

(2010) 03 MAD CK 0238

Madras High Court

Case No: C.M.A. No. 1453 of 2003 and C.M.P. No. 9620 of 2003

Deputy Chairman, Madras Dock
Labour Board now stands
substituted by Chennai Port
Trust

APPELLANT

Vs

Ambabai and Others

RESPONDENT

Date of Decision: March 23, 2010

Citation: (2010) 3 LW 660

Hon'ble Judges: A. Arumughaswamy, J

Bench: Single Bench

Advocate: G. Venkatraman, for Aiyar and Dolia, for the Appellant; K.M. Ramesh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A. Arumughaswamy, J.

The Appellant is the opposite party before the Commissioner for Workmen Compensation No. 1 (Deputy Commissioner of Labour), Chennai.

2. The claimants have filed a claim petition seeking compensation for the death of one Subramani. It is the case of the claimants that the deceased was working as Mazdoor under the opposite party / Appellant. The accident took place on 14.05.1997, during the course of the employment, within the harbour premises.

3. The Opposite party filed a counter stating that the death of the deceased Subramani did not arise during the course of his employment in MDLB nor did it arise out of his employment under this opposite party. Far away from the work spot in the container yard of Container Corporation of India, the deceased was found to be dead. The opposite party came to know about the death of the deceased only on 15.05.1997. Since one Sundar @ Valliyap-pan, who is working as an operator of M/s.

Vikram Associates, is responsible for the accident, the opposite party is not liable to pay any compensation to the claimants. The opposite party prayed for dismissal of the claim petition.

4. After careful perusal of the records and documents, the Deputy Commissioner of Labour awarded a sum of Rs. 1,69,440/- as compensation. Against which the present appeal has been filed by the opposite party.

5. Heard both sides.

6. It has to be incidently noted that when the claimants have issued a notice, the opposite party has not replied it. Thereafter the opposite party filed a petition in I.A. No. 106 of 1999 to implead two other persons, namely, M/s. Vikram Associates Pvt. Ltd., and M/s. Container Corporation of India. The learned Deputy Commissioner of Labour has dismissed the implead petition, holding that the proposed Respondents are not necessary parties to the proceedings. Against which the opposite party has not preferred any Appeal. Under such circumstances, the present Appeal is preferred by the Appellant.

7. The factum of the accident is not in dispute. Paragraph 2 of the counter reads as follows:

2. The Worker by name M. Subramani, Mazdoor No. 4522 was allotted on 14.05.1997 to work under M/s. B.L. Transport handling contractors for shore work i.e., Tub Hooking at the Wharf WQ 2 during the second shift from 2 P.M to 10 P.M. on 14.05.1997.

From this, I am of the view that the deceased was working under the Appellant has been admitted by him.

8. The next question for my consideration is whether the death has occurred during the course of the employment. From the evidence, it is seen that the deceased was sleeping during his working hours, 200 feet away from the work yard in the Port Trust. At that time one Sundar @ Valliyappan, who is an operator of Vikram Associates (the proposed party No. 2 in impleading Petition), has placed the container on the floor without noticing that the deceased was sleeping and it was noticed only on the next day i.e., on 15.05.1997 that the deceased was caught underneath the container and died of crush injuries, sandwiched between the container and the floor. The Deputy Commissioner of Labour, after careful perusal of the oral and documentary evidence, came to a conclusion that for the death of the deceased, one Sundar @ Valliyappan is responsible, who is an operator of M/s. Vikram Associates and the accident must happened only on 14.05.1997 in between 8 and 9 p.m., i.e., during working hours of the deceased.

9. The vehement contention of the Appellant is that once it was proved that one Sundar @ Valliyappan, who is an operator under M/s. Vikram Associates, is responsible for the death of the deceased, the Appellant is not liable to make the

payment. The counsel for the Respondents/claimants contended that the "Theory of Notional (Extension)" have to be applied and admittedly the death occurred only in the port trust, which belongs to the Port Trust of Government of India. It is needless to say that the Port Trust has been divided into parts for the convenience of allotment of work for loading and unloading purpose. As per paragraph 2 of the counter, it is not disputed that the deceased was working at the time of accident and he was working under the Appellant. Of course, the deceased was found to be dead, 200 feet away from the work yard on the negligent act of the Valliappan, who is responsible for the accident. If this fact is replied by way of reply notice by the Appellant at the earliest point, the claimants must have impleaded Vikram Associates also as necessary party in the petition. Anyhow the deceased was working under the Appellant and died in the course of employment due to the negligent act of the operator of M/s. Vikaram Associates. Under such circumstances, even this theory cannot be accepted in the absence of M/s. Vikram Associates, who was the proposed second opposite party in the Impleading Petition before the Deputy Commissioner of Labour. The Appellant has to suffer for his own carelessness i.e., not issuing the reply notice at first instance and not preferring any Civil Revision Petition against the order passed in the Impleading Petition. This Court has no other option except to pass an order against the Appellant. If at all any remedy is available, it is for the Appellant to work out his remedy against M/s. Vikram Associates, subject to the limitation. The amount is very meagre and the calculation is in accordance with law. Except the liability nothing has been agitated.

10. With this observation, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.