

**THE HON'BLE MRS JUSTICE ANIS**

**C.M.A. No.4083 OF 2003**

**JUDGMENT:**

This appeal is filed by the appellants/ claimants under Section 30 of Workmen's Compensation Act, 1923 (for short 'the W.C. Act'), aggrieved by the dismissal order dated 19.09.2002, passed by Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Guntur-I, Guntur in W.C.M.P. No.17 of 2002.

2) The appellants/ petitioners filed M.V.O.P. No.364 of 1998 before the Principal District Judge, Guntur before the MACT, for compensation on 21.05.1998 and the same was dismissed on 27.12.2001.

3) For the sake of convenience, the parties hereinafter will be referred to as they were arrayed in the Original Petition.

4) W.C.M.P. No.17 of 2002 is filed to condone the delay of 728 days in filling the appeal, on the ground that the original petition for compensation for the death of son of appellants/ petitioners by name Yesupogu Kanakambaram in a motor accident occurred on 13.04.1998 during the course of his employment as cleaner of lorry bearing No.AP 22 4093 was filed mistakenly before the MACT instead of the Commissioner for workmen's Compensation Act. Therefore, the delay of 728 days is occurred and there are no latches on the part of the petitioners/ appellants.

5) On the other hand, learned counsel for respondents contended that there are no valid or tenable grounds to allow the application as the appellants filed M.V.O.P. No.364 of 1998 before the Principal District Judge, Guntur for compensation. The said case was dismissed on 27.12.2001 on the ground that the deceased was a cleaner of AP 20T 4093. After dismissal of M.V.O.P. No.364 of 1998, suppressing the above facts, they filed W.C.M.P. No.17 of 2012 before

the Assistant Commissioner of Labour-I, for condoning the delay of 728 days. It is also contended that once the case was decided on merits before the Principal District Judge, Guntur, no interference is required by this Court.

6) A perusal of the record shows that there is no dispute with regard to the accident, which was occurred on 13.04.1998 and in the said accident the son of the appellants died. Immediately after the accident, M.V.O.P. No.364 of 1998 was filed by the petitioners/appellants before the Principal District Judge, Guntur for compensation on 21.05.1998. The said case was dismissed on 21.12.2001. After dismissal of M.V.O.P, the applicants, who are parents of the deceased, filed W.C.M.P. No.17 of 2002 before the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Guntur-I, with a delay of 728 days.

7) A perusal of the record further shows that the petitioners have not properly explained the day-to-day delay of 728 days and this Court directed the appellants to file a copy of W.C.M.P. No.17 of 2012 but the same is also not filed, on the ground that the copy is not available with the counsel.

8) Having perused the entire material on record and having heard the learned counsel for both sides, this court is of the view that the Assistant Commissioner of Labour-I, Guntur has rightly held that after dismissal of M.V.O.P. No.364 of 1998 by the Principal District Judge, Guntur, the appellants ought to have filed appeal under Motor Vehicle Act only. The appellants have not made out any ground to interfere with the findings of the orders passed by the Tribunal in W.C.M.P. No.17 of 2012, hence the appeal is liable to be dismissed.

9) Accordingly, the appeal is dismissed. No order as to costs.

10) Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

**(ANIS, J)**

Date:14.03.2016

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