
(2008) 06 MAD CK 0023
In the Madras High Court
Case No : C.M.A. No. 11 of 2004

Natarajan

APPELLANT

Vs

Kaliaperumal

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1)

Citation : (2009) 1 LLJ 335

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : AL. Gandhimathi, for the Appellant; G. Arokiasamy, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—Challenge in this civil miscellaneous appeal is against the order dated April 30, 2004 in W.C. No. 89/2003 passed by

the Deputy Commissioner of Labour, Trichy/Tribunal directing the appellant/respondent to pay a sum of Rs. 77,351/- (Rupees Seventy Seven

Thousand Three Hundred and Fifty One only) to the respondent/claimant together with the interest at 12% per annum from the date of accident till date of payment.

2. The respondent/claimant has filed the claim petition before the Deputy Commissioner of Labour, Trichy/Tribunal claiming a compensation of Rs.

5,00,000/- (Rupees Five Lakhs only) as against the appellant/ respondent.

3. The facts of the claim in nutshell are as follows:

On February 21, 2002 at about 11.30 a.m, when the respondent/claimant was working as machine driver in Malathi Saw Mill near Santaipet,

West 4th Street, Pudukkottai, owned by the appellant/respondent, the wood he was cutting in the machine got in suddenly and dragged his right hand into the machine and caused grievous hurt, as a result of which his right hand, particularly the middle three fingers were cut and the bones were fractured. S.Kumar, S/o. K. Solai, residing at T.S. No. 2383, Mappilaiyarkulam, Pudukkottai and one Chinnadurai, S/o. Karuppiah, residing at Attangudi Post, Pudukkottai Taluk and District, have personally known about the occurrence. Kumar who owns a cart (driven by manpower) used to bring in teak wood from the appellant/respondent's saw mill for hire, was present in the said saw mill and witnessed the, occurrence. Chinnadurai also witnessed the accident since he passed by the said saw mill at the time of the occurrence. The appellant/respondent's family members also gave aid to him. He was admitted in the, Pudukkottai Government Hospital by the appellant/respondent and his son Raju and later, he was transferred from Pudukkottai Government Hospital and got admitted into S.R.V. Hospital, Pudukkottai and took treatment as inpatient from February 21, 2002 to February 25, 2002 and thereafter, was taking treatment as outpatient continuously. The lawyer's notice dated August 12, 2002 was issued to the appellant/respondent calling upon him to pay the compensation. However, the appellant/respondent stated in the reply that there was no relationship as employer and employee between him and the claimant and that the claimant did not receive Rs. 4,000/- p.m., as his monthly salary, etc. Hence, the compensation of Rs. 5,00,000/- (Rupees Five Lakhs only) was claimed directing the appellant/respondent to pay the same to the claimant.

4. The appellant/respondent took a stand in the counter that the respondent/claimant at no point of time has worked in his saw mill and that his saw mill has been looked after by him and his son directly and that in his mill, the claimant or no one has rendered service and that he does not know about the details of the alleged accident, injuries sustained and the medical treatment and that since there is no relationship of workman and employer between the parties, the claim petition for compensation is not maintainable and that the appellant/respondent is not liable to pay the compensation legally to the respondent/claimant and prays for dismissal of the petition with costs.

5. Aggrieved by the order passed by the Deputy Commissioner of Labour, Trichy/Tribunal, in W.C. No. 89/2003 dated April 30, 2004, the

appellant/respondent has projected this civil miscellaneous appeal as an appellant before this Court.

6. On the side of the respondent/claimant, before the Deputy Commissioner of Labour, Trichy/Tribunal, witnesses P.W.1 to P.W.3 were examined

and Exhibits P-1 to P-8 were marked and on the side of the appellant/respondent, witness R.W.1 was examined and Exhibit R-1 was marked.

7. The following substantial questions of law were framed at the time of admission of this Civil Miscellaneous Appeal:

(1) Whether the Court below is correct in finding that there is a relationship of employer and employee between the parties?

(2) Whether the Court below is correct in fixing the salary at Rs. 2,000/- without any documentary evidence?

8. This Court has heard the learned Counsels appearing for the parties and noticed their contentions.

9. The learned Counsel for the appellant/respondent submits that the Deputy Commissioner of Labour/Tribunal should have seen that the

appellant/respondent has proved his case to the effect that there was no employer and employee relationship between the parties at any point of

time and that the Deputy Commissioner of Labour/Tribunal has not taken into consideration that the appellant himself along with his sons managed

the saw mill throughout and no private person was employed for any other purpose, which was admitted by P.W.2 in his evidence and should have

rejected the case of the second respondent/claimant and further that the Deputy Commissioner of Labour/Tribunal should have seen that on the

date of alleged incident, the saw mill was closed due to the death of the father of the appellant, which is proved by the death certificate produced

and hence, the claim has no basis. It is further plea of" the appellant/respondent that the Deputy Commissioner of Labour/Tribunal erred in

determining the salary of the respondent/claimant at Rs. 2,000/- p.m, which is groundless and arbitrary and in any event, the order of the Deputy

Commissioner of Labour, Trichy/Tribunal is illegal and therefore, prays for allowing the appeal in the interest of justice.

10. Finding on the substantial question of law No. (1):

The pith and substance of the appellant/ respondent's case is that there is no relationship of employer and employee between the parties at any point of time.

11. P.W. 1/the claimant in his evidence has stated that he was employed as machine driver for two years in the appellant/respondent's Malathi

Saw Mill situated at West 4th Street, Pudukkottai, on a monthly salary of Rs. 4,000/- in all and on February 21, 2002 at about 11.30 a.m., he

was working in the appellant/ respondent's saw mill and at that time, while cutting the wood, his right hand got dragged into the machine and

consequently the middle three fingers' bones in his right hand were fractured and sustained injuries in other fingers and firstly, he was admitted into

the Pudukkottai Government Hospital by the appellant/respondent's son Raju and S. Kumar and after the first aid, they brought him back and

since the appellant/respondent's son is known to him and asked him not to file a police case, the police was not informed and hence F.I.R was not

lodged and thereafter, in S.R.V. Hospital, he received treatment as inpatient for five days and thereafter, he took outside treatment. It is further

evidence of P.W.I that Kumar and Chinnadurai have witnessed the accident and after the accident, the appellant/respondent and his son have

given the medical assistance and they know about the accident and that after the accident, he is not able to do any work.

12. P.W.2, Chinnadurai in his evidence has deposed that the respondent/claimant while working in the appellant/respondent's saw mill, his right

hand entangled in the machine and at that time, he was proceeding in that way and on hearing the noise, he went inside and saw the claimant's

damaged fingers and he along with Kumar took the claimant to Pudukkottai Government Hospital and that the appellant/respondent had known

about the occurrence and he came and saw the claimant and on that date, the appellant/respondent's son was also there.

13. It is the categorical evidence of P.W.2 that the accident occurred on February 21,2002 around 11.00 a.m. Further, it is the clear cut evidence

of P.W.2 (in his cross-examination) that the accident took place in the saw mill of the appellant/respondent on February 21, 2002 and while

admitting the claimant in Pudukkottai Government Hospital, the Hospital authorities asked as to how the accident took place and noted the same.

14. R.W.1, the appellant/respondent in his evidence has stated that the respondent/claimant has not worked in his saw mill and that there are two machines and one small machine, and big machine is used to saw the wood and the small machines are used for trison and that he along with his sons are operating the same and that on February 17, 2002 at about 10.00 p.m., in the night, his father has expired and that on coming to know of the same on February 18, 2002 early morning, he has gone for performing the funeral rites and from February 18, 2002 to February 27, 2002 morning, he has closed his saw mill and opened it on February 27, 2002 at 9.00 a.m. and during the said period, he along with his family, members were in Rakkappanpatti and therefore, there is no possibility for happening of the accident in his saw mill and that his father's death certificate is Exhibit R-1.

15. It is apt to point out that in the decision Smt. Mangala Ben v. Dilip Motwani and Anr. 1998 (3) LLN 835, at p. 837, it is observed as follows:

5. In our opinion, the finding of the; Commissioner on the basis of the above that it is not proved that the deceased was in the employment of the respondent owner of the car is perverse. The learned Commissioner further held that the claimant did not; produce any evidence to prove that the deceased was employed for the purposes of respondent Dilip Motwani's trade or business. He observed that in absence of such evidence, the deceased cannot be held to be a workman. In our opinion, the learned Commissioner committed grave error of law in holding that the burden lay on the claimant to prove that the deceased was employed for the purposes of respondent's trade or business. It is settled that the onus is upon the employer to prove the conditions necessary for excluding a person from the category of workman. From the definition of "workman" given in Section 2(1)(n) of the Act, it is clear that for not treating a person as workman, two conditions are required to be proved, namely that his employment for the purpose of employer's trade or business and the onus is on the employer to prove these conditions. The learned Tribunal wrongly held that the onus lay on the claimant to prove that Hansmukh Manilal was employed for the purpose of his employer Motwani's trade or business, it resulted in failure of justice. The finding of the learned Commissioner is vitiated by error of law. Under these circumstances, it is clear

that substantial question of law is involved. From the evidence produced by the claimant it has been proved that Hansmukh Manilal was in the employment of car owner respondent Motwani and he died during the course of his employment. Therefore, the claimant is entitled for compensation.

16. Further, it is the settled principle in law that once it is established that services of an individual have been engaged on the basis of payment of the employer, then the burden that he did not satisfy the conditions of a workman will squarely lie on the employer, in the considered opinion of this Court. As a matter of fact, when the employer has denied that the workman was employed by him at the time of occurrence/accident, then the early burden is on the individual workman to prove that he met with accident on February 21, 2002 which arose out of and in the course of his employment under the appellant/respondent.

17. On a perusal of Exhibit A-1, discharge card, it is evident that the respondent/claimant has sustained injuries in his fingers in the right hand while working in saw mill on February 21, 2002 at 11.30 a.m., and that he has complained of pain etc. In Exhibit A-6, lawyer's notice dated August 12, 2002 issued by the respondent/claimant addressed to the appellant/respondent, the manner and happening of the occurrence and the injuries sustained on February 21, 2002 at 11.30 a.m., have been described in a detailed manner. However, in the reply notice, Exhibit A-7, dated August 20, 2002, issued by the appellant/ respondent's counsel addressed to the respondent/claimant's counsel, the manner and happening of accident have been denied, besides denying the existence of relationship of employer and employee between the parties at any point of time.

18. At this stage, it is relevant to point out that P.W.3, Dr. Devakumar, in his evidence has stated that he examined the respondent/ claimant on January 7, 2004 and issued Exhibit P-8, disability certificate assessing the disability at 38% and that on examination, he found that the right hand bones of the claimant were in ugly manner and that the claimant could not lift heavy objects and he could not do hard jobs.

19. As far as the present case is concerned, from the unassailable evidence adduced by P.W.1/claimant and from the unimpeachable evidence of P. W.2, Chinnadurai in regard to the manner and happening of the accident on

February 21, 2002, amply strengthened by the documentary evidence, Exhibit A-1, discharge card, and on surrounding facts and circumstances of the case which float on the surface, this Court comes to the conclusion that it has been proved to the satisfaction of this Court that the respondent/claimant was in the employment of the appellant/respondent and that the accident took place during the course of his employment under the appellant/respondent and that there was a relationship of employer and employee between the parties and in that view of the matter, the respondent/claimant is entitled for compensation and the substantial question of law No. (1) is answered accordingly.

20. Finding on the substantial question of law No. (2):

According to the learned Counsel for the appellant/respondent, the Deputy Commissioner of Labour, Trichy/Tribunal has erred in determining the maximum salary of Rs. 2,000/- p.m., and the same is unwarranted in the facts and circumstances of the case. Though the respondent/claimant has stated in his evidence as P.W. 1 that his salary in all is Rs. 4,000/- p.m., there is no satisfactory proof in this regard, in the considered opinion of this Court. However, the Deputy Commissioner of Labour, Trichy/Tribunal has fixed the salary of the respondent/claimant as Rs. 2,000/- p.m., which in the considered opinion of this Court is not excessive or exorbitant. Even in the absence of documentary evidence in regard to the proof of salary, the Deputy Commissioner of Labour, Trichy/Tribunal is empowered to determine the salary at Rs. 2,000/- p.m, on a modest assessment and on that basis, the compensation of Rs. 77,351/- calculated, cannot be found fault with, in the considered opinion of this Court and the substantial question of law No. (2) is so answered accordingly.

21. In view of the foregoing discussions and on all over assessment of the facts and circumstances of the case, this Civil Miscellaneous Appeal fails and the same is dismissed in furtherance of substantial cause of justice.

22. Considering the facts and circumstances of the case, the respective parties are directed to bear their own costs in this appeal.