

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.S. RAMESH

C.R.P.(NPD)No.289 of 2015

K. Pachiappan

..Petitioner

-Vs-

1. Ramesh Gandhi

2. Reliance General Insurance Co. Ltd.,
Rias Towers 2nd Floor,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai-600 040.
Service at
Reliance Gl. Insurance Co. Ltd.,
Reliance House,
Haddows Road, Nungambakkam,
Chennai 600 034.

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 09.12.2014 made in I.A.No.123 of 2012 on the file of the Commissioner for Workmen's Compensation II, Teynampet, Chennai 600 006.

For Petitioner : Mr.M. Swamikkannu

For Respondents : No appearance

ORDER

The order under challenge in the present petition is the dismissal of petition filed to condone the delay before the Commissioner for Workmen's Compensation II, Teynampet, Chennai 600 006.

2. The reason assigned by the petitioner for the delay is that he had earlier approached the Motor Accident Claims Tribunal for compensation and that since he is entitled to claim compensation from the employer also, the delay in filing the claim petition, had occurred.

3. According to the learned counsel for the petitioner, since the petitioner was pursuing the claim petition before the Motor Accident Claims Tribunal, he could not file the present application in time. The Commissioner for Workmen's Compensation had rejected the petitioner's application for condonation of delay on the ground that since the petitioner had already received the compensation from the Motor Accident Claims Tribunal, he was disentitled for invoking the provision of the Workmens Compensation Act.

4. The application that was preferred before the Commissioner of Workmen's Compensation Act is as to whether the delay of 313 days could be condoned or not. The reason assigned by the petitioner requires to be looked

into for the purpose of considering such a prayer. On the other hand, the commissioner had chosen to go into the merits of the claim made and had rejected the application on the ground that the petitioner had already received a compensation through a different forum.

5. The learned counsel for the petitioner has relied upon the judgment reported in 2010(1) TNMAC 645 (Rajasthan) and submitted that the claim of compensation before the Motor Accident Claims Tribunal as well as the Commissioner of Workmen's Compensation can be maintained simultaneously.

6. It is seen that in the said judgment, the learned single Judge had relied upon the decision of the Kerala High Court as well as the Hon'ble Supreme Court and had come to the conclusion that the contract between the tort-feasor and the employer are two different contracts and as such, both claims are maintainable.

7. The learned Judge observed that the intention of creating bar of estoppel in the form of Doctrine of selection is only to save same person viz., the employer where such employer happens to be tort-feasor also, who may be burdened twice by the claim of the petitioner. But when the claim is made

against the tort-feaser and the employer independently through a second claim petition, it can only be held that the claim arises out of two different contracts and as such, both claims can be maintained.

8. Nevertheless, this is an issue which could be decided during the course of the proceedings under the Workmen Compensation Act. Since the petitioner has now filed an application only to condone the delay in filing application under the Workmen Compensation Act, the Commissioner could have looked into the reasons adduced in the petition and decided whether the reasons are justifiable for condoning the delay.

9. In my view, the petitioner has been pursuing the claim petition under the Motor Vehicles Act and that could be a sufficient cause for approaching the Commissioner, Workmen Compensation Act. Since the second respondent, who is the contesting respondent in this petition has not chosen to appear before this Court, the issue with regard to the maintainability of the claim petition under the Workmen Compensation Act shall be left open to be raised by the second respondent, during the course of the proceedings.

10. With the above observations, the order passed in I.A.No.123 of 2012 before Workmen's Compensation II, Teynampet, Chennai 600 006 is set

aside. Consequently, the delay of 313 days in filing the application under the Workmen Compensation Act is condoned. The Civil Revision Petition stands ordered, accordingly. No costs.

12.12.2018

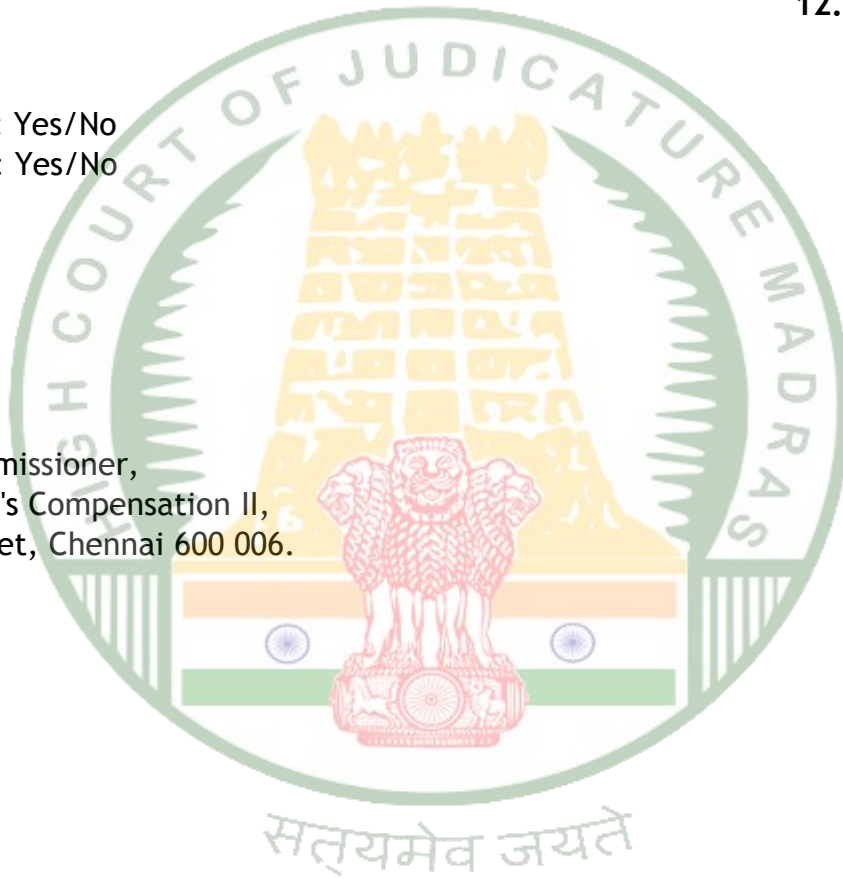
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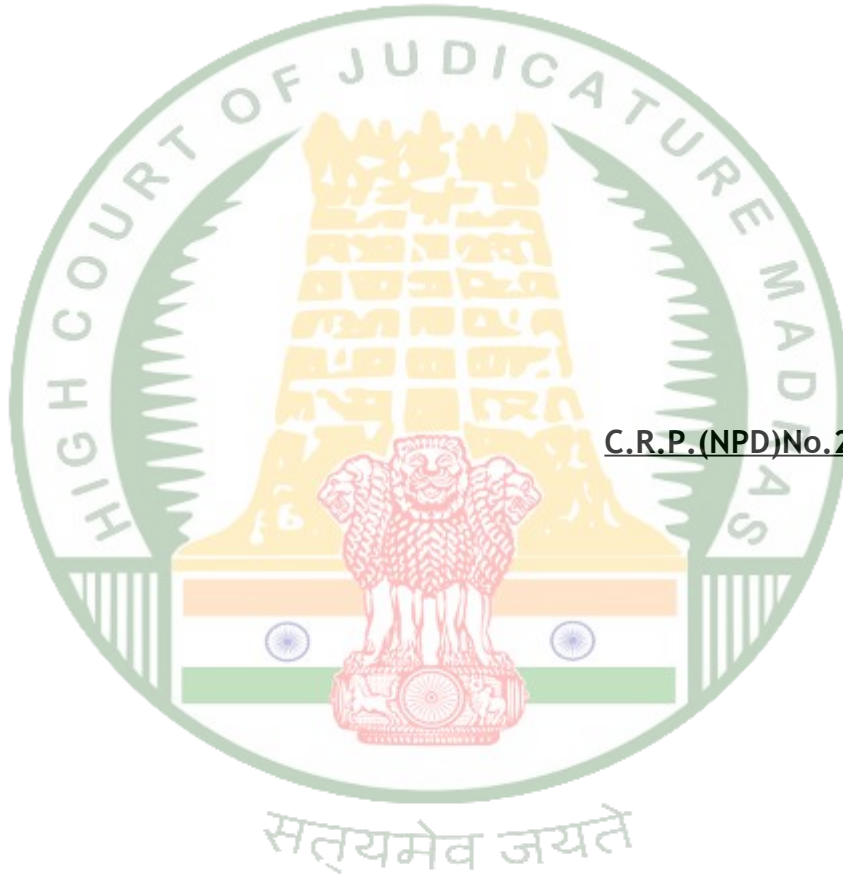
The Commissioner,
Workmen's Compensation II,
Teynampet, Chennai 600 006.



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M.S.RAMESH,J.

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