(2010) 11 MAD CK 0227

In the Madras High Court

Case No : C.M.A. No. 2788 of 2008

The Managing Director Sreenivasan Associates — APPELLANT

Vs

Palaniammal and Others — RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Citation : (2010) 11 MAD CK 0227

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : S. Saravanan, for the Appellant; V. Bhiman, for Respondents 1 to 4 and S.K. Krishnamoorthy, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

C.T. Selvam, J.—This Civil Miscellaneous Appeal arises against the Order passed by the Deputy Commissioner of Labour, Coimbatore in W.C. No. 2/2007 dated 07.07.2008.

2. While admitting the Civil Miscellaneous Appeal, the following substantial question of law has been framed:

Whether the decision of the Commissioner in directing the appellant to pay a sum of Rs. 2,21,204/- instead of directing the Insurance Company to pay the compensation in its entirety is sustainable?

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

One Jayakumar, who was employed as a fitter with the appellant company met his death owing to an accident in the course of his employment. The respondents 1 to 4/claimants preferred a claim under the Workmen Compensation Act.

4. One witness each was examined before the Commissioner on behalf of the claimants, the appellant/2nd respondent and the insurance company/3rd respondent.

The following exhibits were marked, Claimants: (a) Ex.P1 : Copy of FIR (b) Ex.P2 : Copy of Postmortem Report (c) Ex.P3 : Copy of Death Certificate (d) Ex.P4 : Copy of Legal heirship Certificate

Appellant/2nd respondent: (a) Ex.R1 : 02.04.2008 Approval letter (b) Ex.R2 : Copy of NMR Wager Bill from 01.04.2006 to 06.04.2006. (c) Ex.R3 : Copy of Insurance Police No.413800/0/1051/43/SC/2007/623-08-2005.

Insurance company/3rd respondent: (a) Ex.R4 : Copy of Insurance Police No. 413800/0/1051/43/SC/ 2007/623-08-2005. (b) Ex.R5 : Terms and conditions of Policy.

5. On appreciation of materials before him, the Commissioner arrived at a finding that the deceased had met his death owing to an accident suffered by him in the course of employment. Going by the records available and finding that the deceased was aged 47 years and earning Rs. 170/- per day, the compensation payable was determined at Rs. 3,38,880/-. The appellant/2nd respondent was directed to pay a sum of Rs. 2,21,204/-, while the insurance company was directed to pay the balance sum of Rs. 1,17,676/-. The appeal has been preferred by the employer/2nd respondent before the lower forum.

6. This Court finds that the reasoning of the lower forum is well-founded. On perusal of the schedule forming part of the insurance policy taken out by the appellant, it is seen that amongst the list of employees informed therein, the appellant has informed the number of fitters employed as 15 and their total wages as Rs. 2,50,000/-. On a mere arithmetical calculation of a division of 2,50,000 by 15 and a further division by 12, the lower forum found the monthly wage per fitter to be Rs. 1,389/-. Thus, in the very insurance policy taken out by the appellant, the appellant has informed the monthly wage per fitter to be Rs. 1,389/- and the purpose of the policy was to make good such amount per employee per month as and when occasion arises. In other words, the extent of insurance cover obtained by the appellant for each fitter is only towards covering a wage of Rs. 1,389/- per month.

7. Though the learned Counsel for the appellant would submit that such amount would fall even below the wages prescribed under the Minimum Wages Act, it is to be noticed that premium payable on the policy has been arrived at on the representation made by the appellant. What the lower forum has done is arrived at the compensation payable and apportioned the same between the insurance company and the appellant and restricted the payment by the insurance company to the extent of insurance cover taken by the appellant. This Court finds no error whatsoever in the order.

8. Accordingly, the Civil Miscellaneous Appeal shall stand dismissed. The answer to the question of law raised in the matter is in the affirmative.

9. It is represented that the entire amount as per the order of the Commissioner stands deposited. The claimants are at liberty to withdraw the same. In the

event of any sums remaining outstanding from either the appellant or the 6th respondent in the appeal, the shortfall shall be made good within a period of six weeks from the date of receipt of a copy of this order.