

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2078 of 2007

and CMA.No.521 of 2014

C.M.A.No.2078/2007

M.Murugesan

.. Appellant/1st Respondent

vs.

1.Venkatesan

... R1/Petitioner

2.Sivakumar

... R2/2nd Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 30 of the Women Compensation Act, to set aside the order dated 02.04.2007 made in I.A.No.20 of 2007 in W.C.No.106 of 2002 on the file of the Deputy Commissioner of Labour- I, Chennai 600 006

For Appellant : Mr.A.Shanmugaraj

For Respondents : No Appearance

C.M.A.No.521 of 2014

N.Venkatesan

.. Appellant/2nd Respondent

vs.

1.M.Murugesan

... 1st Respondent/Petitioner

2.Sivakumar

... R2/R1

Prayer: This Civil Miscellaneous Appeal filed under Section 30 of the Women Compensation Act, to set aside the order dated 18.01.2011 made in I.A.No.235 of 2010 in W.C.No.106 of 2002 on the file of the Deputy Commissioner of Labour- I, Chennai 600 006

For Appellant : No Appearance

For R1 : Mr.A.Shanmugaraj

For R2 : No Appearance

C O M M O N J U D G M E N T

C.M.A.No.2078 of 2007 has been filed by the claimant who is alleged suffered employment injury on 30.12.2006.

2. For the sake of clarity and for the purpose of easy narration of facts parties shall be referred to as name.

3. Mr.N.Murugesan, the appellant in C.M.A.No.2078 of 2007 suffered an injury while excavating the land of N.Venkatesan, the appellant in C.M.A.No.521 of 2014. Therefore, a claim

petition was filed by the appellant in C.M.A.No.2078 of 2008

on 04.01.2002 before the Deputy Commissioner of Labour, Chennai-I, claiming a sum of Rs.2,00,000/- as compensation under Workmen's Compensation Act, 1923. The said proceeding was originally filed against his employer Sivakumar who was contractor by the appellant in C.M.A.No.521 of 2014. Under these circumstances, the appellant in C.M.A.No.521 of 2014 was impleaded by an order dated 14.01.2013.

4. The principal employer Venkatesan who is the first respondent in C.M.A.No.2078 of 2007 and the appellant in C.M.A.No.521 of 2014 remained absent before the Deputy Commissioner of Labour-1, Chennai and therefore an exparte order came to be passed on 10.08.2004 in W.C.No.106 of 2002 awarding a sum of Rs.1,49,716/-

5. Thereafter I.A.No.20 of 2007 was filed to condone the delay of 136 days in filing application to set aside the exparte order dated 10.08.2004. Delay came to be condoned by an order dated 02.04.2007.

6. Under such circumstances, the claimant had filed C.M.A.No.2078 of 2007. Again, when the case was taken up for hearing before the Deputy Commissioner of Labour-1, Chennai, the Principal employer N.Venkatesan the appellant in C.M.A.No.521 of 2014 was absent for the 2nd time again and therefore the exparte order came to be passed on 27.09.2007.

7. Under such circumstances, the Principal employer viz., N.Venkatesan again filed I.A.No.234 of 2010 to condone the delay of 1090 days in filing the petition to set aside the exparte order 27.09.2007 and I.A.No.235 of 2010 for restoration of the case under Section 10(1) of the Workmen Compensation Act, before the Deputy Commissioner of Labour-1, Chennai. By the impugned order dated 18.01.2011 both the I.A.s were dismissed on the ground that the appellant in C.M.A.No.521 of 2014 had been set exparte twice. Thereafter, C.M.A.No.521 of 2014 was filed before this Court on 10.01.2013.

8. Today, i.e. on 27.09.2019 when the case was taken up for hearing, the learned counsel for the appellant in C.M.A.No.2078 of 2007, the claimant alone is present. There is no representation on behalf of the principal employer N.Venkatesan, appellant in C.M.A.No.521 of 2014.

9. I have considered the arguments of the learned counsel for the appellant.

10. As far as the appeal in C.M.A.No.2078 of 2007 is concerned and I am of the view that nothing survives in view of subsequent development. Consequently, C.M.A.No.2078 of 2007 is closed.

11. As far as C.M.A.No.521 of 2014 is concerned, the said appeal filed by the principal employer. It is noticed that the principal employer was set exparte on 10.08.2004 and therefore a petition was filed by the principal employer (appellant in C.M.A.No.521 of 2014) to set aside the same vide I.A.No.20 of

2007. By an order dated 02.04.2007, I.A.No.20 of 2007 in W.C.No.106 of 2002 came to be allowed. In C.M.A.No.2078 of 2007 the claimant has challenged the same which has now become infructuous. In the light of the impugned order dated 18.01.2011 pursuant to the order dated 27.09.2007 passed in W.C.No.106 of 2002.

12. I.A.No.234 of 2010 was filed with delay of 1090 days. There is no explanation for condoning the delay. Therefore, I do not find any reason to interfere with impugned order.

13. Today also there is no representation on behalf of the principal employer (appellant in C.M.A.No.521 of 2014). The Principal employer (appellant in C.M.A.No.521 of 2014) has not been diligent in prosecuting the present Civil Miscellaneous Appeal. Therefore, the impugned order passed by the Deputy Commissioner of Labour - I, Chennai-6 in I.A.Nos.234 & 235 of 2010 cannot be interfered.

14. There is no substantial question of law to be answered in C.M.A.No.521 of 2014 (principal employer). Accordingly, the said C.M.A.No.521 of 2014 is liable to be dismissed.

15. In fine,

- i. C.M.A.No.2078 of 2007 is closed in view of the subsequent development. No cost.
- ii. C.M.A.No.521 of 2014 is dismissed. No cost.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kkd/jen

To

The Deputy Commissioner of Labour- I,
Chennai 600 006.

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No. 83427

C.M.A.Nos.2078 of 2007
and CMA.No.521 of 2014

RV (CO)