

(2016) 04 MAD CK 0145

In the Madras High Court

Case No : CMA.(MD).No. 557 of 2015 and M.P(MD).Nos. 1 and 3 of 2015

The Management, ISRO, Mahendragiri, Thirunelveli District

APPELLANT

Vs

V. Arasi

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 12(1)

Citation : (2016) 3 ACC 812 : (2017) ACJ 1247 : (2016) 150 FLR 1082 : (2016) LabLR 1226 : (2016) 3 LLJ 117 : (2016) 4 TAC 588

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : Mr. E.T. Rajendran, Advocate, for the Appellant; Mr. T. Murugan, Advocate and Mr. R. Murugan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V.M. Velumani, J.—The Civil Miscellaneous Appeal is filed against order passed by the Deputy Commissioner of Labour, Thirunelveli, in W.C. No. 15 of 2010 (Non-fatal) dated 12.08.2014.

2. The appellant is the first respondent in W.C. No. 15 of 2010. After the death of Hariharsuthan, who was the first petitioner, the respondents 1 and 2 herein were impleaded as petitioners 1 and 2. The third respondent is the Contractor of appellant and the second respondent in W.C.

3. The facts of the case are as follows:-

The deceased Hariharasuthan herein after referred as Worker was working in construction work under third respondent, who is the Contractor of the appellant. He was paid Rs. 300/- per day. On 15.06.2009 at 9.30 am when he was doing work of appellant as per instructions of third respondent he fell down from a height more than 15 feet and sustained injuries in spinal Cord and hip. Due to the said injuries spinal cord and body below hip was affected and there was no feeling below hip. The disability is total disability and he could not do any work.

He was aged 21 years at the time of accident. The appellant as Principal employer, the third respondent as Contractor and the fourth respondent as insurer are jointly and severally liable to pay the compensation. The worker claimed a sum of Rs. 8,86,840/- as compensation.

4. The appellant filed counter statement denying its liability to pay any compensation. There was no employer employee relationship between appellant and worker. The appellant never engaged the worker and never paid any salary. The worker was engaged by third respondent/Contractor. The third respondent was awarded Contract by appellant to do work of appellant. All the workers are employed by the third respondent only. The accident occurred on 15.06.2009 only due to negligence on the part of the third respondent to take proper safety measures. The appellant is not an industry. The provisions of Workman's Compensation Act is not applicable to the appellant organization. The appellant is not liable to pay any compensation. Only the respondents 3 and 4 are liable to pay compensation.

5. The third respondent remained ex parte.

6. The fourth respondent filed counter statement and submitted that the third respondent insured 30 workers with the fourth respondent under Workers Welfare Insurance Policy for Rs. 1,00,000/- each and fourth respondent is liable to pay only a maximum of Rs. 1,00,000/- for each worker and is not liable to pay compensation as per provisions of Workman's Compensation Act. The third respondent made a claim in respect of the accident. After considering the claim, the fourth respondent paid a sum of Rs. 99,500/- to third respondent. The fourth respondent is not liable to pay any other compensation and prayed for dismissal of the claim against the fourth respondent.

7. Before the Commissioner, the worker examined himself as PW.1 and examined one Dr.S. Ramaguru as PW.2 and marked 7 documents as Exs.P1 to P7. The appellant did not let in any oral or documentary evidence. The fourth respondent examined one Selvaraj, Assistant Manager and marked 3 documents as Exs.R1 to R3.

8. After recording evidence worker died. The respondents 1 and 2 were impleaded as petitioners 2 and 3 in WC. No.15 of 2010.

9. The learned Deputy Commissioner of Labour considered the pleadings and evidence and arguments of counsel for parties and awarded compensation of Rs. 5,34,504/- and directed the appellant to deposit the said amount within 30 days from the date of receipt of copy of the order, failing which directed the appellant to pay the said sum together with interest at 12% per annum from the date of accident viz., 15.06.2009. Challenging the said order dated 12.08.2014 made in W.C. No.15 of 2010 (Non-fatal) appellant has filed the present appeal.

10. The learned counsel for the appellant contended that the Deputy Commissioner of Labour failed to consider:-

(i) the fact that the appellant is not an Industry or public utility and that the provisions of labour laws and Workmen Compensation Act are not applicable to the appellant;

(ii) the documents filed by appellant along with counter which form part of the records;

(iii) having held that third respondent is a Contractor and the appellant is the Principal employer, erred in not fixing the liability on the third respondent.

(iv) ought to have ordered that appellant is entitled to be indemnified by third respondent/Contractor as per Section 12(1)(2) of Workmen's Compensation Act.

(v) the fact that third respondent had taken insurance for Rs. 60,00,000/- for 30 unnamed persons and accident in question is the only accident, ought to have ordered fourth respondent Insurance Company to pay the compensation awarded.

11. The learned counsel for the appellant relied on the following Judgments:

(i) In the Judgment of the High Court of Gujarat at Ahmedabad reported in 1991 ACJ 761 (Manager Century Minerals and Chemicals Pvt. Ltd., v. Koli Gordhan Laxmanbhai and other), relevant portion reads as follows:-

10. An agreement between the contractor and the company was executed and it is produced at Exh.42. Thus, as per the agreement between the contractor and the company,. The contractor had to engage labourer for the execution of the contract work of the company. It is true that the company had not directly engaged labourers for the execution of the said work. As such, the contractor was required to engage workers for the execution of the said contact work stipulated in the agreement between the contractor and the company. Therefore, the injured workman, who has sustained injuries arising out of and in the course of the employment would be entitled to compensation from both the opponents. The learned Commissioner has considered this contention raised before him seriously and has rightly upheld in favour of the claimant. It would be pertinent to make a reference to the provisions of section 12 of the Act. According to the provisions of Section 12 of the Act, where any persons in the course of or for the purposes of his trade or business contracts with any other persons or a contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the said persons shall be liable to pay to the workman employed for the execution would have been liable to pay if that workman had been immediately employed by him and where compensation is claimed by the victim workman or injured workman he would be entitled to compensation from both the persons. No doubt, it is true that there must be relationship of an employer and employees as pointed out by Mr. Farooqui so as to hold the master liable for the payment of compensation. If any workman suffers any injury, as a result of an accident, arising out of or in the course of employment, obviously the employer is liable to pay compensation to the workman under the provisions of section 3 of the act. There must be an

employer and employee relationship between the person against whom the compensation is claimed and the workman.

.... Therefore, the liability for the payment of compensation under Section 3 of the Act would be not only of original opponent No. 2 contractor, but also of original opponent No. 1, Company.

(ii) In the Judgment of the High Court of Judicature at Bombay reported in 1990 II LLN 921 (Sarjerao Unkar Jadhav v. Gurinder Singh and another), relevant para 10, wherein it has been held as follows:

10. In my view the purpose and effect of Sub-Section (2) of Section 12 of the Act is the principal who is made primarily liable for payment of compensation to the workman or to his dependants is entitled to be reimbursed or indemnified by the persons i.e his contractor who directly employed the workman. By the amendment, this right is extended against a subcontractor, if any engaged by the contractor for doing the work, I do not think that a principal employer can derive any further support from this provision. In any event, the principal employer cannot ordinarily refuse to make the payment of compensation to the workman on the basis of some agreement of indemnity between him and the contractor. That will essentially be a matter between him and his contractor. Needless to mention that respondent 2 is entitled to enforce his rights under Sub-section (2) of Section 12 against the contractor even though he did not appear before the Court.

(iii) 2013 (2) SCC 41 (National Insurance Company Limited v. Saju P. Paul) relevant para 17, wherein it has been held as follows:-

17. ... The High Court also erred in holding that the claimant was travelling in the vehicle in the course of his employment since he was a spare driver in the vehicle although he was not driving the vehicle at the relevant time but he was directed to go to the work site by his employer. The High Court erroneously assumed that the claimant died (sic was injured) in the course of employment and overlooked the fact that the claimant was not in any manner engaged on the vehicle that met with an accident but he was employed as a driver in another vehicle owned by M/s. P.L. Construction Company. The insured (owner of the vehicle) got insurance cover in respect of the subject goods vehicle for driver and cleaner only and not for any other employee. There is no insurance cover for the spare driver in the policy. As a matter of law, the claimant did not cease to be a gratuitous passenger though he claimed that he was a spare driver. The insured had paid premium for one driver and one cleaner and, therefore, second driver or for that purpose "spare driver" was not covered under the policy."

(iv) 2004 (8) SCC 517 (National Insurance Company Limited v. Challa Bharathamma and others) relevant para 13, wherein it has been held as follows:-

13. The residual question is what would be the appropriate direction. Considering the beneficial object of the act, it would be proper for the insurer to satisfy the

award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

12. Per contra, the learned counsel for the respondents 1 and 2 submitted that their son/worker died while working for appellant and the accident occurred due to failure on the part of the appellant and third respondent to provide proper safety measures for the workers. Their son/worker has proved that accident took place during and in the course of employment and that appellant as principal employer is liable to pay compensation. The appellant did not let in any contra evidence. The Deputy Commissioner awarded compensation only after considering all the aspects. No substantial questions of law arises in the appeal and prayed for dismissal of Civil Miscellaneous Appeal. In support of his contention learned counsel relied on the following Judgments:

(i) 1994 ? II LLLN 829 (State of Maharashtra v. Mahadeo Krushna Waghmode and others) relevant para 4, wherein it has been held as follows:-

4. It is well settled that the principal employer is liable to pay the amount of compensation for the injury suffered by the workman as a result of accident arising out of and in course employment of the workman. If the Executive Engineer claims to be indemnified by the contractor in respect of compensation payable to the workman or his dependants, it is for Executive Engineer to adopt appropriate proceeding if so advised. The original applicant was entitled to recover the amount of compensation from the applicant therein. The quantum of compensation is correctly computed by the learned Commissioner in conformity with the provisions contained in Workmen's Compensation Act, 1923."

(ii) The unreported Judgment of this Court dated 03.09.2015 in CMA No. 2334 of 2008 (The Communications Limited v. Gowri and another), relevant para 4, wherein it has been held as follows:-

4. The main grievance raised herein by the learned Stating counsel for the appellant is that by virtue of Section 12 of Workmen's Compensation Act, the Principal employer is entitled to recover the amount paid by him by way of compensation from the immediate employer ? contractor, as such the failure of the learned Commissioner for Workmen's Compensation in not recognising such right of the Principal employer in his order renders the same legally unsustainable. The learned counsel for the appellant has in support of his contention drawn the attention of this Court under the relevant provisions of Sections 12(1) and (2) of the Employees Compensation Act, 1923, which is extracted hereunder:-

2. Contracting (1) Where any persons (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contract with any other persons (hereinafter in this sections referred to as the contractor for the execution by or under the contractor of the whole or any part of the any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any (employee) employed in the execution of the work any compensation which he would have been liable to pay if that (employee) had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wagers of the (employee) under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, (or any other persons from whom the (employee) could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation to a contractor from whom the workman could have recovered compensation) and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

13. The learned counsel for the third respondent submitted that he is only a Contractor and has taken insurance with fourth respondent and therefore, only fourth respondent is liable to pay the compensation awarded by Deputy Commissioner. In any event the appellant is not entitled to recover any amounts from third respondent.

14. The learned counsel for the fourth respondent contended that as per the Insurance Policy, the fourth respondent has paid amount and the fourth respondent is not liable to pay any further amount.

15. At the time of admission, the following substantial questions of law are framed:-

1. Whether the appellant is ISRO is an Industry and will the labour laws

applicable to him?

2. If the labour laws are not applicable to ISRO, being a Research Organization, whether it is bound to pay compensation under Workmen Compensation Act?

3. Assuming ISRO is the Principal Employer can it be clothed with absolute responsibility without any liability to the contractor the third respondent and Insurance Company the fourth respondent?

4. Can the appellant be held responsible for damages when the accident is covered by the valid insurance policy of the fourth respondent?

5. Whether the compensation awarded by the Deputy Commissioner of Labour is excessive?

6. Whether the Contractor having received the compensation from the fourth respondent/Insurance Company withhold the payment?

7. Whether the Deputy Commissioner of Labour is correct in not ordering recovery of compensation by the appellant from Contractor as Section 12(2) of the Workmen's Compensation Act.

16. I have heard the learned counsels appearing on either side and perused the materials available on record, impugned order, the judgments relied on and arguments of the learned counsel for parties.

17. Substantial questions 1 to 7:-

From the materials on record it is seen that the appellant admitted that third respondent is its Contractor and appellant is the Principal employer. The third respondent was entrusted with construction work on behalf of the appellant. The third respondent employed the worker for the purpose of construction work of appellant. It is also an admitted fact that the accident occurred while the worker was doing construction work for the appellant as per instructions of third respondent/Contractor. In view of these admitted facts, the appellant as a Principal employer is liable to pay the compensation to the worker. The Deputy Commissioner of Labour considered the pleadings, evidence and arguments and granted compensation by applying proper method as contemplated by the Act. The Deputy Commissioner of Labour has appreciated the materials in proper perspective and there is no illegality in the impugned order.

18. The learned counsel for the appellant contended that the appellant is not an industry and labour laws are not applicable to the appellant. The appellant did not examine any witness and did not mark any document to prove that the appellant is not an industry and is exempted from provisions of Labour Laws. By merely filing certain documents along with counter, the said documents cannot be presumed to be proved. The documents are to be proved in the manner known to law and the respondents must be given an opportunity to disprove the contention of the appellant.

19. The learned counsel for the appellant contended that the third respondent is the Contractor and the same is not disputed. He further contended that as per Section 12(1)(2) of workman's Compensation Act the appellant is entitled to be indemnified by third respondent/contractor.

Section 12(1) (2) of workmen's compensation Act, reads as follows:-

12. Contracting.?

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor for the execution by or under the contractor of the whole or any part of any work ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, 1[or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

As per this Section, when the work of a party is entrusted to another principal employer and Contractor relationship comes into force. The principal employer is liable to pay compensation, if the contractor fails to pay the compensation and is entitled to be indemnified by contractor. That is principal employer is entitled to recover the amount of compensation paid to the worker from the Contractor. The Deputy Commissioner of Labour failed to consider this aspect. In view of the admitted fact that third respondent is Contractor of appellant and the third respondent employed the worker, appellant is entitled to be indemnified by third respondent, contractor the compensation awarded by the Deputy Commissioner of Labour.

20. The fourth respondent contended that third respondent did not take Insurance for compensation under the Workmen's Compensation Act, but, took Insurance policy only under workers welfare Insurance, with maximum compensation of Rs. 1,00,000/- for each of 30 workers.

21. The fourth respondent marked Insurance Policy as Ex.R1 and examined its

Assistant Manager as RW.1. The appellant and third respondent have not let in any contra evidence. The fourth respondent having paid amount as per the terms of Insurance Policy, based on the claim made by the third respondent is not liable to pay any further amount as compensation.

22. The substantial questions of law framed at the time of admission are answered as follows:-

Questions 1 and 2:-

The appellant failed to prove that it is not an industry and the labour laws are not applicable.

Questions 3, 6 and 7

The third respondent is a Contractor of appellant and had employed worker to do the work of appellant. In view of this admitted fact that the appellant is entitled to be indemnified by third respondent, Contractor as per Section 12(2) of Workmen's Compensation Act. As held by Hon'ble Supreme Court reported in 2004 (8) SCC 517 (National Insurance Company Limited v. Challa Bharathamma and others), the appellant need not file a suit for recovery of compensation amount paid by it to the claimants. The appellant may initiate proceedings before concerned executing Court as if the amount payable by the Contractor/third respondent is decided in favour of the appellant. A notice shall be issued to the Contractor to pay the amount of compensation paid by the appellants to the claimants/respondents 1 and 2 herein. If third respondent/Contractor fails to pay the amounts it is open to the appellant to file execution petition as if this order is a decree in their favour against Contractor/third respondent. The concerned executing Court shall implement this order as a decree of Civil Court as per provisions Civil Procedure Code applicable to execution proceedings.

Question No. 4

The fourth respondent has paid the amount as per the policy and is not liable to pay any further amount. Therefore, the appellant is liable to pay the amount of compensation awarded and he is entitled to be indemnified by third respondent.

Question No. 5

From the materials on record and facts and circumstances of the case the compensation awarded is not excessive.

23. With the modification that the appellant is entitled to be indemnified by the third respondent/Contractor, impugned order of Deputy Commissioner of Labour is confirmed.

24. With the above modification, the appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.