

(2002) 07 MAD CK 0155
In the Madras High Court
Case No : C.M.A. No. 1549 of 1993

Smt. Sivabakyam and Another	Vs	APPELLANT
The Management Udayagiri Estate		RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 4A

Citation : (2002) 3 LLJ 938

Hon'ble Judges : K. Gnanaprakasam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : A.U. Illango, for the Appellant; M.S. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

A. S. Venkatachalamoorthy, J.—The wife and the son of the deceased Sivakumar, have filed the above Civil Miscellaneous appeal.

2. The deceased Sivakumar was admittedly employed in the Udayagiri Estate as a Workman and he was drawing a salary of 377 per month. On 29.12.1987 he received personal injury by accident arising out of and in the course of his employment time, he was 24 years old. Shortly thereafter, on 5.1.1988, he died.

3. The appellants filed an application in Form G as stipulated under the Workmen's Compensation Act claiming a compensation of Rs. 32,988.

4. The said claim was resisted by the respondent and in fact, a counter statement was filed.

5. The Commissioner for the Workmen's Compensation/Deputy Commissioner of Labour, Coimabtores-12, took the claim petition on file as W.C. No.76 of 1989.

6. During enquiry, the first appellant examined herself and also marked documents namely Exs.A1 and A2, a copy of the hospital chit for taking treatment and a copy of the death certificate respectively.

7. However, on the side of the respondent, none was examined and no document was filed.

8. During enquiry, as could be seen from the records, the first appellant was cross examined by the respondent. Ultimately, by an order dated 27.4.1992, the enquiring authority allowed the application and directed the respondent opposite party to deposit a sum of Rs. 32,710 being the compensation awarded for distribution among the dependents namely appellants herein, within thirty days from the date of receipt of the order.

9. The perusal of the records would show that some time thereafter, on 27.5.1992, the respondent filed an application I.A.No. 5 of 1992 in W.C.No. 76 of 1989 with a prayer to set aside the order dated 27.4.1992 and restore the employer to the position which he would have occupied but for the order.

10. From the records, there is nothing to show that in fact, the appellants were served with a copy of the said application nor they were heard. The Deputy Commissioner of Labour, Coimbatore, thereafter, has passed an order dated 12.3.1993, dismissing the claim petition namely W.C.No. 76 of 1989. Being aggrieved by the order of the Deputy Commissioner of Labour, Coimbatore dated 12.3.1993, the present appeal has been filed.

11. We may straightway say that the order has been passed by the Deputy Commissioner of Labour, totally without jurisdiction whatsoever. As already referred to, the Deputy Commissioner of Labour passed the order on 27.4.1992. The reading of the order would show that the respondent took part in the proceedings and cross examined the sole witness namely the first appellant herein. Hence the order was passed by the Deputy Commissioner of Labour, only after hearing both the sides. If really the respondent was aggrieved by that order, it should have taken up the matter as prescribed under law. It is not known under what provisions of the Workmen's Compensation-Act or under what law, the application I.A.No. 5 of 1992 came to be filed. More surprising, is the fact that the appellants were not served with a copy of the said application. The Deputy Commissioner of Labour has acted totally without jurisdiction and rather to say very precisely, he has-acted against the provisions of the Act. That being so, this Court has no hesitation to set aside the order dated 12.3.1993. The resultant would be, the order passed by the Deputy Commissioner of Labour, Coimbatore-12, in W.C. No. 76 of 1989 on 27.4.1992 shall stand enforceable.

12. In the result, the Civil Miscellaneous appeal is allowed. No costs. In view of the orders passed in the Civil Miscellaneous appeal, C.M.P.No.18663 of 1993 to fix an early date for the disposal of the Civil miscellaneous appeal, is closed.