.

2. The second respondent herein filed a claim petition before the Deputy Commissioner of Labour, Salem, stating that he was employed by the opposite party from 2-7-1982, to deepen the well belonging to the opposite party and during and in the course of such employment, by the opposite party the workman, while engaged in such employment, for digging and deepening of the well on 5-7-1982, received personal injuries during the accident when dynamite was placed for deepening operation of the well. According to the claimant, himself and others were working in that well on 5-7-1982 and the opposite party was present supervising the work and at about 3-30 p.m. as directed by the opposite party he used dynamite and in the explosion which resulted he suffered injuries during the accident and he was taken to a private clinic at Namakkal by the opposite party where his left arm was amputated upto his wrist by one Dr. Rajkumar and he was in the hospital for 21 days The injuries resulted in a permanent total disablement since bis left arm was amputated upto his wrist and he also suffered injuries in the hand and other parts of the body. According to the claimant, he was given a monthly wages of Rs. 450 and he is more than 15 years of age. Though notice of accident was served on the opposite party, no compensation was received by him. The claimant"s father also made efforts to

settle the matter through Panchayat and he also issued notice on 13-10-1982 to secure the settlement but all the efforts proved futile. Hence he filed the petition claiming compensation of Rs. 20,000.

3. The opposite party filed the counter opposing the petition denying all the allegations made in the petition and contended that he never employed the applicant as a workman on any date, and it was not true that the workman suffered the injuries on 5-7-1982, while deepening the well and he did not employ the workman or anybody else to deepen the well. According to him the well also did not belong to him and there was no such accident as stated in the petition and he is not liable to pay any amount to the claimant. It is further stated that the claimant could have suffered injuries in some other manner and could have been treated as alleged by him but no point of time he was employed by him and it was also not true, that he was earning Rs. 450 per mensem.

4. In support of the claim the workman besides examining himself also examined two other witnesses. On behalf of the opposite party one witness had been examined and the opposite party also examined himself. One hospital receipt and a memo from the office of the District Collector with reference to the Communication sent by the claimant had been also marked. The opposite party also marked documents. The learned Deputy Commissioner of Labour after considering the materials on record held that the claimant was engaged by the opposite party to deepen the well belonging to him and along with others, the workman was deepening the well and the workman suffered the injuries during and in the course of employment and accordingly the respondent was held liable to pay compensation. Having regard to the injuries suffered, and also taking into consideration the wages, the Deputy Commissioner of Labour fixed the percentage of loss of earning capacity at 70% as per schedule I of the Workmen's Compensation Act, and directed the opposite party to pay Rs. 20,580, as compensation. Aggrieved with the said order the present appeal has been filed.

5. In this appeal, the appellant has come forward contending that the order is wholly erroneous and the learned Deputy Commissioner of Labour failed to see that the workman was not employee as per Section 2(1)(n) of the " Workmen's Compensation Act, and in the absence of any satisfactory evidence, the conclusion arrived at by the Learned Deputy Commissioner is not proper. It is also contended that the learned Deputy Commissioner erred in accepting the case of the claimant that he was getting a monthly wages of Rs. 450 without any documentary evidence, and also erred in computing the percentage of loss of earning capacity especially in the absence of any medical evidence and under such circumstances, it has been prayed that the order passed by the learned Deputy Commissioner of of Labour granting compensation has to be set aside.

6. The point that arises for consideration in this appeal is as to whether the second respondent was employed by the appellant to deepen the well and while during and in the course of such employment the second respondent sustained

the injuries; and whether the appellant is not liable to pay the compensation and in any event the compensation ordered to be paid is excessive. Before the Deputy Commissioner of Labour, who enquired the petition, the claimant had examined himself and he has deposed as to how he was employed by the appellant from 2-7-1982, and he was working along with two other persons and how the accident took place on 5-7-1982. AW 2, Thiru Ayyasami had also worked with the claimant and he has also deposed that one Panneerselvam also worked with them from 2-7-1982, and according to him, the accident took place when dynamite exploded and the claimant was taken to Namakkal Hospital and there was amputation. AW 3 Thiru Pandiyan, who was the President of the Village Panchayat has deposed that the well is in the land of the opposite party and the claimant and others worked in the well and on 5-7-1982, he saw the workman with injuries and he was taken to the hospital.

7. One Muthuraja who had been examined on behalf of the opposite party, has only stated that the well belongs to 5 to 6 persons besides himself and the opposite party has no exclusive right. The opposite party has merely denied employment of the workman and also the occurrence.

8. In this case, the workman did not examine the doctor, who amputated and he has simply filed the hospital chit, but it is to be pointed out that the learned Deputy Commissioner of Labour had the opportunity to see the applicant and in fact before this Court also the workman happened to be present along with his counsel on 25-9-1987, and the Court had also the opportunity to see the workman and his left arm was amputated upto wrist. Having regard to the evidence of AWs 2 and 3, I feel no hesitation in accepting the case of the workman with regard to his employment as well as the injuries sustained by him during and in the course of employment under the opposite party.

9. As regards the wages, the learned Counsel for the appellant pointed out that AW 2 Ayyasami had stated that he was getting only Rs. 10 per day as wages and therefore, fixing the wages of the workman at Rs. 15 per day is not proper but in this connection it is to be pointed out that the claimant as AW 1 has stated that his daily wage was Rs. 15 and he had also sent notice claiming the said wages. Having regard to the version spoken to by the workmen and in the absence of any evidence contra, fixing the wages at Rs. 15 per day cannot be said to be erroneous and the fact that it is a scheduled injury and as per schedule-I the percentage of loss of earning capacity fixed at 70% and the compensation awarded also cannot be said to be erroneous.

10. As regards the contention of the learned Counsel for the appellant that the workman in this case will not come under the definition of workman as defined u/s 2(1)(n) of the Workmen's Compensation Act, since the work was only casual in nature, it is to be pointed out that in the decision reported in Madanlal Vs. Mangali, it has been held that even a daily wage earner is a workman coming within the ambit of the definition under the Workmen's Compensation Act. It has been pointed out therein that the word "and" occurring in the definition of

"workman" has been used conjunctively and, therefore, in order to take out a labourer from the category of a workman, both the following conditions must be satisfied, viz. (1) that the employment must be casual and (2) that the employment must be otherwise than in the employer's trade or business. Absence of any one of these conditions will not result in taking out a labourer from the category of a workman. In the decision reported in *Sitharama Reddiar v. Ayyasami Gounder* (1955) 9 FLJ 101 our High Court has held that to exclude a person from the definition of a "workman" as defined in Section 2(1)(n) of the Workmen's Compensation Act both the conditions referred to above have to be considered. In an unreported decision of this Court, rendered by Sengottuvelan, J. (A.A.O. 100 of 1981, judgment, dated 24-6-1983) under similar facts, the learned Judge has held that the workman concerned was entitled to compensation and such a workman comes within the definition of Section 2(1)(n) of the Act. The learned Judge, in the decision rendered by him has also referred to the decision reported in *Marimuthu Nadar Vs. Tutikorin Municipality and Another*, . The facts in that case also relate to well digging and there was dynamite explosion during the digging operation. In this connection it is also to be pointed out having regard to the fact that the opposite party owned the land in which the well is situate and the deepening operation of the well could be stated for the purpose of agriculture, which is the business of the opposite party. It is also to be stated that the claimant has clearly stated that for agricultural purposes water is drawn from that well. The contention of the appellant against the order passed by the Deputy Commissioner for Labour cannot at all, be accepted. Accordingly, I find the point against the appellant. In the result the appeal is dismissed with costs. The workman is entitled to the compensation deposited by the appellant.