
(2015) 03 MAD CK 0587

In the Madras High Court

Case No : CMA (MD) No. 1424 of 2013, M.P. (MD) Nos. 1 of 2013 and 1 of 2014

Periasamy

APPELLANT

Vs

Jayaraj

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2015) 146 FLR 36

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : N. Anand Kumar, for the Appellant; T. Vadivelan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

D. Hari Paranthaman, J—The appellant is the owner of the Rice Mill at M. Pudupatti, Musiri Taluk, Trichy District. The respondent was a Collie employed in the said Rice Mill. The Rice Mill also consists of Flour Mill. According to the respondent, he was employed as a Coolie in the appellant-Mill for three years. Whiles, on 15.9.2003 about 11.00 A.M., while he was working in the Mill, he was dragged by the belt of a machine and his right hand was totally cut-off and he was thrown out and sustained grievous injuries all over the body including right hip, right stomach and fracture in right hand. He was taken to Government Hospital at Musiri. Thereafter, he was admitted in Annal Gandhi Memorial Government Hospital, Trichy, as inpatient on 15.9.2003 and an operation was performed on 20.9.2003. He was discharged on 12.12.2003. He was an inpatient for about three months. The respondent sent a notice dated 3.11.2003 through his Advocate to the appellant by RPAD, demanding to pay compensation for the injuries suffered by him in the accident that arose out of and during the course of employment. The appellant sent a reply dated 15.1.2004, simply denying the allegations as false. Therefore, the respondent filed W.C. No. 291 of 2004 before the learned Deputy Commissioner for Workman Compensation (Deputy

Commissioner for Labour) Tiruchirappalli, claiming a sum of Rs. 3,00,000/- compensation.

2. The appellant filed a counter-statement refuting the claim. The appellant stated that no accident took place in his Rice Mill. The respondent was never employed in his Rice Mill. He was working as a Lorry Cleaner and he was aged 24 years and it was not 14 years as alleged in the claim petition.

3. The mother of the respondent, respondent and one Manivel who was the eye-witness to the occurrence were examined on the side of the respondent and Exs. A1 to A5 were marked. Ex. A1 is the FIR. Ex. A2 is the Lawyer Notice sent by the respondent. Ex. A3 is the acknowledgment for having received the Lawyer's Notice by the appellant. Ex. A4 is the Discharge Summary. Ex. A5 is the Disability Certificate certifying that the respondent suffered 95% permanent disability. Ex. X1 is the hospital records produced by the Government Hospital, Trichy, pursuant to the summons issued by the Commissioner for Workmen Compensation.

4. The appellant got examined himself as RW 1 and Exs. R1 to R4 were marked. Ex. R1 is the letter of the appellant addressed to the Assistant Engineer, Tamil Nadu Electricity Board, Musiri, about some electrical fault in the Mill. Ex. R2 is a Bill for Rs. 4,120/- towards repair work. Ex. R3 is the extract of some pages of Cash Book and Income and Expenditure Statement. Ex. R4 is a reply sent by the Counsel for the appellant to the Counsel for the respondent as reply to Ex. A2-Lawyer Notice sent by the respondent.

5. The Deputy Commissioner of Labour considered the evidence on record and rejected the plea of the appellant and recorded a factual finding that the respondent was a workman employed by the appellant and that the accident arose out of and in the course of employment in the Rice Mill owned by the appellant on 15.9.2003. He recorded a finding that the respondent suffered 80% permanent disability. He took Rs. 3,556/- as salary of the respondent which is prescribed under the Minimum Wages Act for a Coolie. Thereafter, he arrived at the compensation payable by the appellant to the respondent at Rs. 3,73,951/-. He passed an order dated 21.12.2012 in W.C. No. 291 of 2004 directing the appellant to pay the aforesaid amount. Aggrieved by the aforesaid order dated 21.12.2012 in W.C. No. 291 of 2004, the appellant has filed the present appeal and the entire award amount was deposited by the appellant at the time of filing the appeal, as it is a pre-condition for filing this appeal, under section 30 of the Workmen Compensation Act.

6. Notice for admission was ordered on 17.7.2013 and on receipt of notice, the respondent entered appearance through his Advocate. An interim order was also granted by this Court on 17.7.2013 directing the Deputy Commissioner for Labour, Tiruchirappalli, not to disburse the award amount to the claimant and the same has been periodically extended.

7. Heard both sides. The quantum of the amount awarded by the Deputy

Commissioner of Labour and the extent of injuries sustained by the respondent/workman and the treatment undergone by him are not relevant for purpose of this case, as they are not disputed by both the parties.

8. The learned Counsel for the appellant vehemently contended that the accident did not take place in his Rice Mill which consists of Flour Mill also. According to him, the respondent was never employed by the appellant. He has questioned the factual finding recorded by the Deputy Commissioner of Labour. He submitted that in the FIR, it is stated that the respondent worked in the Rice Mill at Muthampatti, but the Rice Mill of the appellant is only at M. Pudupatti, Thuraiyur Road, Musiri Taluk, Trichirappalli District. Further, he has stated that the name of the respondent/claimant's father is given as Narayanan in the Discharge Summary-Ex. A4. Hence, the Deputy Commissioner of Labour was not correct in concluding that the respondent was employed by the appellant and the accident took place during and in the course of employment.

9. On the other hand, the learned Counsel for the respondent has submitted that the Deputy Commissioner of Labour rendered a factual finding after recording reasons and the same could not be termed as perverse. He further submitted that this Court under section 30 of the Workmen's Compensation Act, could not normally interfere in the factual finding as to whether the respondent was an workman employed by the appellant. He took me through the original records.

10. He has pointed out that in the FIR, it is stated that the respondent was a Coolie in Muthampatti Periyasamy Rice Mill which is situated at Vadakku Thottiyapatti, M. Pudupatti, Musiri Taluk. He has brought to my notice that it is stated as Periyasamy Rice Mill. "Periyasamy" is the name of the appellant. He has also stated that the reply sent by the appellant to Ex. A2-Lawyer Notice, by way of Ex. R4, does not contain any reasons and it is a simple denial. He has further taken me through the Discharge Summary of the Government Hospital, wherein, it is stated that the respondent was admitted for crush injury that arose out of an industrial accident on 15.9.2003. Just because the father name of the respondent is wrongly written in the Discharge Summary, the same could not be relied on by the appellant.

11. He took me through the voluminous record of the Government Hospital, Trichy, wherein admission of the respondent is recorded, which states that the name of the respondent's father is one Konda Naicker. It is found at page 55 of the original records. Hence, he has submitted that in the Discharge Summary, the name of the respondent's father was wrongly mentioned. He has also taken me through the Accident Register, wherein also, it is recorded that the respondent is the son of Konda Naicker. Hence, he has submitted that the name of the respondent's father wrongly recorded in the Discharge Summary could not be taken advantage by the appellant. He submitted that the document will not speak lie. He relied on the FIR, hospital records and more particularly, the admission record and the record made in the Causality AGM Hospital at Trichy as well as Accident Register, to establish that the accident took place in the Rice mill

of the appellant.

12. He has submitted that the Rice Mill at M. Pudupatti and Muthampatti are one and the same and the appellant could not take advantage of mentioning of the place of Rice Mill as Muthampatti. In the FIR, particularly, in the first page of the FIR, it has been made clear that the respondent had worked at M. Pudupatti. Further, he submitted that the first witness of the respondent who is the mother of the respondent was not cross-examined by the appellant. The third witness namely, eye-witness also deposed in support of the claim of the respondent. The respondent also gave evidence. But the appellant did not produce any evidence, except his self-serving evidence. He pointed out that when the appellant took a specific stand that one Manokaran was the only workman employed in the Rice Mill, he failed to examine the said Manokaran. He also submitted that one workman was not sufficient to handle the Rice Mill and Flour Mill. Therefore, he prayed for dismissal of the appeal.

13. I have considered the submission made on either side.

14. Ex. A1 is the FIR it is dated 20.9.2003 on the file of Musiri Police Station. The FIR states that the father of the respondent is one Konda Naicker. The first page of the FIR states that the respondent was employed as a Coolie at Vadakku Thottiyapatti, M. Pudupatti, Musiri Taluk. In the narration, it is stated that the respondent was working in the Rice Mill owned by Periyasamy (appellant) at Muthampatti and he met with an accident resulting in grievous injuries.

15. A reading of the entire FIR would make it clear that the respondent only worked in the Rice Mill owned by the appellant at M. Pudupatti. Further, when the mother of the respondent gave evidence categorically stating that her son got injured in the Rice Mill which is on the Thuraiyur Road, Musiri Taluk owned by the appellant, the appellant did not cross-examine the said witness. The respondent also deposed categorically stating that he was employed in the Rice Mill owned by the appellant and he got injured in the accident, while he was doing the work in the appellant Rice Mill. In the cross-examination, nothing is elicited that he was not at all employed in the Rice Mill owned by the appellant. Furthermore, the third witness Manivel was examined on the side of the respondent. The said witness was an eye-witness. He stated that he witnessed the accident and the Mill was owned by the appellant. In the same cross-examination of Manivel also, nothing is elicited to establish that the respondent was not employed by the appellant. On the other hand, Thiru. Manivel confirmed his version during the cross-examination also. The Doctor who gave disability certificate was also examined.

16. The appellant gave evidence and admitted during cross-examination that his Rice Mill has Flour Mill and Chilly Grinding Mill. He also admitted in the cross-examination that he does not maintain any Attendance Register or Wage Register. He stated that one Manokaran was the only workman employed in the Mill, but for the reasons best known to the appellant, the said Manokaran was

not examined.

17. The aforesaid facts were discussed in detail by the Deputy Commissioner of Labour and he arrived at a factual finding that the respondent was employed as a workman in the Rice Mill owned by the appellant and the accident took place on 15.9.2003. Since the appellant himself has stated that the respondent was aged 20 years in the counter, he could not plead that the respondent was aged only 14 years. Furthermore, I do not find any infirmity in the order of the Deputy Commissioner of Labour for taking the age of the respondent as 24 years based on medical records. In the Discharge Summary, it has been stated that the age of the respondent was 24.

18. The Medical Superintendent, Annal Gandhi Memorial Government Hospital, Trichirappalli, sent a proceedings dated 7.6.2010 to the Deputy Commissioner of Labour, Trichirappalli, enclosing the medical records of the respondent for having given treatment to him for the period between 15.9.2003 and 12.12.2003 as inpatient (Inpatient No. 34615). In the said letter, it is stated that the name of the respondent is Jeyaraj and he was aged 24 years and that he is a son of Konda Naicker. The entire medical records were marked as Court documents. The records would speak truth. The medical records make it clear that on 15.9.2003, he was admitted as inpatient in Annal Gandhi Memorial Government Hospital, Trichirappalli. It was stated that the respondent suffered crush injuries at right hand portion and an operation was performed on 20.9.2003 and his entire right hand was amputated.

19. Before taking treatment at Government Hospital, Trichy, the respondent was initially taken to Causality in the Government Hospital at Musiri on 15.9.2003. The chit issued by the said hospital also states that the respondent sustained injuries in the Rice Mill on 15.9.2003. The entire records and the oral evidence put together make it clear that the accident took place only in the Rice Mill of the appellant and such factual finding arrived at by the Deputy Commissioner of Labour cannot be termed as perverse. It is well settled that this Court in the appeal filed under section 30 of the Workmen's Compensation. Act, cannot interfere in the factual finding rendered by the Deputy Commissioner of Labour, unless there is a manifest error committed by the Deputy Commissioner of Labour, warranting interference. In the result, the Civil Miscellaneous Appeal is dismissed and the respondent is permitted to withdraw the entire award amount lying in the credit of W.C. No. 291 of 2004 on the file of the Commissioner for Workman Compensation (Deputy Commissioner for Labour) Tiruchirappalli. No costs. Consequently, M.P.(MD) Nos. 1 of 2013 and 1 of 2014 are closed.