
(2013) 09 MAD CK 0251

In the Madras High Court

Case No : C.M.A. No. 2070 of 2008 and M.P. No. 1 of 2008

Rani, M. Selvi, M. Arul Kumar and A. Muthulakshmi

APPELLANT

Vs

The Management, M/s. Venkatam Construction Engineering
and New India Assurance Company

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0251

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Saravanan, for the Appellant; S. Mukunth for R1 for
Sarvabhauman Associates and Mr. Nageswaran for R2, for the Respondent

Final Decision : Partly Allowed

Judgement

C.S. Karnan, J.—The applicants have filed compensation petition in W.C. No. 78 of 2005, on the file of the Deputy Commissioner of Labour, Coimbatore against the respondents herein namely employer and Insurance Company stating that the 1st applicant's husband Mariappan was engaged as a Mason by the 1st opposite party. Besides doing Mason work on 31.12.2003, he was also engaged to cut iron rods. Due to the hard labour involved, he had developed chest pain and expired while he was taken to the hospital. Hence, the claim petition has been filed against the opposite parties. The 1st opposite party has filed counter statement stating that he is a licenced contractor and the deceased was engaged for a few days work. On 31.12.2003, there was no work at all and the deceased had left the work spot at 5 "O" clock itself. At around 11.30 p.m., the deceased after consuming alcohol, had come to the room of Sundaramoorthy. While he was eating in the room, it is alleged that he developed chest pain, which resulted in his death. As such, the death is due to heart attack. Therefore, there is no nexus between the 1st opposite party and the said Mariappan as employer and employee. The respondent denied that the late Mariappan was engaged for cutting the iron rod on that day. The respondent further denied the averments in

the claim regarding age, income of deceased. The respondent further stated that his company had taken valid Insurance Policy with the 2nd opposite party.

2. The Insurance Company had filed counter statement and resisted the compensation petition. The respondent stated that the deceased was a casual employee and not insured under the policy. Further, there was no employer-employee relationship between them. The respondent further stated that the deceased had died due to heart attack.

3. On considering the averments of all parties, the Deputy Commissioner of Labour had framed issues and recorded statements and on scrutinising the documents marked by both the parties, dismissed the compensation application stating that the deceased had not expired in the course of employment. Against the said dismissal order, the above appeal has been filed.

4. The highly competent counsel for the applicants argued that on 31.12.2003, the deceased Mariappan was fully engaged in the concrete-layer work from morning to evening. After that, he was engaged to cut the iron rods to be used in the site on the very same day, Mariappan developed chest pain and he was immediately taken to hospital, wherein the Doctor declared him, "dead on arrival". The death has been caused by hard work carried out by the deceased under the opposite party. The 1st opposite party had not denied that the deceased was his employer but had only denied that on that particular date, the deceased was not employed. This contention is only a hypothetical theory, in order to evade payment of compensation to the applicants. The highly competent counsel further submits that before filing the compensation petition, the applicants had issued legal notice and narrated the entire incidents and requested the 1st opposite party to pay the compensation. After deducting initial compensation of a sum of Rs. 20,000/- which had been paid by the 1st opposite party for the death of Mariappan. Therefore, the 1st opposite party is liable to pay full compensation to the applicants. The 1st opposite party's company is a registered one and its employees are insured with the 2nd opposite party. In order to prove the Insurance, a copy of the policy was marked and the 1st opposite party had also categorically stated in their counter that their employees had been extended coverage of insurance with 2nd opposite party. The deceased was paid a sum of Rs. 165/- per day. For payment of initial compensation of Rs. 20,000/-, a receipt had been obtained from the applicants by the 1st opposite party. It is crystal clear that the relationship between the 1st opposite party and deceased was as employer and employee. Further, the 1st applicant's husband had applied in the course of employment.

5. The learned counsel for the 1st opposite party submits that out of sympathy, a sum of Rs. 20,000/- had been paid to applicants for the funeral expenses of the late Mariappan, who was a casual labourer under the 1st opposite party. On the particular date i.e. 31.12.2003, the said Mariappan had not been engaged as employer under the 1st opposite party. Actually, he went for the work of one Sundaramurthy, wherein he had consumed alcohol and became intoxicated and

at that time, while he was eating food, he had experienced chest pain and died. Therefore, the death had not been caused in the course of employment and not caused due to any hard work done by him, as alleged. The 1st opposite party paid a sum of Rs. 20,000/- only on sympathetic grounds.

6. The learned counsel for the Insurance Company vehemently argued that the applicants had not proved their case regarding employer-employee relationship and that the death had taken place in the course of employment. Therefore, the Insurance Company is not liable to pay any compensation. Further, the deceased was a casual labourer and was not extended coverage of insurance as per policy taken by 1st opposite party.

7. (1) From the foregoing discussions, this Court is of the view that the deceased was engaged as a Mason in the construction work under the 1st opposite party as per evidence of the applicants and the 1st opposite party had also not denied the employment but had only denied the averments in the claim that the deceased was engaged to do work on 31.12.2003; (2) As per nature of work, it is evident that the deceased has to use physical force to carry out the hard work and this had affected him, causing him to develop chest pain later on, on the same day; (3) This Court is of the further view that the death of Mariappan cannot be termed as natural death and it has been caused only due to the nature of work carried out under the 1st opposite party. Therefore, it is evident that employer-employee relationship prevailed between the 1st opposite party and the deceased Mariappan. The 1st opposite party's company employees had been covered under a policy of insurance with the 2nd opposite party.

8. On considering the factual position of the case and arguments advanced by the learned counsel on all sides and on scrutinising the dismissal order of the Deputy Commissioner of Labour and this Court's view listed above, this Court is inclined to grant compensation to the applicants as follows:-

Rs. 3,36,245/- ($3,500 \times 50/100 \times 192.14$) is awarded under the head of loss of income to the applicants; Rs. 5,000/- is awarded for funeral expenses. In total, this Court awards Rs. 3,41,245/- as compensation to the applicants as it is found to be appropriate in the instant case. Therefore, this Court directs the 2nd respondent herein/New India Assurance Company Limited to deposit the said amount before the Deputy Commissioner of Labour, Coimbatore, within a period of 4 weeks from the date of receipt of this order, failing which the compensation amount will carry interest at the rate of 12% per annum from the date of application till date of payment of compensation.

9. After such deposit having been made, the learned Deputy Commissioner of Labour, Coimbatore has to disburse the compensation amount among the legal heirs of the deceased, after they file a memo., along with a copy of this order and after identification of the applicants by their counsel. In the result, the above appeal is partly allowed. Consequently, the award passed in W.C. No. 78 of 2005, on the file of Deputy Commissioner of Labour, Coimbatore, dated 28.12.2007, is

set aside. No costs. Consequently, connected miscellaneous petition is closed.