(2008) 10 MAD CK 0146

Madras High Court

Case No: C.M.A. No. 1461 of 2001 and C.M.P. No. 2984 of 2007

J. Rajasulochana @ Jothi		APPELLANT
	Vs	
Mehapoop Bai Rice Mill		RESPONDENT

Date of Decision: Oct. 29, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Workmens Compensation Act, 1923 - Section 10, 10(1), 10(A), 30, 4(4)

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: A. Shanmugaraj, for the Appellant; A.G. Rajan, for the Respondent

Final Decision: Dismissed

Judgement

P.R. Shivakumar, J.

This Civil Miscellaneous Appeal has been preferred against the order of the Deputy Commissioner of Labour-II/Commissioner for Workmen''s Compensation-II, Chennai 600 006 dated 04.04.2000 made in W.C. No. 20/1999 dismissing the claim of the appellants herein/applicants made against the respondent herein for compensation for the death of one Jayaraman. The appellants herein preferred a claim on the file of the Deputy Commissioner of Labour-II/Commissioner for Workmen''s Compensation-II, Chennai-600 006 under Sections 10(1) and 4(A) of the Workmen''s Compensation Act praying for an order directing the respondent herein to pay a sum of Rs. 3,00,000/- as compensation together with penalty and interest from the date of accident. The appellants in the claim petition had contended that first appellant was the wife and the second appellant was the daughter of the deceased Jayaraman; that the said Jayaraman was employed as a machine operator in the rice mill of the respondent/opposite party and was getting a sum of Rs. 150/- as daily wages; that on 13.07.1998 at about 2.00 p.m. while he was operating the machine in the rice mill of the respondent/opposite party, he fell on the conveyor belt and consequently died due to shock and hemorrhage; that the deceased Jayaraman was

aged about 32 years at the time of his death and that since he died in an accident that arose out of and in the course of his employment under the respondent/opposite party, the respondent/opposite party was liable to pay compensation to the appellants/applicants being the legal heirs and dependents of the deceased Jayaraman. The appellants/applicants had quantified the compensation and prayed that an order directing the respondent/opposite party to pay a sum of Rs. 3,00,000/- as compensation together with penalty and interest should be passed in their favour.

2. The claim was resisted by the respondent herein/opposite party by filing a counter statement containing the following averments:

a) There was no connection between the deceased Jayaraman and the respondent/opposite party at any point of time. There was no employer-employee relationship as claimed by the appellants/applicants in their petition. The petition averments to the effect that the Jayaraman met with an accident arising out of and in the course of employment under the respondent/opposite party is totally false and imaginary one. As there was no jural relationship of employer and workman between the respondent/opposite party and the deceased Jayaraman, the respondent/opposite party is not liable to pay any amount as compensation either to the appellants/applicants or to any other person. Apart from the fact that there was no relationship of employer and employee between the respondent/opposite party and the deceased Jayaraman, the appellants/applicants are not wife and daughter as claimed by them. They are totally strangers and hence the claim petition preferred by them is liable to be dismissed as not maintainable.

b) Based on the above said pleadings made in the counter statement, the respondent herein/opposite party had prayed for dismissal of the claim petition.

3. The lower authority namely, Commissioner for Workmen''s Compensation-II (Deputy Commissioner of Labour-II), Chen-nai-600 006 conducted an enquiry in which, including the first appellant, two witnesses were examined as A.W.1 and A.W.2 and seven documents were marked as Ex. A1 to A7 on the side of the appellants herein/applicants, whereas respondent herein/opposite party examined himself as the sole witness (R.W.1) and marked Ex. R1 as the sole document on his side.

4. At the conclusion of enquiry, upon a consideration of the evidences, the learned Commissioner for Workmen''s Compensation-II (Deputy Commissioner of Labour-II), Chennai-600 006 came to the conclusion that the petition claiming compensation for the death of Jayaraman was not maintainable as the appellants/applicants were not able to prove their relationship with the deceased and in tune with the said finding, the claim petition was dismissed as not maintainable.

5. Aggrieved by and challenging the said order of the learned Commissioner for Workmen''s Compensation-II (Deputy Commissioner of Labour-II), Chennai-600006 dated

04.04.2000 made in W.C. No. 20/1999, the appellants herein/applicants have brought-forth this Civil Miscellaneous Appeal u/s 30 of the Workmen''s Compensation Act on various grounds set out in the memorandum of Civil Miscellaneous Appeal.

6. At the time of admission, the following questions were framed as substantial questions of law involved in this civil miscellaneous appeal:-

"1. Whether the Commissioner for Workmen''s Compensation can totally reject the marriage fee receipt (Ex. A1) and its counterfoil (Ex.A4), which has been produced through the temple authorities (A.W.2)?

2. Whether the Commissioner for Workmen''s Compensation can dismiss the claim petition for not marking the legal heir certificate while the claimant proved the marriage with the deceased by examining the temple authorities?"

7. This court heard the submissions made by Mr. A. Shanmugaraj, learned counsel for the appellants and Mr. A.G. Rajan, learned counsel for the respondent and paid its anxious consideration to the same. The materials available on record were also perused.

8. An appeal u/s 30 of the Workmen''s Compensation Act shall lie against the order of the Commissioner for Workmen''s Compensation not on a question of fact but only on a substantial question of law. During the hearing of this civil miscellaneous appeal, the learned counsel for the appellants submitted that though the appellants had raised a substantial question of law in the grounds of appeal regarding the power of Commissioner for Workmen''s Compensation to decide the question of maintainability of the claim petition without deciding the question whether the deceased was a workman under the respondent/opposite party, the said question was not framed as a substantial question of law at the time of admission of the civil miscellaneous appeal and that hence the same has got to be framed as third substantial question of law. Upon considering the said submission made by the learned counsel for the appellants, this court deemed it fit to accept the same and frame the third substantial question of law as follows:-

"3. Whether the Commissioner for Workmen''s Compensation can dismiss the claim petition as not maintainable on the ground that the appellants/applicants have not proved them to be the dependents of the deceased person without deciding the question whether the deceased was an employee under the respondent/opposite party and whether he died in an accident arising out of and in the course of his employment?"

9. Regarding the third substantial question of law framed, the learned counsel for the respondent/opposite party would contend that the question of entertaining a claim petition would arise on three circumstances: 1) when the opposite party denies the relationship of employer and employee between himself and the deceased, 2) when the opposite party denies the accident having arisen out of and in the course of employment though the relationship of employer and workman is admitted and 3) the question of quantum of compensation alone is in dispute. It is the further contention of the learned counsel for the

respondent that in the last two type of cases, the Commissioner for Workmen''s Compensation has got power to go into the disputed question but in the first case, the Commissioner for Workmen''s Compensation cannot go into the question of jural relationship of employer and workman without deciding the locus standi of the applicants to make the claim and the maintainability of the claim petition as the said question would go to the root of the cases itself.

10. the other hand, the learned counsel for the appellants would contend that the liability of the employer to pay compensation does not depend upon a claim being made and that as per Section 4(A)(1) the compensation should be paid as soon as it falls due. It is true that as per Section 4(A)(1), the employer is liable to pay compensation as soon as it falls due. But a conjoint reading of the said provision along with other connection provisions will show that in case of denial of liability by the opposite party based on the contention that the deceased or the injured was not a workman under the opposite party, then to give jurisdiction to the Commissioner for Workmen''s Compensation to decide the said issue, a claim should have been made by the persons having locus standi to make it namely; the injured person or the dependents of the deceased.

11. Section 4(A)(2) says, in cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts and such payment shall be deposited with the Commissioner or made to the workman as the case may be without prejudice to the right of the workman to make any further claim.

Section 10(1) deals with the claim for compensation. It reads as follows:-

"No claim for compensation shall be entertained by a Commissioner unless notice of theaccident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or, in case of death, within two years from the date of death."

Section 10(A) enjoins a duty on the employer to submit statement of fatal accidents to the Commissioner. It reads as follows:-

"10-A. Power to require from employers statements regarding fatal accidents.-

(1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of arid in the course of his employment, he may send by registered post a notice to the workman''s employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation, he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such enquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit."

Sub clauses 3 and 4 are relevant. When the employer disowns his liability, then the Commissioner for Workmen''s Compensation can inform the dependents of the deceased workman that it is open to the dependents to prefer a claim for compensation.

Section 4(4) reads as follows:-

"If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of this death to the person who actually incurred such expenditure."

12. A conjoint reading of all the above said provisions will make it clear that in case of fatal accidents only the dependents can prefer a claim for compensation u/s 10 of the Workmen''s Compensation Act. When the very locus standi of the claimants is disputed, unless and until the claimants prove their entitlement to make such a claim and thus prove their locus standi to prefer the claim, the other questions need not be gone into as the question of maintainability of the claim petition goes to the root of the case itself. Even assuming that the question of relationship of employer and workman should have been gone into notwithstanding the fact that the Commissioner has come to a conclusion that the petitioners have not proved to be the dependents of the deceased, the materials available on record will not be enough to prove that there was an employer and workman relationship between the respondent/opposite party and the deceased Jayaraman. The only documents relied on by the appellants/applicants are Ex.A2 - copy of the First Information Report and Ex.A4 - copy of the Postmortem certificate. Ex.A4 does not lend any assistance to find a solution to the question whether there was any relationship of employer and workman between the respondent/opposite party and the deceased Jayaraman.

13. Of course the appellants/applicants have produced Ex.A2 - copy of the FIR which shows that a case was registered on the file of Sankarapuram Police Station, Villupuram District as Crime No. 471 of 1998 on 13.07.1998 for offences punishable under Sections 304-A and 201 IPC based on the complaint of one Govindarajan, Village Administrative

Officer of Pootai village. The complaint is a very short one to the effect that Jayaraman who was employed in the rice mill of the respondent herein/opposite party got injured and died on 13.07.1998 at about 2.00 p.m. while he was thus working in the said mill. How did he sustain injuries leading to his death? - has not been stated in the complaint. It has also been stated in the complaint that when he went to the house of the deceased in Pootai village at about 5.00 p.m. on the same day he found the dead body of deceased Jayaraman kept in that house. The complaint itself was lodged at 8.00 p.m. It is obvious from the said complaint that he was not an eye witness for the said accident.

14. The first appellant who was examined as A.W.1 would also admit that she did not have any record to show that the deceased was employed as a machine operator in the rice mill of the respondent. Though she would state that she was informed by a person belonging to the said village that the deceased Jayaraman died in an accident that occurred in the rice mill, the was not in a position to state even the name of the so-called informant. Except the ipse dixit of the first appellant as A.W.1, there is no other evidence to show that the deceased Jayaraman was employed as a machine operation in the rice mill belonging to the respondent/opposite party. None of the residents of the village was examined to prove the said contention of the appellants. The appellants have not produced either family card or voters list or legal heir certificate to show whether there was anybody in the family of Jayaraman who would be in a position to come and depose regarding his alleged employment under the respondent/opposite party. Not even the Village Administrative Officer who preferred the complaint to the police was examined on the side of the appellants to prove either the employment of the deceased Jayaraman under the respondent or the accident alleged to have occurred in the rice mill. On the other hand, the respondent who figured as R.W.1 would state categorically that there was no relationship between himself and the deceased Jayaraman that the deceased Jayaraman was not employed under him as a workman and that hence he was not liable to pay any compensation.

15. For all the reasons stated above, even assuming that the question of employer and workman along with the question whether the deceased died in an accident arising out of and in the course of employment could be decided before deciding or along with the question whether the appellants are dependents of the deceased, the said evidence adduced on the side of the appellants/applicants shall not be enough to arrive at a conclusion that there was such a relationship between the respondent and the deceased Jayaraman and that the deceased Jayaraman died due to an accident arising out of and in the course of his employment under the respondent in his rice mill. For the said reason alone, the claim of the appellants deserves to be rejected and hence the order of the learned Commissioner for Workmen''s Compensation does not deserve any interference on the above said ground of challenge.

16. Coming to the question of locus standi to prefer the claim for compensation, after considering the oral and documentary evidence produced on the side of the appellants/applicants, the learned Commissioner for Workmen''s Compensation has

arrived at a correct conclusion that they had miserably failed in proving their case that they were the wife and daughter of the deceased Jayaraman and hence were his dependents. The appellants have simply relied on a copy of the receipt dated 23.04.1985 issued by the temple authorities of Arulmigu Veerateswarar Devasthanam, Keezhaiyur, Thirukkovilur Taluk evidencing payment of Rs. 25/- as fee for performing the marriage between Jayaraman and Rajasulochana. As per the said receipt, the fees was paid on 23.04.1985 for the marriage scheduled to be performed on a future date namely, 26.04.1985. A clerk of the said Devasthanam produced an authorisation letter to give evidence regarding the receipt and a xerox copy of the receipt as Ex.A6 and Ex.A7 respectively and deposed. But it is pertinent to note that the respective age of the bride and bridge groom were not noted in the said receipt. The mere fact that fee was paid under the said receipt for a marriage to be performed at a subsequent date will not be enough to prove that such a marriage in fact took place. When the temple authorities were in the practice of issuing receipts for granting permission to conduct marriages in the temple, it is quite surprising to note that the appellants were not able to produce any copy of the marriage register kept in the said Devasthanam. A.W.2 himself admitted that there was a marriage register and only if the said register was perused it could be ascertained whether the marriage, for which fee was collected under Ex. A1 and A7, did in fact take place. But such a register has not been summoned and not even a copy of the relevant entry in the said register has been obtained and produced. The appellants have not even produced the documents like photographs showing the first appellant and the deceased Jayaraman as wife and husband, family card, voters list etc. Not even the birth certificate of the second appellant has been produced. The same has been commented upon by the learned Commissioner for Workmen''s Compensation in support of her finding that the appellants had not proved their relationship with the deceased Jayaraman.

17. Now, in the appellate stage, the appellants have come forward with C.M.P. No. 2984 of 2007 seeking permission under Order XLI Rule 27 CPC to produce thru documents as additional documentary evidence. The first document is a xerox copy of the identity card issued to the petitioner by Tamil Nadu Building Construction Workers Welfare Board, Chennai. It should be noticed that the said document was obtained only on 11.06.2001 i.e. after the dismissal of the claim petition of the appellants. Though the name of the first appellant''s husband is mentioned as Jayaraman, there is no indication as to whether the said Jayaraman is alive or not. The address given is No. 51, 6th Kanagasabai Street, Dr. Kanu Nagar, Nesapakkam, Chennai-78. Therefore no credence can be given to the said document. The second document is the Transfer Certificate of the second appellant. It was obtained only recently namely, 07.07.2004. In the said certificate, the date of joining in the school has been noted as 01.07.2002, whereas in column 15, the date of leaving the school is noted as 02.06.2002. That means, the certificate had been issued as if she joined the school at a later date than the date on which she left the very same school. That itself will be enough to show that the said document has been obtained for the purpose of the case. Similarly a copy of the certificate said to be issued by the Village

Administrative Officer of Thiruvannamalai Town is sought to be produced as the third document. The same was only a residence certificate in which the first appellant has been described as Tmt. Rajasulochana (a) Sulochana wife of late Jayaraman. The said document was dated 15.06.1999 much before the date on which the order of the Commissioner for Workmen''s Compensation was passed and even before the counter statement of the respondent was filed. The appellants have not assigned any valid reason for not producing the document no. 3 during the course of enquiry before the learned Commissioner for Workmen''s Compensation. The other two documents came to be obtained subsequent to the order passed by the learned Commissioner for Workmen''s Compensation. The discrepancies in the date of admission and the date of leaving the school found in the Transfer Certificate sought to be produced additional documentary evidence make it obvious that those documents were obtained for the purpose of this case. Therefore the C.M.P. No. 2984 of 2007 is nothing but an attempt to fill up the lacunae in order to support the claim of the appellants that they are respectively the wife and daughter of the deceased Jayaraman. For all the reasons stated above, this court comes to the conclusion that the appellants have not made out a case under Order XLI Rule 27 of CPC for reception of additional evidence and hence the civil miscellaneous petition deserves to be dismissed.

18. It is pertinent to note that the appellants have not even chosen to produce the death certificate of deceased Jayaraman and legal heir certificate. Even now the appellants have not chosen to produce the birth certificate of the second appellant. On the other hand, the respondent has made out a strong case that the appellants/applicants have made an attempt to claim compensation for the death of one Jayaraman with whom they had no connection at all in order to have unlawful enrichment. In support of his contention, besides pointing out the want of evidence on the side of the appellants, the respondent has pointed out the following aspects also:

i) The appellants, while making a claim before the learned Commissioner for Workmen''s Compensation, had not even given their residential address and on the other hand chose to furnish the address of their advocate alone as the address for service.

ii) The notice dated 30.09.1999 issued to the respondent by the Taluk Legal Services Authority, Kallakurichi, marked as Ex.R1 simply mentioned the name of the first appellant as "Jothi wife of late Jayaraman" without any alias name which would show that the first appellant had given a petition to the Taluk Legal Services Authority only in the name of Jothi and not as Rajasulochana, whereas in the claim petition, her name has been shown as Rajasulochana (a) Jothi.

iii) Even in the receipt evidencing payment of fees for the proposed marriage the name of the first appellant was given as Rajasulochana and not Rajasulochana (a) Jothi. During hearing in this civil miscellaneous appeal, when the learned counsel for the appellants was asked whether the appellants would be in a position to get a legal heir certificate from the Tahsildar to show their relationship with the deceased Jayaraman. The learned

counsel replied that the appellants won''t be in a position to get such a legal heir certificate. It will clearly show that the appellants were not in a position to prove that they are respectively the wife and daughter of the deceased Jayaraman.

19. In the light of the foregoing discussions and in the light of the admission made by the learned counsel for the appellants that the appellants will not be able to get a legal heir certificate, the contention of the respondent that the appellants/applicants have made an attempt by making a false claim posing themselves to be wife and daughter of the deceased Jayaraman in order to gain unlawful enrichment has become more probable.

20. For all the reasons stated above, this court comes to the conclusion that the challenge made to the finding of the learned Commissioner for Workmen''s Compensation-II (Deputy Commissioner of Labour-II), Chennai 600 006 to the effect that the claim made by the appellants was not maintainable as they had not proved their relationship and dependency on the deceased Jayaraman, cannot be countenanced. This court, further holds that there is no merit in the appeal and the same deserves to be dismissed. However, taking the peculiar facts and circumstances of the case into account, this court is of the view that there shall be no order as to cost. In the result, C.M.A. No. 1461 of 2002 and C.M.P. No. 2984 of 2007 are dismissed. There shall be no order as to cost.