(2010) 12 MAD CK 0183

Madras High Court

Case No: C.M.A. No. 2272 of 2004

Erode Agricultural Producers Co-operative Marketing Society Ltd.	APPELLANT
Vs	
Muthulakshmi and Others	RESPONDENT

Date of Decision: Dec. 8, 2010

Acts Referred:

- Employees State Insurance Act, 1948 - Section 2(9)
- Workmens Compensation Act, 1923 - Section 2, 2(1), 30, 30(1)

Citation: (2011) 256 MLJ 1266

Hon'ble Judges: T. Mathivanan, J

Bench: Single Bench

Advocate: A.K. Kumarasamy, for the Appellant; N. Manokaran, for the Respondent

Final Decision: Dismissed

Judgement

T. Mathivanan, J.

Challenge is made to the award of Rs. 3,68,340/- dated 12.4.2004 and made in W.C. No. 238 2002 on the file of the Workmen''s Compensation Commissioner (Deputy Labour Commissioner) Salem-VII by the Appellant herein who is the first Respondent in W.C. No. 238 of 2002.

2. The circumstances which propelled the Appellant to file this Civil Miscellaneous Appeal are recapitulated as under:

2.1. The Respondents 1 to 5 had filled a claim petition in W.C. No. 238 of 2002 before the Workmen''s Compensation Commissioner (Deputy Labour Commissioner) Salem-VII against the Appellant society as well as the 6th Respondent, insurance company herein claiming a compensation of Rs. 5 lakhs, for the death of one. Palanichami who is none other than the husband of the first Respondent.

2.2. The deceased Palanichami was employed as a Kalasi (coolie) by the Appellant society for loading and unloading tamarind bags. He died on account of injuries sustained by him during the course of his employment. The Respondents are widow, children and parents of the deceased Palanichami. They were depending on the income of the deceased and as such they came forward with a claim petition in W.C. No. 238 of 2002 before the Workmen''s Compensation Commissioner (Deputy Labour Commissioner) Salem-VII.

2.3. The Appellant society had resisted the claim petition stating that the society had taken an insurance policy from the 6th Respondent insurance company covering the risks under the Workmen''s Compensation Act towards employment of Kalasi (coolies) for the period from 24.4.2001 to 23.4.2002. The other grounds on which the claim petition was resisted are;

1. The deceased Palanichami was not an employee under the Appellant society.

2. He was engaged by the labour contractor who undertook the work of loading and unloading.

3. The society is not maintaining any records to prove the wages of Kalasi and that the society is not liable to answer for the claim of the Respondents 1 to 5.

2.4. The 6th Respondent herein, who is the second Respondent in the claim petition had also contested the claim petition on the following grounds;

1. The accident was not taken place during the course of employment of the deceased.

2. The death is not due to the injuries sustained in the accident.

3. The relationship of employer and employee is disputed.

4. The applicants must prove that the deceased was earning Rs. 5,000 per men sum.

2.5. The Deputy Commissioner of labour after appraising the evidences of both oral and documentary and other materials available on record had proceeded to pass an award of Rs. 3,68,340/- directing the Appellant/first Respondent society and the 6th Respondent insurance company to apportion the liability of payment of compensation in the following ratio.

a. the Appellant/first Respondent to pay a sum of Rs. 2,30,212.50.

b. the 6th Respondent insurance company to pay a sum of Rs. 1,38,127.50.

3. Challenging the award of compensation and the order relating to apportionment of liability the Appellant society has approached this Court by way of this appeal.

4. Heard the learned Counsels for the Appellant and the Respondents.

5. The learned Counsel for the Appellant society has adverted to that

1. The deceased Palanichami was not a workman within the definition of Section 2(n) of the Workmen''s Compensation Act 1923.

2. He was working as a kalasi under the labour contractor and that he was not an employee under the Appellants society.

3. The 6th Respondent insurance company did not restrict their liability and hence, the apportionment of the compensation between the Appellant and the insurance company is not legally sustainable.

6. The learned Counsel for the Respondents 1 to 5/claimants has submitted that the appeal preferred by the Appellant society itself is not maintainable u/s 30 of the Workmen ''s Compensation Act 1923 as no substantial question of law is arisen. He has also canvassed that the jurisdiction of the High Court arises only when substantial question of law is involved.

7. The portion of argument put forth by the learned Counsel for the Respondents 1 to 5/claimants with regard to the question of jurisdiction of this Court u/s 30 of the Workmen''s Compensation Act, assumes importance and hence this could be discussed at first.

8. Section 30 of Workmen''s Compensation Act 1923 (hereafter may be referred to as the Act) is dealing with maintaining of an appeal before the High Court from the order of a Commissioner.

9. Section 30(1) - An appeal shall lie to the High Court from the following orders of a Commissioner namely.....

Provided that no appeal shall lye against any order unless a substantial question of law is involved in the appeal and, in case of an order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than Rs. 300/-.

10. From the above context, it is made clear that unless a substantial question of law is involved no appeal shall lie against any order before the High Court.

11. By enacting this proviso, the legislature wanted to emphasis that ordinarily, orders passed by the Commissioner under the Act could not be interfered with. When such being the case, the Appellants society cannot urge any other ground other than what is available to them. Therefore, all that this Court may do is to see whether there is any substantial question of law which would enable the Appellant society to present the appeal before this Court.

12. On coming to the instant case on hand, the appeal has been admitted on the following substantial question of law.

When the liability of the Insurance Company is not restricted under Exhibit A-7 policy and in fact no such plea was raised by the Insurance Company, is the

Workmen''s Compensation Commissioner justified in apportioning the compensation between the Appellant and the Insurance Company?

13. Section 30 of the Act without doubt discourages ordinary appeals and requires a substantial question of law to be involved therein to enable the Court to entertain the same. In other words jurisdiction of this Court is to first ascertain whether a substantial question of law is involved in the appeal. It is only when such a question is found to be involved, this Court would be entitled to deal with the appeal and not other wise. This legal position is very clear in the language used in Section 30 itself.

14. The question whether a finding is contrary to evidence on record is without doubt a question of law. In this regard, this Court find it very useful and relevant to refer the decision in Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., . In this case, the Hon''ble Supreme Court has laid down the following tests to determine whether the appeal involves a substantial question of law. Those tests are (i) whether directly or indirectly it affects substantial rights of the parties, or (ii) the question is of general public importance or (iii) whether it is not a open question in the sense that the issue is not settled by pronouncement of the Supreme Court or the like; or (iv) the issue is not free from difficulty, or (v) that it calls for discussion for alternative view.

15. It is also observed that only if one of those tests be satisfied, the Court would be entitled to entertain the controversy in appeal. The above cited decision i.e., Chunilal Mehta v. C.S.&M. Co. Ltd. (supra), case has been referred in the decision in Nissan Springs Pvt. Ltd. Vs. Om Jain, .

16. The learned Counsel for the Appellant society has submitted that since, the documentary evidence under Exhibit A-7 was not properly appreciated and considered by the Commissioner, the question of apportionment of liability between the Appellants society and the 6th Respondent Insurance Company as the liability of the 6th Respondent Insurance Company is not restricted assumes more importance and this alone formulate the question of law so as to maintain this appeal before this Court.

17. Exhibit A-7, is the Workmen''s Compensation Policy. From face of this document under Exhibit A-7, it appears from the first column that the estimated number of employees is FIVE. Column No. 2 explains the caption of the employees as coolies. Column No. 3 explains the estimated total salaries, wages and other earnings as 50x5 Nos. x 365 days, i.e, at the rate of Rs. 50 per day for 5 employees to be multiplied with 365 days (1 year). Accordingly, for 5 employees at the rate of Rs. 50 per day for 365 days the estimated total earnings comes to Rs. 91,250/-. The last column i.e., the 6th column explains the place of employment as Erode Producers Cooperative Marketing Society Ltd., 2/3 Kaveri Road, Erode-3. From the above context, it is probably clear that 5 employees under the caption of coolies were insured with the 6th Respondent Insurance Company and at the time of taking

insurance, their daily wages was fixed at Rs. 50/- and this policy shall remain in force from 24.4.2001 to 23.4.2002 i.e., for one year.

18. It is obvious to note here that during the material time the daily wages of the deceased was determined at Rs. 50 and accordingly, the Appellant society seems to have been insured with the 6th Respondent Insurance Company in respect of 5 employees (coolies). In the policy it has been specifically mentioned that;

PROVIDED ALWAYS that in the event of any change of Law(s) or the substitution of other other legislation therefore this Policy shall remain in force but the liability of the company shall be limited to such sum, as the company would have been liable to pay it the Law(s) had remained unaltered.

Besides this, the condition No. 6 of the policy also makes it clear that the liability of the 6th Respondent Insurance Company is limited and it cannot be heard to say that it is not restricted as argued by the learned Counsel appearing for the Appellants society.

19. The learned Counsel for the Appellant society has also canvassed that the deceased Plan was not a workman within the definition of Section 2(n) of the Workmen''s Compensation Act and that he was working as kalasi under a labour contractor and as such he was not an employee under the Appellant society. In this connection it is very much essential to refer to documents under Exhibit A-7 Workmen''s Compensation Policy, in which under column No. 2 it is described as coolies. Whether the term "coolie" could be brought under the ambit of "workmen"? is the core question to be decided in this appeal.

20. It is also pertinent to note here that this plea has not been taken by the Appellant society before the Workmen''s Compensation Commissioner (Deputy Labour Commissioner) Salem-VII. However, it is imperative on the part of this Court to decide as to whether the deceased Palanichami was having the relationship of workmen with the Appellant society or not. The Appellant society is an Agricultural Producers Cooperative Society, rendering service to the ryots in stocking and selling their agricultural products. It has its own go-down where its members and ryots fetch their agricultural products such as turmeric etc., pack in gunny bags and they are stocked in the go down. Even as per the version of the Appellant society, in it''s counter filed before the Commissioner of Workmen''s Compensation, "Kalasis" experienced in the field are engaged on contract basis to stack the gunny bags. They are also engaged for unstacking and weighing the gunny bags.

21. In paragraph 5 of the counter filed by the Appellant society, it has specifically been admitted that the deceased Palanichamy was working as Kalasi (Coolie) and he was attending the work on 27.12.2001.

22. That on 27.12.2001 at about 11.30 a.m., while attending to the work by lifting the turmeric bags for weighing, a gunny bag from the nearby load slided on his back

culminating in injuries to him. Palanichami was immediately removed to the hospital at Erode and after first aid, he was referred to K.J. Hospital, Coimbatore and underwent treatment from 27.12.2001 to 4.1.2002 and subsequently, he had succumbed to the injuries on 5.1.2002. This is also the case of the Respondents 1 to 5/claimants.

23. Now the learned Counsel for the Appellant society has contended that though the deceased Palanichami was working as Kalasi/coolie in the Appellant society, he was not a workmen "within the definition of Section 2(n) of the Workmen''s Compensation Act". He has also maintained that whenever casual labourer is required, the society will engage a labour contractor and the labour contractor in turn will engage coolie or kalasi, to do the work of the society and the labour contractor will be paid taking a temporary receipt from him. He has also added that the society is not maintaining any records to show the name and salary of the coolies engaged by the contractor. This portion of the argument advanced on behalf of the Appellant society is not able to be countenanced because it is settled law supported by several judicial pronouncements that a Kalasi or a coolie whatever may be the case is construed to be a workman within the definition of Section 2(1)(n) of the Workmen''s Compensation Act 1923.

24. The definition of "workmen" in Section 2(1)(n) of the Act is pari material with the definition of "employees" used in Section 2(9) of the Employees'' State Insurance Act 1948, because, in both the definitions it is provided that there has to be a contract of employment dealing with the definition of "employee" u/s 2(9) of the Employees'' State Insurance Act, 1948. This principal is well defined in General Manager (Works) Straw Products Ltd v. Mohd. Akhtar 1999 III LLJ (Suppl) 227 : (1990) 61 FLR 55 Sum).

25. It is obvious to note here that Schedule 2 of Workmen''s Compensation Act, does not limit the scope of the definition of Workmen given u/s 2(1)(n), but it merely illustrates it. Schedule 2 of Workmen''s Compensation Act relating to Section 2(1)(n), bring the following persons under the ambit of Section 2(1)(n) to define that they are also workmen. Clause (vii)(a) reads as follows;

Any person who is employed for the purpose of, loading, unloading, fueling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or handling or transport within the limits of any port subject to the (Ports Act, 1908 (15 of 1908) and Major Port Trust Act, 1963 (Act 38 of 1963)), of goods which have been discharged from or are to be loaded into any vessel.

Clause (xxvi)(a) reads as follows;

Any person who is employed in the handling or transport of goods in, or within the precincts of,

(a) any warehouse or other place in which goods are stored, and in which on any one day of the preceding twelve months ten or more persons have been so employed, or

(b) any market in which on any one day of the preceding twelve months (fifty) or more persons have been so employed.

26. The definition is required to be interpreted in the light of the object of the Act which is beneficial in character. The Act aims to protect the relatively weaker Section of the society. It''s object is to do social justice and to provide for speedy and cheap forum for the workman and/or his dependants for claiming compensation on. account of unforeseen events (i.e. accident) arising out of and during the course of employment. The Act is required to be interpreted liberally so that the benefits sought to be conferred on the workmen or on the dependants of the workmen reach to them and the same are not lost on account of literal and pedantic approach in interpreting the provisions of the Act.

27. In Narayan v. Southern Railway 1980 I LLJ 359 (Ker) : 1980 ACJ 48 a Division Bench of Kerala High Court, while penning down the judgment has referred the case in Chintaman Rao and Another Vs. The State of Madhya Pradesh, . In this judgment, Hon''ble Mr. Justice SUBBED RAO speaks as follows (Headnote):

The concept of employment involves three ingredients: (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee where under the employee agrees to serve the employer subject to his control and supervision.

28. In another case in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, the Supreme Court, after a review of the case-law on the relationship of employer and employee observed at p. 482 of MLJ:

The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lard Uthwatt at page 23 in Mersey Docks and Harbour Board v. Coggins &, Griffith (Liverpool) Ltd.. The proper test is whether or not the hirer had authority to control the manner of execution of the Act in question.

The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view

that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done (vide observations of SOXNERVELLE, L.J. In Cassidy v. Ministry of Health (1951) 2 K.B. 343 and DENNING, L.J in Stevenson, Jordan and Harrison Ltd. v. Mac Donald and Evans (1952) I TLR 101. The correct method of approach, therefore, would be considered whether having regard to the nature of the work there was due control and supervision by the employer.

29. From the above context, it is made clear that in order to establish the relationship of employer and employee, the prima facie test which is required is the existence of right in the master to supervise and control the work directly done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he shall do the work.

30. On coming to the instant case on hand, even if it is admitted for argument sake that the deceased Palanichamy was employed by a contractor who was alone having, contractual relationship with the Appellant society for the purpose of employing labourers since, the Appellant society is having direct control or a right which is in existence in the Appellant society to have direct control over the work to be done by the employees, the deceased Palanichamy will definitely come under the purview of WORKMAN as defined u/s 2(1)(n) of the Workmen''s Compensation Act, and no doubt the relationship of employer and employee was very well in existence between the Appellant society and the deceased Palanichamy.

31. As adumbrated in paragraph No. 18 of this order, it is concluded that the liability of the sixth Respondent Insurance Company, is limited and hence the sixth Respondent Insurance Company cannot be directed to pay more compensation because its liability is restricted specifically in the policy condition. It is also pertinent to note here that the sixth Respondent Insurance Policy, has not challenged the award passed by the Workmen''s Compensation Commissioner.

32. In condition No. 6, of the policy, it is specifically stated that the name of every employee together with the amount of wages, salary and other earnings shall be properly recorded and the insured shall at all times allow the company to inspect such records and supply the Company with a correct account of all such wages salaries and other earnings paid during any period of Insurance within one month from the expiry date of such period of insurance. If the amount so paid shall differ from the amount on which premium has been paid the difference in premium shall be met by a further proportionate payment to the company or by a refund by the company as the case may be.

33. It is obvious to note here that the condition has not been complied with by the Appellant society. The learned Counsel appearing for the Petitioner while advancing

his arguments as referred in Paragraph 23 of this order, has fairly admitted that the society has not been maintaining any records to show the name and salary details of the coolies engaged by the contractor. When such being the case, it cannot be heard to say that the liability of the sixth Respondent Insurance Company is unlimited, but on the contrary, Exhibit A-7 Workmen''s Compensation Policy, itself would go to show that the liability of the sixth Respondent Insurance Company is restricted.

34. It is also apparent that on the basis of Exhibit A-7 Workmen''s Compensation Policy, the Workmen''s Compensation Commissioner has calculated the monthly salary of the deceased at Rs. 1,500 i. e., Rs. 50 per day and concluded that the sixth Respondent Insurance Company is liable to pay compensation only on that basis. It is obvious that the Respondents 1 to 5 have stated in their claim petition that the deceased was aged about 40 years at the time of occurrence and this has also been considered by the Workmen''s Compensation Commissioner. The Workmen''s Compensation Commissioner has also observed in his order that the Appellant society has not come forward at the time of trial to produce the pay acquittance to substantiate the real monthly salary of the deceased.

35. However, he has also observed that P.W.1 who is the wife of the deceased had stated in her evidence that the deceased was getting a sum of Rs. 5,000/- per men sum. On the basis of her statement, the Labour Commissioner has determined the monthly salary of the deceased at Rs. 4,000/-. Since, the deceased was aged about 40 years at the time of occurrence, as per schedule 4 of Workmen''s Compensation Act, the factor of 184.17, has been adopted by the Workmen''s Compensation Commissioner to arrive at the quantum of compensation. Accordingly, he has arrived at the calculation of Rs. 3,68,340/- towards the compensation (i. e., Rs. 4,000 x 50 x 184.17/100).

36. Since the liability of the sixth Respondent Insurance Company is restricted on the basis of the Workmen''s Insurance Policy, the Workmen''s Compensation Commissioner has apportioned the liability of the sixth Respondent Insurance Company to the extent of Rs. 1,38,127.50 under the following ratio (1,500 x 50 x 184.17/100). He has also determined the liability of the Appellant society at Rs. 2,30,212.50 under the following ratio (Rs. 2,500 x 50 x 184.17/100).

37. Keeping in view of the above circumstances, this Court is of the considered view that the finding of the Workman''s Compensation Commissioner does not require interference of this Court.

38. While admitting the appeal this Court has passed an order on 16.3.2005 in C.M.P. No. 13456 of 2004, stating that the Respondent No. 1, 4 and 5 herein namely; Muthulakshmi, Velappa Gounder and Poonnaiammal are altogether permitted to withdraw a sum of Rs. 80,000/- from and out of the deposited amount without furnishing any security. Further, the Deputy Commissioner of Labour

(Commissioner, Workmen''s Compensation, Salem-7) was directed to invest the balance amount in a nationalised bank initially for a period of three years and renewable thereafter till the disposal of the appeal. Besides this, the mother and guardian of the Respondents 2 and 3 namely Muthulakshmi, was also permitted to withdraw the accrued interest once in three months directly from the bank. Since the award of the Deputy Commissioner of Labour (Commissioner, Workmen''s Compensation, Salem-7) does not require any interference of this Court, the Respondents 1 to 5 (Respondents 2 and 3 represented by the first Respondent being their mother and guardian) are at liberty to withdraw the entire remaining balance.

With this observation, the appeal is dismissed.