

(2003) 08 MAD CK 0056

In the Madras High Court

Case No : C.M.A. NPD. No. 1405 of 1995

The State of Tamil Nadu

APPELLANT

Vs

P.Chellam and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 2(1), 30, 30(1)

Citation : (2003) 3 LLJ 960 : (2003) 3 LW 634 : (2003) 3 MLJ 271

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : C.S. Swamy, Special Govt. Pleader, for the Appellant; A. Saravanan, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—This appeal is directed against the order of the Deputy Commissioner of Labour for Workmen's Compensation,

Trichirapalli dated 20.5.1994 made in W.C.No. 43 of 1993 in and by which the Commissioner has passed an award of Rs. 72, 548/- as

compensation.

2. In respect of death of one Pitchai on 23.5.1992 in the course of his employment as Road Inspector (rhiy Ma;thsh;), his wife, three minor

children and his mother have prayed for a compensation of Rs. 2, 03, 580/-. Before the Deputy Commissioner, the first claimant, wife of the

deceased has been examined as PW1 and one Rani as PW2 and the FIR - Ex.P1, Post mortem certificate - Ex.P2 and SSLC Certificate - Ex.P3

have been marked. On the side of the respondents, no oral evidence was let in and no document was marked.

3. The Commissioner, on appreciation of the materials placed, after holding that

the deceased was a workman within the meaning of Section 2(n) of the Workmen's Compensation Act, 1923, (hereinafter referred to as the Act) died in the course of his employment, directed the respondents to pay a compensation of Rs. 72, 548/- within a period of 30 days from the date of his order. Questioning the said order, the respondents therein namely, the Divisional Engineer and the Assistant Engineer (NH), Perambalur, have preferred the present appeal u/s 30 of the Act.

4. Learned Special Government Pleader, after taking us through the order of the Deputy Commissioner, would contend that inasmuch as the deceased was a Road Inspector working in a supervisory capacity, he cannot be considered as a workman within the definition. Accordingly, the ultimate order by the Deputy Commissioner granting compensation cannot be sustained.

5. On the other hand, the learned counsel appearing for the respondents-applicants would contend that inasmuch as the Deputy Commissioner has arrived at a proper conclusion based on acceptable evidence and granted compensation in favour of the applicants, in the absence of any contra evidence, the appeal is liable to be dismissed.

6. We have carefully considered the rival submissions.

7. It is the claim of the applicants that the deceased Pitchai, at the time of the accident, was a Road Inspector and drawing a salary of Rs. 2, 900/-

per month. While he was in employment on 23.5.1992, a van driven by its driver negligently dashed against him and thereby he died

instantaneously. There is no dispute that the applicants are his wife, minor children and mother. Let us now consider whether the deceased was a

workman within the definition of Section 2(n) of the Act. Section 2(n)(ii) of the Act reads as under:

(i).....

(ia).....

(ii) employed in any such capacity as is specified in schedule II.

Schedule II prescribes list of person-workman within the meaning of Section 2(1) (n) of the Act. Among the sub clause, Clause VIII is relevant

which reads as follows:

(viii) employed in the construction, maintenance, repair or demolition of-

(a).....

(b).....

(c)any road, bridge, tunnel or canal; or

(d).....

It is clear that any one employed in the construction, maintenance, repair or demolition of any road, bridge, tunnel or canal is a workman within the meaning of Section 2(1)(n) of the Act.

8. We have already referred to the specific case of the applicants that at the time of the accident, the deceased was working as rhiy Ma;thsh;

(Road Inspector). Though in the counter statement, it is stated that the deceased was a Government servant eligible to get all death-cum-retirement

benefits, the fact that he was not an employee within the meaning of Section 2(n) of the Act has not been substantiated by placing acceptable

evidence. In the absence of any oral or documentary evidence before the Deputy Commissioner, we hold that though they had taken a plea, the

same has not been established by placing any materials. Considering the details furnished by the applicants and in the light of the Clause 8(c) of

schedule II, we are in agreement with the conclusion arrived at by the Commissioner viz., that the deceased was a workman within the meaning of

Section 2(n) and inasmuch as he died in the course of his employment, the applicants are entitled to claim compensation under the provisions of

Workmen's Compensation Act. There is no dispute with regard to the quantum of compensation arrived at by the Commissioner. Inasmuch as the

Commissioner has considered the age, salary of the deceased and adopted a formula prescribed under the Act and arrived at the compensation,

we are in agreement of the same.

9. Further, the conclusion of the Commissioner is based on acceptable oral and documentary evidence. In the light of proviso to Section 30(1) of

the Act, only on the ground of substantial question of law, this Court is empowered to interfere with the order of the Deputy Commissioner.

Inasmuch as, the finding and the ultimate decision of the Deputy Commissioner is based on acceptable evidence, the said factual finding of fact

cannot be interfered by this Court.

10. Looking from any angle, we do not find any ground for interference.

Accordingly, the appeal is dismissed. No costs.