

NC: 2025:KHC:33174 MFA No. 7464 of 2019



# DATED THIS THE 23<sup>RD</sup> DAY OF AUGUST 2025 BEFORE

# THE HON'BLE MR. JUSTICE C.M. POONACHA MISCELLANEOUS FIRST APPEAL NO. 7464 OF 2019 (ECA -)

#### **BETWEEN:**

- SMT. LAKSHMI W/O. LATE CHINNASWAMY, AGED ABOUT 42 YEARS,
- 2. KUM. DRAKSHAYINI G.C. D/O. LATE CHINNASWAMY, AGED ABOUT 19 YEARS,
- KUM. G.C. ROOPINI,
   D/O. LATE CHINNASWAMY,
   AGED ABOUT 17 YEARS,
- 4. KUM. G.C. SUKANYA, D/O. LATE CHINNASWAMY, AGED ABOUT 15 YEARS,
- 5. MASTER G.C. SATISHA, S/O. LATE CHINNASWAMY, AGED ABOUT 13 YEARS,

NO.3 TO 5 ARE MINOR REPRESENTED BY THEIR NATURAL GUARDIAN AND MOTHER SMT. LAKSHMI ALL ARE RESIDENCE OF AMBEDKAR STREET, GANGAVADI VILLAGE, YERAGAMBALLI POST, TELANDUR TALUK, CHAMARAJANAGAR DISTRICT.

...APPELLANTS

(BY SRI. GOWTHAMDEV C. ULLAL, ADVOCATE)

#### **AND:**

 BANGALORE METRO RAIL CORPORATION, REPRESENTED BY ITS DIRECTOR,





AT 3<sup>RD</sup> BMTC COMPLEX, KH ROAD, SHANTHINAGAR, BANGALORE-560 027.

2. CANON DETECTIVE AND SECURITY SERVICE, REPRESENTED BY ITS MANAGING DIRECTOR, AT NO.11,  $5^{TH}$  MAIN,  $7^{TH}$  CROSS, AVALAHALLI, BDA PARK, GIRINAGAR, BSK  $3^{RD}$  STAGE, BANGALORE.

ALSO AT NO.1566,  $9^{TH}$  CROSS, AVALAHALLI MAIN ROAD, MUNESHWARA BLOCK, BANGALORE.

 M/S. GYT-COASTAL JV, MAJESTIC SITE OFFICE, NEAR KSRTC BUS STAND, BANGALORE-560 009.

...RESPONDENTS

(BY SRI HARISH N.N., ADVOCATE FOR R1; SMT. GEETHA MISRA, LEGAL AID ADVOCATE FOR R2; VIDE ORDER DATED 14/08/2023 SERVICE OF NOTICE TO R3 IS HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 30(1) OF WORKMEN'S COMPENSATION ACT, 1923 PRAYING TO MODIFY THE JUDGMENT AND DECREE DATED 26.06.2019 PASSED BY THE COURT OF THE IX ADDITIONAL SMALL CAUSES AND ADDITIONAL MACT BANGALORE (SCCH-7) IN E.C.A. NO.144/2014 DIRECTING ALL THE RESPONDENTS TO PAY COMPENSATION TO THE APPELLANTS JOINTLY AND SEVERELY BY ALLOW THE APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 25.07.2025 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE C.M. POONACHA



### **CAV JUDGMENT**

The present appeal is filed by the claimants under Section 30(1) of the Employees Compensation Act,  $1923^1$ (formerly known as Workmen's Compensation Act, 1923) challenging the judgment dated 26.06.2019 passed in ECA No.144/2014 by the IX Additional Small Causes Judge and XXXIV ACMM, Court of Small Causes, Member MACT-7, Bengaluru (SCCH-7)<sup>2</sup>, whereunder the Tribunal has partly allowed the claim made by the legal representatives of one Chinnaswami<sup>3</sup> under Section 22 of the Act and awarded compensation of ₹11,576/- together with interest @ 12% per annum and directed the respondent No.2-Canon Detective and Security Services<sup>4</sup> to pay the compensation awarded while dismissing the petition as against respondent No.1-Bangalore Metro Rail Corporation<sup>5</sup> and Respondent No.3-M/s.GYT-Coastal JV<sup>6</sup>.

<sup>1</sup> Hereinafter referred to as 'the Act'.

<sup>&</sup>lt;sup>2</sup> Hereinafter referred to as 'the Tribunal'

<sup>&</sup>lt;sup>3</sup> Hereinafter referred to as 'deceased'

<sup>&</sup>lt;sup>4</sup> Hereinafter referred to as 'Canon'

<sup>&</sup>lt;sup>5</sup> Hereinafter referred to as 'BMRCL'

<sup>&</sup>lt;sup>6</sup> Hereinafter referred to as 'Coastal'



- 2. For the sake of convenience, the parties are referred to as per their rank before the Tribunal.
- 3. The relevant facts in nutshell leading to the present appeal are that, claiming compensation for the injuries sustained in the incident dated 20.01.2012, the deceased filed a claim petition under Section 22 of the Act contending, inter-alia, that while he was on duty on 20.01.2012, at 7.00 p.m., at Metro Station work compound at the KSRTC Bus stand, Majestic, Bengaluru, three unknown persons attacked the deceased with deadly weapons and caused grievous injuries. The deceased was employed by the respondent No.2-Canon as a security guard from 07.11.2011 on a salary of ₹7,500/- per month. The respondent No.2-Canon had supplied security personnel to respondent No.3-Coastal for looking after security arrangements. The respondent No.1-BMRCL had entrusted the work of putting up construction in the Metro Station at Majestic, Bangalore to the respondent No.3-Coastal. That the deceased was appointed as a security quard to take care of the construction material that was kept by the respondent No.3-



Coastal in the process of execution of the construction works of the Metro Station compound, which construction it had undertaken pursuant to its agreement with respondent No.1-BMRCL.

- 4. The respondents 1 to 3 entered appearance in the claim proceedings and have filed separate statement of objections contesting the case of the claimant.
- 5. During the pendency of the claim proceedings, the deceased died on 31.10.2016, consequent to which his wife and children have come on record as claimants 1 to 5 in the said claim proceedings and prosecuted the same.
- 6. The deceased was examined as PW1, a doctor as PW2 and wife of the deceased as PW3. Exs.P1 to P17 have been marked in evidence. The representative of respondent No.2-Canon has been examined as RW1. The representative of respondent No.1-BMRCL has been examined as RW2 and the representative of respondent No.3-Coastal has been examined as RW3. Exs.R1 to R3 have been marked in evidence. The Tribunal by its judgment dated



26.06.2019 has partly allowed the claim petition as stated above. Being aggrieved, the present appeal is filed by the claimants.

7. Learned counsel Sri.Goutamdev C Ullal, appearing for the appellants/claimants, assailing the judgment of the Tribunal vehemently contends that the Tribunal erred in awarding a meager sum of ₹11,576/- together with interest @ 12% per annum by taking into consideration the say of the respondents that the deceased had the benefit of Employee's State Insurance<sup>7</sup>. It is further contended that the deceased had sustained grievous injuries in the incident which took place on 20.01.2012 wherein he sustained quadriplegia sensory loss of upper and lower limbs caused. That due to the injuries sustained in the incident, he ultimately died on 31.10.2016, consequent to which his legal representatives have come on record. Hence, it is contended that the compensation ought to be awarded in terms of Section 4 of the Act. It is further contended that the respondents are jointly and severally liable to pay the

<sup>7</sup> Hereinafter referred to as 'ESI'



compensation awarded. Hence, he seeks for allowing the present appeal and granting of the reliefs sought.

- 8. contra, learned counsel Sri.N.N.Harish, Per appearing for the respondent No.1-BMRCL contends that the respondent No.1 was not the principal employer, having regard to the fact that the deceased was not employed either by respondent No.1 or by the contractor of respondent No.1 i.e., respondent No.3-Coastal. It is also contended that the respondent No.1 is not involved in the business of construction and the activity of construction having been contracted to the respondent No.3, who in turn availed the services of the deceased through respondent No.2-Canon and that too for the purposes of safeguarding the construction materials, at best the respondent Nos. 2 and 3 are jointly and severally liable to pay the compensation that may be awarded in the present claim proceedings.
- 9. Learned counsel, Smt.Geeta Mishra, who was appointed as a legal aid counsel to represent respondent No.2, points out to various inconsistencies in the case put



forth by the claimants and contends that the claim petition itself is liable to be rejected.

- 10. Respondent No.3-Coastal is served and unrepresented.
- 11. The submissions of the learned counsel have been considered and the material on record, including the records of the Tribunal, has been perused. This Court vide order dated 21.11.2023 has admitted the above appeal. Hence, the following substantial questions of law arise for consideration:
  - i) Whether the Tribunal was justified in awarding only a sum of ₹11,576/- while partly allowing the claim petition?
  - *ii)* Whether the claimants are entitled to enhancement of compensation?
  - iii) Whether the respondents 1 to 3
    are jointly and severally liable to
    pay the compensation awarded as
    contended by the appellants/
    claimants?



# Regarding Question No.(iii):

- 12. Since the primary contention that has been addressed by the contesting parties in the above appeal is with regard to the aspect of liability and the substantial question of law No.(iii) has been framed in that regard, it is just and proper that the same is taken up for consideration before considering the aspect of quantum.
- 13. The claim petition was filed by the deceased, claiming compensation for the injuries sustained by him in the incident, which occurred on 20.01.2012 at about 7.00 p.m. It is the case of claimant that when he was on duty on the said date at the Metro Work Compound, KSRTC bus stand, Majestic, Bengaluru city, three unknown persons attacked him with deadly weapons with an intention to commit robbery at the work site, whereunder, the deceased sustained grievous injuries to his head and spinal cord.
- 14. It is forthcoming that the respondent No.1-BMRCL had contracted with the respondent No.3-Coastal to carryout construction activity at Majestic, Bengaluru. The respondent



No.3-Coastal, who was carrying out the construction activity, as entrusted by the respondent No.1-BMRCL, contracted with the respondent No.2-Canon for providing security service personnel. Accordingly, the deceased, who was employed by the respondent No.2-Coastal, was posted to work at the site of the construction that was being carried out by the respondent No.3-Coastal, which was at the Metro Work Compound at the KSRTC bus stand, Majestic, Bengaluru.

15. The claimant (who subsequently died) was examined as PW.1, wherein he deposed that he sustained injuries to the spinal cord and was shifted to NIMHANS hospital for treatment. Further it is deposed that he would never recover to normal life and is in a vegetative state unable to attend the basic necessities without any help from other persons. It is evident from the discharge summaries (Ex.P1/three number) that the claimant was treated as an inpatient at the Department of Neurosurgery, NIMHANS from 22.01.2012 to 26.01.2012, wherein, it is noticed that he has weakness in all the four limbs. He was diagnosed as having developed Quadriparesis (flaccid) and was evaluated and



diagnosed with cervical spine injury. He was treated as an inpatient at Victoria Hospital, Bengaluru from 27.01.2012 to 01.02.2012, wherein, he was diagnosed with Traumatic Cord Contusion of C5-C6. He was treated as an inpatient at NIMHANS from 07.04.2012 to 13.04.2012 wherein it was noticed he had weakness of all four limbs and that there was subluxation (partial dislocation) of C3-C4 as well as chip fracture of C4 of the vertebra; spinal cord contusion and other injuries. The Urodynamic Evaluation Report (Ex.P2) issued by NIMHANS discloses that the original claimant/deceased sustained traumatic quadriplegia. The admission record of NIMHANS (Ex.P12) also discloses the treatment taken by the original claimant/deceased. PW2-Doctor has deposed that there was no improvement of weakness of the upper and lower limbs and sensory loss of the deceased.

16. An interlocutory application under Order XXII Rule 3 r/w Section 151 of CPC was filed in the claim proceedings by the wife and children of the deceased to come on record as claimants contending, *inter alia*, that the



deceased died on 31.10.2016. The Tribunal vide its order dated 03.12.2016 allowed the said application and permitted the wife and children of the deceased to come on record and pursue the claim proceedings.

- 17. The wife of the deceased, who has subsequently come on record as claimant No.1 was examined as PW3 wherein she has deposed that she and the claimants 2 to 5, who are the children of the deceased, have come on record as the claimants after the death of the deceased on 31.10.2016. It is further deposed that the death was due to the injuries sustained in the incident.
- 18. It is clear from the testimony adduced by the claimants that as a result of the incident, the original claimant/deceased sustained quadriplegia and had weakness of all four limbs of the body as also suffered various other medical complications. That due to the injuries sustained in the incident, the deceased died.
- 19. The respondent No.2-Canon, who had employed the deceased, in the statement of objections, has denied the



averments made in the claim petition and denied its liability to pay the compensation. It was further averred that the respondent No.2-Canon had insured the deceased under ESI and that a sum of ₹600/- was deducted from his salary towards insurance and provident fund. The ESI number of the deceased was also mentioned in the statement of objections. The representative of respondent No.2-Canon was examined as RW1 wherein it is deposed that the deceased was being paid a salary of ₹7,500/- per month and was deputed to work with the respondent No.1-BMRCL. It was further deposed that the deceased was insured with the ESI and a sum of ₹600/- was deducted from his salary towards insurance and provident fund. That the deceased had worked with respondent No.2-Canon from 07.11.2011 to 20.01.2012 for 2½ months and he has not completed 280 working days in a year.

20. Vide letter dated 19/27.11.2014 (Ex.P10) the ESI Corporation has intimated the deceased that he has been shown as 'unattached employee' in their records. Further it was intimated that for verification of the eligibility of the



deceased for benefits, the details of the employer were required to be furnished.

- 21. The letter dated 20.01.2015 (Ex.P11) discloses that the ESI Corporation had intimated that the deceased has not been issued a 'Pehchan Card'. It is further informed that he is eligible for medical benefit from 01.01.2013 to 30.06.2013, if he has continued employment after 01.10.2012, he is not entitled for cash benefit after 30.09.2012, as also not eligible up to 30.06.2013 since he has not contributed for 78 days in the contribution period ending 09/2012. It is further intimated that the deceased is not entitled for any benefits from 01.07.2013.
- 22. It is clear that although respondent No.2-Canon has taken a specific defence that the deceased was registered with the ESI, no benefits have been paid by the ESI to the original claimant/deceased towards treatment of his injuries or towards his death.
- 23. The respondent No.3-Coastal, in its statement of objections to the claim proceedings, has merely stated that



there is no employer-employee relationship between it and the deceased. The other averments in the claim petition have been denied. It is further specifically averred that pursuant to the work order submitted by the respondent No.3-Coastal to the respondent No.2-Canon, security service personnel were provided by the respondent No.2-Canon to the respondent No.3-Coastal subject to the terms and conditions of the work order consequent to which the deceased was deputed to work as per the instructions of the respondent No.3-Coastal. The representative of respondent No.3-Coastal has been examined as RW3 wherein he has reiterated the averments made in the statement of objections.

24. The respondent No.1-BMRCL, in its statement of objections, has averred that the claim petition against the said respondent is not maintainable and is liable to be rejected as the said respondent is not a necessary party. It is further specifically averred that the respondent No.2-Canon has entered into an agreement with the respondent No.3-Coastal, who is the principal employer for providing security personnel for manning and looking after the security



arrangement vide agreement dated 23.02.2012. That the respondent No.2-Canon has indemnified respondent No.3 from all legal, labour, workmen (security guards) related issues arising out of the agreement. That the respondent No.1-BMRCL is not a party to the said agreement and hence, is not liable for any liability for their employees. The representative of the respondent No.1-BMRCL has been examined as RW2 and the averments made in the statement of objections have been reiterated. However, it is admitted by RW2 that only a photocopy of the agreement dated 23.02.2012 has been produced and the original/attested/true copy of the said agreement has not been produced.

25. It is the contention of the appellants-claimants that the deceased having initially sustained injuries in the accident dated 20.01.2012, and subsequently, the deceased having died on 31.10.2016 due to the injuries sustained in the accident compensation is required to be awarded by taking the monthly income of the deceased and applying the relevant factor as per the Schedule to the Act. It is further



contended that respondents are jointly and severally liable for payment of compensation.

- 26. It is the primary contention of the respondent No.1-BMRCL that the deceased having been employed by the respondent No.3 through the respondent No.2-contractor, in the event of any compensation being awarded to the claimants, the same is payable by the respondent Nos.2 and 3. The respondent No.1 not having employed the deceased and not being a contractor of respondent No.2, ought not to be fastened with the liability to pay the compensation awarded.
- 27. With regard to the aspect of liability, it is necessary to notice Section 12 of the Act which reads as follows:
  - "12. Contracting.- (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any \*[employee] employed in the execution of the work any compensation which he would have been liable to pay if that \*[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act



shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the \*[employee] under the employer by whom he is immediately employed.

- (2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the \*[employee] could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the \*[employee] could have recovered compensation] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.
- (3) Nothing in this section shall be construed as preventing a \*[an employee] from recovering compensation from the contractor instead of the principal.
- (4) This section shall not apply in any case where the accident occurred elsewhere that on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management."
- 28. A co-ordinate Bench of the Delhi High Court in the case of **Shri.Krishan vs. Jasoda Devi**<sup>8</sup>, while noticing the liability of a principal under Section 12 of the Act, as also considering the interpretation of the words "Trade" and a "Business", after noticing various judgments in that regard has held as follows:

# 43. Summary of Principles

43.1. <u>The Employees' Compensation Act,</u> 1923 is a piece of social beneficial legislation

<sup>&</sup>lt;sup>8</sup> 2017 SCC OnLine Delhi 11137



and its provisions have to be interpreted in a manner so as not to deprive the employees of the benefit of the legislation.

- 43.2. The object for enacting the Employees' Compensation Act even as early as 1923 was to ameliorate the hardship of economically poor employees who were exposed to risks in work, or occupational hazards by providing a cheaper and quicker machinery for compensating them with pecuniary benefits.
- 43.3. Section 12 safeguards the right to compensation when the employer delegates the work to another person. Section 12 is intended to secure to an employee the right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor, but also against the person who had employed such contractor to execute the work. The Act refers to him as the principal.
- 43.4. The main object of enacting Section 12 of the Act is to secure compensation to the employees who have been engaged by the principal employer through the contractor for the work which the principal employer is supposed to carry out by his own employees. If a person substitutes another for himself to do his work, he ought not to escape the liability which would have been imposed upon him, if he had done it himself.

43.5. XXXX

43.6. XXXX

43.7. XXXX

43.8. <u>Section 12 shall apply even in cases of several tiers of employers or petty contractors.</u> It is a matter of common knowledge that contractors in turn employ other petty contractors working under their



direction and an employee may be actually employed by one of these aforesaid persons and in such a case, there may be no direct privity of contract between the principal and the employee in the last analysis. The employee has, for all practical purposes to deal with an immediate employer but when it comes to lodging a legal claim for compensation on account of an accident, he is concerned with the principal employer and not the immediate employer qua the employee.

- 43.9. In case of the multiplicity of immediate and indirect or remote employers/contractors, Section 12 relieves an employee of the difficulty of ascertaining with precision as to who should be deemed to be the actual employer liable for compensation under the Act. The purport of Section 12 is to create a deemed employeremployee relationship between the principal employer and the employee of the immediate employer who is brought in by the principal employer as his contractor.
- 43.10. Section 12 secures compensation to the employee who cannot fight out his battle for compensation by a speedy process. A person who employs others to advance his own interest is expected to provide a surer basis for payment of the injured employee than the intermediary, who may often turn out to be a man of straw, from whom compensation may not be available. This is the purpose for which the claimant is given the option under section 12(3) of the Act to claim the compensation either from the principal or from the contractor.
- 43.11. The contractor may not be a man of means or he may be merely a man of straw or it may be that wittingly or unwittingly he may possibly be part of an arrangement



the principal conceived by to avoid confrontation directly with the employee engaged in the execution of the work. In either case, the interests of the employee need to be protected and that is what the provision secures to the employee. The principal can seek indemnification from the contractor if he has been made answerable for the payment of compensation. The right of the principal to be indemnified has thus been incorporated under Section 12(2), who has entrusted the work to the contractor stipulating the right of indemnification under the Act.

43.12. Section 12 of the Act gives protection to the employee in case of an accident and secures compensation from the persons who can pay, so that such employee will not be dependent upon a petty contractor(s) who may themselves not be able to pay compensation on account of their financial inability.

#### 43.13. XXXX

43.14. The words "trade" or "business" used in Section 12 of the Act have to be understood in the context in which this Act was enacted. The Act was enacted to provide compensation to the employees suffering during the course of their employment. It was also the purpose of the Act that employees should get speedy remedies and it appears that the intention of enacting the Section 12 of the Act was only to ensure that compensation is paid by the principal expeditiously and if this purpose of the Act and the provision are kept in mind, then the words "trade" or "business" may not have the same meaning which it would have, for instance, when used in interpreting a taxing statute.



43.15. XXXX

43.16. XXXX

43.17. The word "trade" connotes commercial activity whereas word "business" is of much wider import and may be used in different contexts in different senses. Used in one context, it may imply a particular occupation or employment to earn livelihood or gain, whereas used in a different context it may mean an activity which engages time, attention, or labour as a principal serious concern or interest. Its connotation may thus vary with the varying contexts in which it is used. In taxing statutes for instance, word "business" will alwavs denote an activity carried out with the object of earning profit, though the same may not be true when used in relation to other activities. Used in broader sense, a person building his residential house or а Government constructing a road, may well be said to do "business" in so far as the said activity engages his or its time, attention or labour as principal serious concern or interest.

43.18. The meaning of these two crucial words in Section 12 has to be understood in context of its object. the The word "business" in the Section need not be restricted what to is svnonvmous with "trade". The use of the conjunction 'or' should be understood as disjunctive for covering totally different areas unconnected with "trade". The word "business" has different shades of meanings. Among them, the most suitable in the present context is that which "The Oxford Advanced Learners Dictionary of Current English" has given as its third meaning: "Task, duty, concern or undertakina to do work". а word "business" in its wider connotation may have more extensive meaning than the



word "trade". Lord Jessel M.R. in Smith v. Anaerson, 1880 15 Ch D 247, meaning of "business" as stressed the "anything which occupies the time and attention and labour of a man for the purpose of profit". Some succinct illustrations have also been given in the said dictionary to drive the meaning home. They are: "It is a teacher's business to help his pupils; I still make it my business to see that money is paid promptly; that is no business of yours". In none of the illustrations, the word "business" is used to denote anything connected with trade or commerce. The word "business" used in Section 12 of the Act has been intended to convey the meaning "the work or task undertaken by the person concerned" which is not restricted to trade or commercial work alone.

(emphasis supplied)

29. A Division Bench of Kerala High Court in the case of *Vijayaraghavan Vs.Velu and another*<sup>9</sup> relied upon by the learned counsel for respondent No.1, while considering the scope and applicability of the Section 12 of the Act, held as follows:

"A reading of the above provision discloses that in order that a person can be made liable to pay compensation to a workman not engaged by him the following essentials must be satisfied:

(i) That person (called the principal) is carrying on a trade or business and in the course of or for the

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<sup>&</sup>lt;sup>9</sup> 1972 SCC Online Ker 148



purpose of that trade or business engages a contractor to execute the work.

- (ii) <u>That work is ordinarily a part of the trade or business of the principal.</u>
- (iii) The accident which gives rise to the liability for compensation must have occurred on, in or about the premises on which the principal has undertaken or usually undertakes to execute the work or which is in his control or management.
- (iv) The accident must have occurred while the workman was in the course of his employment in executing the work".
- 3. In this case essentials (i) and (iv) are clearly satisfied. The question is whether the other essentials are satisfied in this case. Essential (ii) condition contemplated by the section is that the person must have engaged a sub-contractor for work which he himself normally does and which is ordinarily part of his business. The work given on contract may be a work on his own account or on account of another. But, it must be such a work as a person employing a sub-contractor usually undertakes in the ordinary course of his trade or business. The principle behind this is that if a person substitutes another for himself to do that which is his own business he ought not to escape the liability which would have been imposed upon him if he had done it himself towards the workmen employed in the business.



(emphasis supplied)

30. In the case of *Air India Charters Ltd., Vs. Miss Tanja Glusica and others*<sup>10</sup> relied upon by the learned counsel for the appellant, a co-ordinate bench of the Bombay High Court was considering a fact situation wherein the deceased was a pilot who was hired by the appellant/airline through a contractor and the said pilot/employee having died during the course of his employment, the High Court while considering a challenge made to the award of compensation made by the Commissioner, after noticing Section 4A and Section 12 of the Act, upheld the judgment of the Commissioner which fastened the liability on the appellant therein to pay a compensation together with interest.

31. A co-ordinate Bench of Andhra Pradesh High Court in the judgment dated 29.07.2022 passed in the case of **A.P. GENCO, RTPP v. Y.Devanandam**<sup>11</sup> relied upon by the learned counsel for the appellants while considering an appeal challenging an award passed in a claim made under

<sup>&</sup>lt;sup>10</sup> First Appeal No.1854/2013 of Bombay High Court

<sup>&</sup>lt;sup>11</sup> CMA No.1493/2008



the provisions of the Act, in a fact situation wherein an employee was hired by a contractor, noticing the contention put forth by the principal employer, held that the Act is a "piece of social beneficial legislation and its provisions have to be interpreted in a manner as not to deprive the employees of the benefit of the legislation." It was further held that the object of the Act was "to ameliorate the hardship of economically poor employees who are exposed to risks in work or occupational hazards........". It was also noticed that "Section 12 is intended to secure the employee, the right to claim compensation not only against his immediate employer who, in the Act, is referred to as a contractor but also against the person who had employed such contractor to execute the work".

32. A co-ordinate bench of this Court in the case of **Chief Secretary Vs. Sadeppa Lareppa Harijan**<sup>12</sup> relied upon by the learned counsel for the appellants while considering an appeal filed by the Zilla Panchayath, Belagavi challenging an award made in claim proceedings filed under

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<sup>&</sup>lt;sup>12</sup> MFA NO.24096/2010 c/w MFA No.24095/2010



the Act, noticing a fact situation wherein two workers/employees were employed under a contractor for employment in the implementation of a scheme, after noticing Section 12 of the Act, held as follows:

"10. The above provision defines the persons who are treated as employers for the purpose of fastening liability to pay the compensation. For instance, in this case, the accident occurred while the project was being executed for the Jala Nirmala Yojana, which is a project for the benefit of the appellant herein. However, the appellant was not executing the project by employing workmen directly. It is the say of the appellant that it had entered into an agreement for the execution of work with respondent No.5 whose primary task was to execute the project by hiring necessary workmen as well as commanding necessary machineries. The provisions of Section 12 of the Act noted hereinabove clearly presupposes execution of the works either directly by the beneficiary or through the agency of a contractor and in both the events, the employees who suffered injuries in employment related accidents are entitled to proceed against the beneficiary of the project or against the contractor commissioned by the beneficiary (Principal), who has directly employed such workmen. Sub Section 2 of Section 12 of the Act



is explicit in saying that once existence of such an agreement for execution of the project through a contractor is proved, the principal who has paid compensation arising from claims pertaining to employment related accident has the right to be indemnified from a contractor who has employed such workmen. Such claims for indemnification as between the principal and contractor should be adjudicated by the Employee's Compensation Commissioner.

(emphasis supplied)

33. Having regard to the fact situation as well as the legal position as noticed above, it is pertinent to note that the deceased was admittedly employed by the respondent No.2 who had entered into a contract with the respondent No.3 for supply of security personnel who were required to be deployed at the premises where the respondent No.3 was carrying on its business activity. Admittedly, the respondent No.3 was awarded a contract for putting up construction at the Metro Station Premises at Majestic, Bengaluru, by the respondent No.1-BMRCL. The deceased was deployed as per the instructions of the respondent No.3 to guard the



construction material at the work site of the respondent No.1.

34. While it is the contention of the appellants/claimants that all the respondents are jointly and severally liable to pay the compensation having regard to the admitted position that the deceased was working at the site of the respondent No.1-BMRCL, it is the vehement contention of the learned counsel for the respondent No.1 that the respondent No.1 was in the business of construction and operation of Metro Rail Services in the city of Bengaluru. That the respondent No.1 is not in any manner involved in any construction activity and that the said construction activity was contracted by the respondent No.1 to the respondent No.3 for the purpose of putting up construction of Metro Station in the premises of the respondent No.1. Hence, it is contended that the act of the respondent No.1 in contracting work to the respondent No.3 is not to substitute itself in a business carried out by it in the ordinary course of trade/business.



- 35. In this context, it is pertinent note here that the respondent No.1 has not placed on record the agreement that it has entered into with the respondent No.3. Further, neither the respondent No.3 nor the respondent No.2 have placed on record the agreement entered into between them for supply of security personnel. Although, it is forthcoming from the statement of objections of the respondent No.1-BMRCL that it has averred that the respondent No.3 had entered into a security arrangement vide agreement dated 23.02.2012, none of the parties to the claim proceedings have placed on record a copy of the agreement.
- 36. The object of the Act, as has been noticed in the case of *Shri.Krishan*<sup>8</sup> while interpreting Section 12 of the Act, in a fact situation wherein "several tiers of employers or contractors" are employed has been considered as also the meaning and purport of words "trade or business" and it has been held that in a fact situation where the principal employer has entrusted work to a contractor, who has in turn sub-contracted the work to another contractor, the principal employer will be liable for the claim and is entitled



to recover the amount from the person to whom he has contracted the work. The words "trade or business" has also been interpreted to mean any work which has been entrusted by the principal employer. The said interpretation has been made to after noticing various judgments of the Hon'ble Supreme Court as well as other Courts as also keeping in mind the object of the Act and the same is required to be adopted in the present case also.

- 37. The reliance placed by the learned counsel for the respondent No.1-BMRCL on the judgment in the case of **Vijayaraghavan**<sup>9</sup> will not aid the case of the respondent No.1-BMRCL since in the said case, the interpretation of the "work" has been restricted to mean the work carried out in the ordinary case of trade or business of the principal employer. Such an interpretation would not be inconsonance with the object and purport of the Act.
- 38. In the present case, admittedly, the respondent No.1-BMRCL has entrusted the work of putting up construction to respondent No.3-Coastal, who has in turn contracted with respondent No.2-Canon for supply of



security personnel to guard the construction material at the spot/place of construction, which is admittedly the property/premises respondent of No.1-BMRCL. The respondents have not placed on record the agreements entered into amongst them, inter se, vis-à-vis the nature of entrustment of work. In any event, having regard to plain reading of the provisions of the Act, it is required to be held that the respondents are jointly and severally liable to pay the claim of the claimants. In the event the compensation so paid by respondent No.1-BMRCL, it is at liberty to recover the amount paid by it from respondent No.3-Coastal, as also respondent No.3-Coastal is entitled to recover any amount paid by it from respondent No.2-Canon. Hence, the substantial question of law No.(iii) is answered in the 'affirmative'.

# Regarding Question No.(i):

39. The Tribunal while considering the claim of the claimants, noticed that respondent No.2-Canon had taken a contention that it has registered the deceased with ESI and



hence, has held that the claimants are only entitled to a sum of ₹11,576/-. In the present case, although it has been asserted by respondent No.2-Canon that membership of ESI has been taken in the name of the deceased and the employee number has been furnished, it is relevant to note that the claimants have produced the correspondence that they have done with ESI authorities as Ex.P10 and 11, which clearly indicates that the claimants have not received the benefit under the ESI. Hence, the finding of the Tribunal that the claimants are only entitled to a sum of ₹11,576/- is erroneous and liable to be interfered with. The claimants are entitled to compensation in terms of Section 4 of the Act. Hence, the question No.(i) is answered in the 'negative'.

# Regarding question No.(ii):

40. The Tribunal while noticing the injuries sustained by the deceased has recorded a finding that the claimants have not produced any documents to show that the deceased died due to injuries sustained by him during the course of his employment.



- It is pertinent to note here that, as has been 41. noticed herein above, due to the incident and the injuries sustained therein, the deceased who was the original claimant had sustained quadriplegia and had weakness of all four limbs of body as also suffered various other complications. It is further noticed that there was no effective improvement condition of in the the deceased/original claimant, as a result of which, he died on 31.10.2016. It is clear from the material on record that the deceased died due to the injuries sustained in the incident and is entitled to compensation as per Section 4 of the Act.
- 42. The finding of the Tribunal that the claimants have not proved that the deceased died due to the injuries in the incident is erroneous and is interfered with.
- 43. As per Section 4A of the Act, the amount equal to 50% of the monthly wages of the deceased has to be multiplied by the relevant factor. In the present case, it has been averred/deposed on behalf of respondent No.2-Canon that the deceased was being paid a salary of ₹7,500/- per



month. 50% of the said amount i.e., ₹3,750/- has to be multiplied by relevant factor as per Schedule-IV of the Act. The deceased was aged 45 years as on the date of the incident i.e., on 20.01.2012 as averred in the claim petition and died on 31.10.2016. Hence, the deceased was aged 49 years as on the date of his death. Accordingly, the compensation payable to the deceased is  $[₹3,750 \times 156.47]$  (relevant factor)] = ₹5,86,762.50/-.

- 44. The claimants have claimed medical expenses of ₹1,576/-, which is required to be awarded. Hence, the total compensation payable to the claimants is (₹5,86,762.50 + ₹1,576) ₹5,88,338.50/-.
- 45. Under Section 10A of the Act, the employer is required to deposit the compensation, in the case of death of an employee within 30 days being notified of the same. In the present case, the claim petition was initially filed by the deceased seeking compensation for the injuries sustained in the incident. Thereafter, during the pendency of the claim proceedings the original claimant died on 31.10.2016. Till



date no compensation amount has been deposited by the respondents either with regard to injuries or death and neither the original claimants nor his legal representatives i.e., the present appellants received any compensation with regard to the injuries sustained by the deceased or his death.

- 46. In view of the same, it is just and proper that the compensation determined be paid along with interest at 12% p.a. from the date of death 31.10.2016 up to the date of payment. The question No.2 framed for consideration is answered in the affirmative.
  - 47. In view of the aforementioned, the following:

#### **ORDER**

- i) The appeal is **allowed**.
- ii) The judgment and award dated 26.06.2019 **ECA** passed in No.144/2014 by the IX-Additional Small Causes Judge and XXXIV ACMM, Court of Small Causes, Member MACT-7, Bengaluru (SCCH-7) is modified to



the extent of holding that the claimants are entitled to a total compensation of ₹5,88,338.50/- together with interest @ 12% per annum from 31.10.2016 till the date of payment. It is further ordered that the respondent Nos.1 to 3 shall be jointly and severally liable to pay the compensation together with accrued interest.

- iii) The respondent No.1-BMRCL is at liberty to recover any amount paid by it from respondent No.3-Coastal and respondent No.3-Coastal is at liberty to recover any amount paid by it from respondent No.2-Canon.
- iv) From out of the total compensation awarded, appellant No.1/claimant No.1 shall be entitled to 40% of the compensation together with accrued interest and appellant No.2 to 5/claimant No.2 to 5 each shall be entitled 15% of the compensation together with accrued interest.
- v) Out of the amount awarded to the appellant No.1/claimant No.1, 50%



disbursed shall be in favour appellant No.1/claimant No.1 by way of remittance to the bank account of claimant No.1 on due identification and remaining 50% shall be kept in a fixed deposit in any nationalized bank of the choice of the appellant No.1/claimant No.1 for a period of three years, upon expiry of which period, the amount together with interest accrued shall be paid to the appellant No.1/claimant No.1 by way of remittance to the bank account of appellant No.1/claimant No.1 without any further orders in that regard from the Tribunal or this Court.

vi) The amount payable to the appellant No.2 to 5/claimant No.2 to 5 shall be kept in a fixed deposit in any nationalized bank of the choice of the appellant Nos.2 to 5/claimant Nos.2 to 5 till they attain the age of majority and upon attaining majority, the said amount shall be disbursed to the said claimant Nos.2 to 5 by way of remittance to their respective bank accounts, on due identification, without



further orders from this Court or the Tribunal in that regard. However, the appellant No.1/claimant No.1 shall be entitled to draw the periodical interest accruing on the said fixed deposits standing in the names of appellant Nos.2 to 5/ claimants Nos.2 to 5.

vii) The judgment and award dated 26.06.2019 passed in ECA No.144/2014 passed by the Tribunal shall stand modified in the above terms.

Sd/-(C. M. POONACHA) JUDGE

YAN para 1 to 10 & 34 to end PMP para 11-13 YAN para 14-21 HMB para 22-33 List No.: 19 SI No.: 1