

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6176 OF 2020
WITH
CIVIL APPLICATION NO. 5061 OF 2020
IN
WRIT PETITION NO. 6176 OF 2020**

GOPAL @ GOPICHAND SAHEBRAO PATIL
Since deceased

SUNIL SAHEBRAO PATIL
Age: 37 years, Occu: Business,
R/o: 2069, Deshmukh Galli, Erandol,
Taluka Erandol, District Jalgaon. ... Petitioner
(Orig. Claimant)

Versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD.
Above ICICI Bank, Shahunagar,
Jalgaon
Through its Manager ... Respondent

.....
Advocate for the Petitioner : Mr. S. S. Bora
Advocate for the Respondent : Mr. S. G. Chapalgaonkar
.....

CORAM : V. K. JADHAV, J.

RESERVED ON : 30.09.2020

PRONOUNCED ON : 22.04.2021

ORDER :-

1. By this Writ Petition, the petitioner is challenging the order dated 07.08.2020 passed by the learned Commissioner

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for Workmen's Compensation and the Judge, Labour Court, Jalgaon in Misc. WCA No. 7 of 2020 in WCA No. 18 of 2015 whereby the application filed by the present petitioner seeking withdrawal of the amount of compensation of Rs.5,00,000/- deposited by the respondent-insurer in terms of the compromise decree dated 08.02.2020 passed by the National Lok Adalat came to be rejected.

2. Brief facts giving rise to the present Writ Petition are as follows:

a. Deceased Gopal @ Gopichand was working as a second Driver on the pick-up van with employer Devidas Ramdas Wani. On 03.09.2014, when deceased Gopal along with one Dnyaneshwar Deshmukh was proceeding from Erandol to Pune, on Nashik-Pune Highway, near village Kalamb, one layland truck coming from the opposite direction gave dash to the pick-up van. In consequence thereof, deceased Gopal @ Gopichand and said Dnyaneshwar had sustained severe injuries. Injured Dnyaneshwar Deshmukh succumbed to the injuries.

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However, injuries sustained by deceased Gopal @ Gopichand resulted into permanent disablement.

b. Thus, deceased Gopal @ Gopichand filed WCA No. 18 of 2015 for compensation of Rs.10,00,000/- from the original opponent no.1-employer and the respondent-insurer herein. During pendency of WCA No. 18 of 2015, Gopal @ Gopichand (original claimant) died on 30.04.2017. Deceased Gopal @ Gopichand was unmarried and his parents also died prior to his death. Consequently, the petitioner herein, who is the real brother, filed an application Exhibit U-37 for substitution as a legal heir/legal representative. By order dated 03.11.2018, learned Judge of the Labour Court, Jalgaon was pleased to allow the application and permit the present petitioner to prosecute the original application as legal heir of the original claimant.

c. On 08.02.2020, National Lok Adalat was held and WCA No. 18 of 2015 was also placed before the National Lok Adalat. The petitioner and the respondent-insurer have arrived at an amicable settlement and in view of the settlement terms arrived at between the parties, the Judge, vre/-

Labour Court has passed the award. The said WCA No. 18 of 2015 was disposed off finally at Rs.5,00,000/-. On 04.03.2020, the respondent-insurer has deposited the said amount of Rs.5,00,000/- in terms of the compromise above.

d. On 12.06.2020, the petitioner filed an application seeking withdrawal of the amount deposited by the respondent-insurer. Initially, on 29.07.2020, learned Judge, Labour Court has directed the petitioner to place on record the document indicating that he is the real brother of the original claimant. By the impugned order dated 07.08.2020, the learned Commissioner for Employee's Compensation and the Judge, Labour Court, Jalgaon has rejected the application seeking withdrawal of the amount on the ground that in term of the provisions of the Employee's Compensation Act, 1923 (for short, "Act of 1923"), the petitioner is not dependant on deceased Gopal @ Gopichand (original claimant) and therefore, the petitioner is not entitled for withdrawal of the amount deposited by the insurance company in terms of the settlement arrived at between the parties before the National Lok Adalat on 08.02.2020. Hence this Writ Petition.

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3. Learned counsel for the petitioner submits that the petitioner was brought on record as a legal heir/legal representative of deceased Gopal @ Gopichand under the orders of the Commissioner for Employee's Compensation and not as a dependant. Learned counsel submits that the learned Judge, Labour Court, Jalgaon, who was acting in the capacity as the executing court, could not have gone beyond the award. It is well settled that the executing court cannot go beyond the decree nor question the legality or correctness of the decree except wherein the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it and thus, its invalidity can be set up in an execution proceeding. Learned counsel submits that in the instant case, the learned Judge, Labour Court, while deciding the application for withdrawal of the amount deposited by the respondent-insurer in terms of the settlement and as per the award, has ventured into the entitlement of the petitioner for the amount. Thus, the very approach of the learned Judge, Labour Court is illegal, improper and incorrect.

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4. Learned counsel for the petitioner submits that in terms of the provisions of Section 2(1)(d) of the Act of 1923, the petitioner cannot be a dependant of the original claimant Gopal @ Gopichand. The petitioner was brought on record as a legal heir/legal representative to continue the proceeding initiated by his brother deceased Gopal @ Gopichand. In the case of ***Royal Sundaram Alliance Insurance Co. Ltd. v. Madhu and Others [2016 (3) Mh.L.J. 102]***, this Court at Nagpur Bench (Coram : A. S. Chandurkar, J.) has held that if a claim for compensation is made by an injured employee, then there is no requirement under the Act that it is only a dependant, as defined by Section 2(1)(d) of the said Act, who can be impleaded as legal heir on the death of the injured employee. It is further observed that if the right to sue survives after death of an injured employee who has made a claim for compensation, then there is no bar under the said Act for his/her legal representative to continue the said proceedings. Learned counsel submits that the learned Judge, Labour Court has failed to consider the scheme of the Act of 1923. In terms of the provisions of the Act of 1923, where death of the employee out of and during the course of his employment takes place, then in such a
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contingency, the dependants of the deceased employee are entitled for compensation and in such proceedings, the court is empowered to consider the issue about dependency. In the instant case and also in the cases where the claim was filed by the employee seeking compensation for the injuries and if he expired during pendency of the said proceedings, his legal heirs/legal representatives, which may include his brother, can continue the said proceeding and accept the amount of compensation, if any, on behalf of the deceased employee.

5. Learned counsel submits that in terms of the provisions of Section 21 of the Legal Services Act, 1987, the executing court has no jurisdiction to go back and interfere in the award. In the case of *State of Punjab and Others v. Jalour Singh and Others [AIR 2008 SC 1209]*, it is held that where the award is made by the Lok Adalat in terms of the settlement arrived at between the parties (which is duly signed by the parties and annexed to the award of the Lok Adalat), it becomes final and no appeal lies against it to any court. If any party wants to challenge the said award based on settlement, it can be done only by filing a petition under vre/-

Article 226 and/or Article 227 of the Constitution of India, that too on very limited grounds. Learned counsel submits that in view of the dictum laid down by the Supreme Court, it is clear that once the compromise is arrived at between the parties in the Lok Adalat and award is passed in consequence thereof, it can be questioned only before the High Court under Article 226 and/or 227 of the Constitution of India and no other court or tribunal has any power to enter into the said aspect. Learned Judge, Labour Court, who was in fact exercising the powers of the executing court while deciding the application for withdrawal of the amount had no jurisdiction to pass any order contrary to the award passed in the Lok Adalat.

6. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the following cases:

1. ***Royal Sundaram Alliance Insurance Co. Ltd. v. Madhu and Others* [2016 (3) Mh.L.J. 102].**
2. ***State of Punjab and Others v. Jalour Singh and Others* [AIR 2008 SC 1209].**
3. In the matter of Reference under Section 27 of the Workmen's Compensation Act, regarding ***Madho Singh***, reported in **1980 MPLJ 261** [Misc.

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Civil Case No. 263 of 1973 decided by the Division Bench of the High Court of Madhya Pradesh at Jabalpur.

4. *Commissioner for workmen's Compensation v. P. V. Mohanan and Others [ILR 1988 (1) Kerala 655].*
5. *Ikkassintakath Abdurahiman and Others v. Nadakkavu Malikkal Beeran Koya [AIR 1938 Mad 402].*
6. *New India Assurance Co. Ltd. V. Rizwan Sheikh Rashid and Others [2012 (6) Mh.L.J. 652.*
7. *R. Chellappan v. The Deputy Commissioner of Labour [AAO NO. 264 of 1983 decided on 12.10.2001 by the High Court of Madras].*
8. *Gopal Synthetics v. Workmen's Compensation Commissioner and Others [1995 ACJ 908],*
9. *Margarida Gomes and another v. Messrs Mackinnor Mackenzie and Co. Pvt. Ltd., Bombay [AIR 1968 Bombay 328].*
10. *Manubhai & Company v. Rajaram [1970 Mh.L.J. 454].*
11. *Pratap Narain Singh Deo v. Srinivas Sabata and Others [AIR 1976 SC 222].*
12. *Krishnakumar G. v. Union of India [MFA No. 192 of 2010 decided by the Division Bench of the High Court of Kerala at Ernakulam on 10.06.2011]*

7. Learned counsel for the respondent-insurer submits that the petitioner, who is the elder brother of the deceased employee, is not a “dependant” in terms of the provisions of
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Section 2(1)(d) of the Act of 1923. Learned counsel submits that in terms of the provisions of Section 8 of the Act of 1923, no payment of compensation shall be made otherwise than by deposit with the Commissioner and in terms of Subsection (4) of Section 8, an enquiry is contemplated for determination of distribution of the compensation to the dependants and if no dependant exists, the Commissioner is bound to repay the balance of the money to the employer by whom it was paid.

8. Learned counsel submits that in terms of the provisions of Section 9 of the Act of 1923, no lump sum or half-monthly payment payable under the Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the employee by operation of law, nor shall any claim be set off against the same.

9. Learned counsel submits that on perusal of the provisions of Section 2(1)(d) of the Act of 1923, it reveals that it is not intended to benefit of all the heirs of a deceased employee except his nearest and dearest ones, and
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if that is so, there is no reason to extend the benefit of the Act to the present petitioner.

10. Learned counsel submits that in terms of the provisions of Section 23 of the Act of 1923, the Commissioner has the powers of a Civil Court and therefore, at any point of time, it is open to bring on record any necessary and proper parties. Learned counsel submits that, however, in term so Rule 41 of the Workmen's Compensation Rules, 1924 (for short, "Rules of 1924") though certain provisions of the Civil Procedure Code are made applicable to the proceedings before the Commissioner, however the provisions of Order XXII of the Civil Procedure Code have been excluded.

11. Learned counsel for the respondent-insurer submits that in terms of the provisions of Section 2(1)(dd) clause (iii), "any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them. The effect of this part of the definition of the "employee" is clear to include a legal personal representative of the deceased workman.

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12. Learned counsel for the respondent, in order to substantiate his contention, places his reliance in a case ***B. M. Habeebullah Maricar v. Periaswami and Others [AIR 1977 Mad 330]***, wherein, the Full Bench of the Madras High Court has held that the word “workman” as occurring in Section 9 of the Act of 1923 would thus mean the workman himself if he is alive and his dependants if he is not alive. It is held that there is no reason why the benefit of the Act should go to the heirs other than “dependants” under Section 9 coupled with the definition in clause (n) Sub-section (1) Section 2 of the Act of 1923.

13. Learned counsel for the respondent submits that the learned Commissioner has therefore rightly rejected the application bearing Misc. WCA No. 7 of 2020 and further held that the present respondent is entitled for refund of the amount deposited before the Commissioner. There is no substance in this Writ Petition and the Writ Petition is liable to be dismissed.

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14. I have heard learned counsel for the petitioner and the learned counsel for the respondent. With their able assistance, I have perused the memo of the petition, the annexures thereto and the case law cited by both sides.

15. Deceased Gopal @ Gopichand, during his lifetime, had filed the claim WCA No. 18 of 2015 for compensation under Section 10 of the Act of 1923 for the personal injuries sustained by him out of and in the course of his employment. On 30.04.2017 i.e. during pendency of WCA No. 18 of 2015, the original claimant Gopal @ Gopichand expired. Deceased Gopal @ Gopichand was unmarried and his parents had died prior to his death. The petitioner, who is the real brother of deceased Gopal @ Gopichand, filed an application Exhibit U-37 in WCA No. 18 of 2015 for bringing him on record as a legal heir of deceased Gopal @ Gopichand to continue with the proceedings of the claim. The Presiding Officer of the Labour Court, Jalgaon, by order dated 03.11.2018 below Exhibit 37, allowed the said application. In National Lok Adalat held on 18.02.2020 in the Labour Court, Jalgaon, the petitioner and the respondent herein have arrived at an amicable settlement and the
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petitioner has agreed to accept amount of Rs. 5,00,000/- as compensation towards full and final settlement. In terms of the settlement, the learned Judge, Labour Court has passed the award and disposed off WCA No. 18 of 2015 by order dated 08.02.2020. Consequently, the petitioner filed an application bearing Misc. WCA No. 7 of 2020 for withdrawal of the amount deposited by the respondent-insurer in terms of the compromise award. However, the Commissioner for Employee's Compensation, Jalgaon, by the impugned order dated 07.08.2020, has rejected the said application with the observation that in terms of the provisions of Section 2(1) (d) of the Act of 1923, the petitioner does not fall in the category of "dependant" and even if the matter is amicably settled in the Lok Adalat, the petitioner is not entitled for the compensation amount and further directed to refund the amount to the respondent-insurer.

16. It is necessary to understand the scheme of the Act of 1923. Section 4 of the Act of 1923 prescribes the provisions about the amount of compensation. Section 4, deals with different specific segments i.e. (a), (b), (c) and (d). Section 4(a) deals with the instances where the injuries result in
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death. Clause (b) of Section 4 deals with the injuries which result in permanent total disablement. Clause (c) of Section 4 deals with injuries which result in permanent partial disablement and Clause (d) deals with the injuries which result in total or partial temporary disablement. In the instant case, deceased Gopal @ Gopichand had filed the claim for the amount of compensation in terms of Section 4(b). According to deceased Gopal @ Gopichand, the injuries sustained by him in the accident resulted into permanent disablement and he had lost his earning capacity to the extent of 100%. Section 8 of the Act of 1923 prescribes the mode of distribution of compensation. In terms of Sub-section (4) of Section 8, if any amount is deposited as compensation in respect of the deceased employee, the Commissioner may conduct an enquiry which he may deem necessary as to the distribution of compensation to the dependants and if no dependants exist, the Commissioner shall repay the balance of money to the employer by whom it was paid. In terms of Section 10 of the Act of 1923, a claim for compensation can be entertained by the Commissioner under certain conditions as detailed in the Section itself.

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17. Section 2(1)(d) of the Act of 1923 defines the term “dependant”. It is clear from the definition itself that it is not intended to benefit all the heirs of a deceased employee, but to embrace only those relations who, to some extent, depend upon the employee for their daily necessities. The purpose of the Act of 1923 is not limited to payment of compensation to injured employees during the period of their incapacity, but it extends to all the persons who are related to such an employee and who are deprived of support and maintenance by reason of death of the employee.

18. In the instant case, original claimant Gopal @ Gopichand died during pendency of his claim petition bearing WCA No. 18 of 2015. It is nobody's case that death of Gopal @ Gopichand resulted from the injuries sustained by him in the said accident. In terms of Section 3(1) of the Act of 1923, the employer is liable to pay compensation if the personal injury is caused to an employee by an accident arising out of and in the course of his employment. In term of Section 4(a), if the death results from the injury, the amount of compensation is prescribed and in terms of clause (b) of Section 4, compensation is prescribed where
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permanent total disablement results from the injury. In the instant case, neither the employer nor the respondent-insurer deposited the amount of compensation before the Commissioner in terms of the provisions of Section 8 of the Act of 1923. Deceased Gopal @ Gopichand, himself being an injured employee, filed WCA No. 18 of 2015 under Section 10 for compensation claiming therein that the injuries sustained by him in the accident out of and in the course of his employment resulted into permanent disablement and as such he is entitled for compensation in terms of clause (b) of Section 4 of the Act of 1923. Thus, a conjoint reading of these provisions and further the scheme of the Act of 1923 clearly indicates that the dependants may come into picture only if the claim for compensation is preferred on account of death of an employee. Thus, in view of the provisions of Section 2(1)(d), the dependants, as defined, can claim compensation.

19. In *Margarida Gomes* (supra), relied upon by learned counsel for the petitioner, this Court (Coram : Patel, J.) had an occasion to deal with a similar situation wherein the employee died during pendency of his claim petition and his
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heirs made an application to the Commissioner for being brought on record as the legal representatives. The Commissioner rejected the said application for want of provision in the Act and further observed that the said dependants were entitled in their own right to seek remedy under the Act. It is held that so far as the liability to pay compensation under the provisions of the Act of 1923, it is created immediately on the accident occurring to the workman suffering injury and must amount to a debt payable to the workman. It is also observed that the liability under the Workmen's Compensation Act has no connection with any wrong-doing on the part of the employer. It does not result from any neglect or any default on his part. Indeed, in the case of death, or 'serious and permanent disablement', the event may be the consequence of 'serious and willful misconduct' on the part of the workman while the employer is wholly free from blame and yet compensation may be recoverable all the same. In paragraph nos. 6, 12 and 14 of the judgment, the following observations have been made:

“6. I am clear, therefore, on the provisions of this Act that the liability in the case is created

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immediately on the accident occurring to the workman suffering injury and must amount to a debt payable to the workman.

7. ...

8. ...

9. ...

10. ...

11. ...

12. *Under the Act, the compensation becomes payable not because of a tort, or wrong doing by the employer. "Liability under the Workmen's Compensation Act has no connection with any wrong-doing on the part of the employer. It does not result from any neglect or any default on his part. Indeed, in the case of death, or 'serious and permanent disablement', the event may be the consequence of 'serious and willful misconduct' on the part of the workman while the employer is wholly free from blame, and yet compensation may be recoverable all the same" (United Collieries case, 1909 AC 383 at p. 391). Under the present Act, the liability is negatived under Section 3(1)(b) only if the workman has been at the time of the accident under the influence of drink or drug or has disobeyed willfully an express order or an express rule for the purpose of securing safety of workmen or has willfully removed or disregarded any safety guard or other device which he knew to have*

been provided for the purpose of safety of workmen. Except in these limited cases, in all other cases of accident, the workman is entitled to compensation. Section 306 of the Succession Act, therefore, has no application in the present case.

13. ...

14. *The further question then is whether the application abates, and the petitioners must file a second application for the purpose. This is not a case where the death has occurred by reason of the accident taking place in the course of the employment. By reason of the accident personal injury was caused to the workman. The petitioners would have been entitled to present an application if death had occurred as a result of the accident. In the present case however they would not be able to make an independent application in their own right, since the death has occurred by reasons extraneous to the accident. The right of the workman himself having survived, is it necessary that they should be driven to any other proceeding either under the Act or under the general law? I think, not.”*

20. In ***Royal Sundaram Alliance Insurance Co. Ltd.***

(supra), relied upon by learned counsel for the petitioner,

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this Court (Coram : A. S. Chandurkar, J.) had an occasion to deal with the substantial question of law which is as under:

“Whether a legal representative of an employee who had initiated proceedings under Section 10 of the said Act seeking compensation for injuries suffered during course of employment would be entitled to continue said proceedings after the death of said employee?”

21. In this case also the elder brother of the deceased employee had applied for being brought on record in the capacity as a legal heir and the said application was opposed on the ground that the elder brother of the deceased was not dependant in terms of the provisions of Section 2(1)(d) of the Act of 1923. In paragraph nos. 5, 6 and 7 of the judgment, the following observations have been made:

“5. The scheme of the said Act therefore indicates that in case of death of an employee during the course of employment, it is for his/her dependents to seek compensation. In case of injuries suffered, the employee himself/herself can claim compensation. The term “dependent” would have to be considered in the context of compensation being

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sought on behalf of a deceased employee. In that context therefore, if the deceased employee is survived by any dependent as defined under Section 2(1)(d) of the said Act, compensation can be claimed by such dependent under provisions of the said Act. However, if claim for compensation is made by an injured employee then there is no requirement under the said Act that it is only a dependent as defined by Section 2 (1)(d) of the said Act who can be impleaded as a legal heir on the death of the injured employee. If the right to sue survives after the death of an injured employee who has made a claim for compensation then there is no bar under the said Act for his/her legal representative to continue said proceedings.

6. A somewhat similar question was considered by learned Single Judge in Margarida Gomes (supra) and it was held that as the right of the concerned employee to sue survived, the proceedings can be continued by his legal representatives. This decision has been followed by another learned Single Judge in New India Assurance Co. Ltd. (supra) In Proprietor Radhakrishna (supra) identical facts were considered by learned Single Judge of the Karnataka High Court and by following the judgment of learned Single Judge in Margarida Gomes (supra) the proceedings were adjudicated on merits. The decisions in Commissioner for Workmen's and

Krishnakumar (supra) support the stand of respondent No.1.

7. In the judgment of the Full Bench of the Madras High Court in B. M. Habebullah (supra) on which heavy reliance was placed by the learned counsel for the appellant, the judgment of learned Single Judge in Manubhai & Co. v. Babajee AIR 1968 Bom. 328 was referred to but the view taken therein was not followed. The Full Bench held that as benefit under the said Act could be granted only to the employee and his dependents, a legal representative was not entitled to claim compensation. Considering the decision of learned Single Judge in Margarida Gomes and Manubhai and Co. (supra) it is not possible to agree with the view taken by the Full Bench of the Madras High Court. In National Insurance Co. Ltd. (supra) the claim for compensation was filed by an adopted son of the deceased employee. In that context it was held that said adopted son was not entitled to claim compensation. In Mayfield Estate (supra) the claim was again filed for compensation by a person who was not a dependent. Similar is the case in National Insurance Co. Ltd. (supra). In Gopal Synthetics (supra) it was held that a brother of deceased employee was not a dependent under Section 2(1) (d) of the said Act. There is no dispute with the said proposition as in the present case the brother is

brought on record as legal representative of the injured employee who had expired after filing the proceedings. For the same reason, the decisions in Suresh Kumar and others, Divisional Manager, New India Assurance Co. Ltd. and National Insurance Co. Ltd. (supra) cannot be made applicable.”

22. In ***B. M.Habeebullah*** (supra), relied upon by learned counsel for the respondent, the Full Bench of the Madras High Court has observed, “a workman, while on duty, died as a result of an accident. His mother filed a claim under the Workmen’s Compensation Act (VIII of 1923), before the Commissioner having jurisdiction. During the pendency of that claim before the Commissioner, the mother also died. Thereafter her son and her two daughters made a joint application to the Commissioner praying that they be substituted for their mother as her legal representatives.” It is held that Section 9 of the Workmen’s Compensation Act could apply not only to a workman who is alive and to whom compensation is payable but also to one who is dead and whose dependants are in a position to receive the compensation. In this case, the claim for compensation came to be filed by the dependant mother on account of death of

her son (employee). She also died during pendency of the claim petition. Consequently, her another son and two daughters made a joint application to the Commissioner for their substitution in place of their mother as her legal representatives. The Full Bench has referred the provisions of Section 9 which deals with non-assignment and non-attachment of the compensation amount and also puts a bar on passing of the compensation by operation of law to any person other than the workman.

23. Section 9 of the Act of 1923 reads as under:

Section 9. Compensation not to be assigned, attached or charged.- Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the employee by operation of law, nor shall any claim be set off against the same.

24. This section is designed, as far as possible, to protect the workman from the claim by money lenders and others.

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25. In the matter of Reference under Section 27 of the Workmen's Compensation Act, regarding **Madho Singh**, reported in 1980 MPLJ 261, relied upon by learned counsel for the petitioner, by referring the observations of the Full Bench of the Madras High Court in **B. M. Habeebullah** (supra), in paragraph 4, the Division Bench of the Madhya Pradesh High Court headed by G. P. Singh, C.J. has made the following observations:

"4. A Full Bench of the Madras High Court, however, in B. M. Habeebullah v. Periaswami MANU/TN/0243/1977 : AIR 1977 Mad. 330 overruled its earlier decision in Abdurahiman's case. It was held in this case that Abdurahiman's case had not correctly interpreted section 9 of the Act in the light of the definition of workman and the correct interpretation is that there is no passage of right of compensation from a dependant to his heirs if the dependant dies before receipt of the compensation under section 8. With great respect we are unable to agree with the view taken by the Full Bench of the Madras High Court. The relevant portion of section 9 of the Act reads as follows:

No lump sum or half monthly payment payable under this Act shall pass to any person other than the workman by operation of law.

Reading the work “Workman” in the light of the definition given in section 2(1)(n) the above quoted portion of section 9 will read as under:

No lump sum or half monthly payment payable under this Act shall pass to any person other than the workman and where the workman is dead, his dependants, by operation of law.

Now the section quoted as above deals with prohibition of passing of compensation by operation of law. Ordinarily devolution by succession is also a mode of passing of property by operation of law, but in such a case there can be no question of passing of any property to the deceased. Had the intention under section 9 been to prohibit passing of property by devolution, the words “other than the workman” would not have been there. The section would have been simply worded as below:

Save as provided by this Act, no lump sum or half monthly payment payable under this Act shall ... pass to any person by operation of law.

The words “other than the workman” signify that the workman or his dependant is in existence when

the question of passing of property by operation of law arises. In our opinion, the earlier decision of the Madras High Court was correct that passing of property by operation of law which is prohibited or restrained by section 9 does not include passing of property by devolution or succession, but refers to other cases of passing of property by operation of law such as insolvency where the person whose property passes by operation of law is in existence. For example, even if the workman or in case of his death his dependant is adjudicated insolvent the amount payable to him under the Act will not pass by operation of law and vest in the Court or receiver and will be payable in accordance with the Act to the workman or the dependant, as the case may be it is true, as observed by the Full Bench of the Madras High Court that the earlier Division Bench decision of that Court did not expressly refer to the definition of workman which includes a dependant in case of death of the workman, while construing section 9, but in our opinion, the criticism is not correct that if the definition is noticed and the section is read in the light of that definition it will cover a prohibition for passing of compensation by devolution. As earlier shown by us, reading section 9 along with the definition of workman makes no difference. The point made out by the earlier case is that the words “other than the workman” show that the passing of property by operation of law

contemplated by section 9 is of that type which recognizes the presence of the workman. Reading section 9 with the aid of the definition as contained in section 2(1)(n) only shows that the passing of property by operation of law prohibited therein recognizes the presence of the workman or in case of the death of his dependants. The section has absolutely no application for deciding the question of right to compensation of the death of the dependants. For these reasons, we are in respectful agreement with the view expressed by the earlier Division Bench case of the Madras High Court. Even assuming that the view expressed by the Full Bench is also a possible view of section 9, we do not think that there is justification for departing from the view taken as early as 1938 when the legislature did not intervene to overrule that view which had prevailed for nearly forty years. If the view taken in the earlier Madras case or that taken by the Calcutta High Court was not correct, the Legislature would have intervened and made suitable amendments in the Act as was made in the corresponding English Act of 1906 in 1925. As earlier pointed out by us, the Act was amended on 10 occasions between 1937 and 1977 without displacing the interpretation adopted by the Calcutta, earlier Madras and the Andhra Pradesh decisions which is a very strong indication to show that these decisions were in line with the intention of the Legislature. No reference is made to

this aspect of the matter by the Full Bench decision of the Madras High Court.”

26. It is observed by the Division Bench of the Madhya Pradesh High Court that the Bench is unable to agree with the view taken by the Madras High Court. Section 9 has absolutely no application for deciding the question of right of compensation on the death of the dependants. The Division Bench has thus answered the questions as follows:

(1) The heir of a deceased dependant can claim the amount deposited as compensation even though the dependant died before he could file a claim before the Commissioner and before compensation could be awarded to him.

(2) The amount of compensation becomes the property of dependants and vests in them even before the Commissioner passes an order of disbursement.

27. In *Commissioner for workmen's Compensation v. P. V. Mohanan and Others* (supra) relied upon by learned counsel for the petitioner, the workman Gopalan died by an accident out of and in the course of his employment and the employer by accepting the liability for compensation, deposited the compensation amount with the Commissioner for Workmen's Compensation. The widow, who was the sole dependant of the deceased workman, also died before the amount can be paid to her. Thus, a son of the deceased claimed the amount. The Commissioner made a reference to the High Court as to whether the compensation amount could be disbursed to the heir of the dependant of the deceased workman. The Division Bench of Kerala High Court headed by V. S. Malimath, C. J. held that "the Commissioner cannot refund the compensation to the employer when the dependant entitled to the compensation dies, but is bound to pay the same to the heirs who produce a succession Certificate or any direction or order of a competent court. When the compensation amount deposited with the Commissioner for workmen's Compensation becomes the property of the sole dependant of the deceased workman, and if that sole dependant dies prior to the allotment of that compensation, vre/-

the said amount would devolve on the heirs of the dependant.

28. In the above case, the Division Bench of Kerala High Court in paragraph nos. 14 and 15 of the judgment has expressed disagreement with the view taken by the Full Bench of Madras High Court in the case of **B. M. Habeebullah** (supra). Paragraph nos. 14 and 15 of the judgment read as under:

“14. The earlier decision of the Madras High Court in Abdurahiman v. Beeran Koya, (supra), was overruled by that court in B. M. Habeebullah v. Periaswami MANU/TN/0243/1977 II LLJ 322. With respect, we cannot, for reasons already stated, agree with that view and the same has been rightly dissented from by the Madhya Pradesh High Court in Reference under Section 27, Workmen's Compensation Act, 1923, (supra).

15. The Full Bench decision of the Madras High Court (supra), the lone dissenting view on this aspect, stressed on Section 9 of the Act under which the compensation amount cannot pass to any person other than the workman by operation of law. The workman, as per the definition, includes

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dependants. This Section itself insists that it shall pass only to the workman including his dependants. No other person is entitled to the amount. When once the dependant entitled to the compensation is known, and his right to receive the same is settled by the Commissioner, there is no violation of the provision, if, after the death of the dependant, the amount is given to the heirs of the dependant. Section 9 and Section 8 have to be read together so that under the Act there cannot be any direct payment to the dependant of the workman when the workman dies and the Commissioner alone is empowered to direct payment to the dependant, and the amount cannot be claimed by any person other than that dependant, by the operation of any law. No law can prejudicially affect the dependant's right to receive the compensation when once the Commissioner decides his right to receive same. We are, therefore, not in agreement, with great respect, to the learned judges of the Madras High Court, and with their reasoning in the Full Bench ruling in B.M. Habeebullah Maricar v. Periaswami (supra)."

29. In the case of **Gopal Synthetics** (supra), relied upon by learned counsel for the petitioner, while referring the ratio laid down by the Full Bench of Madras High Court in **B. M.**

Habeebullah (supra), the Rajasthan High Court in paragraph nos. 14 and 15 has made the following observations:

“14. It was on the basis of this provision which included the word 'legal personal representative' which was found absent in the Act that the decisions of the Calcutta, Andhra Pradesh and Bombay High Courts were dissented. In my opinion, the word 'legal representative' does not assist in any manner to come to the conclusion that the word 'dependant' should be construed as the dependant at the time of distribution of the amount under Section 8 of the Act and if there is no dependant at the time of distribution the legal representatives of the dependant would have no right. Once a right is crystallised and vests in the dependant, it becomes a civil right and the legal representative is entitled to step into the shoes of the dependant.

15. The provisions of the Act contemplate lump sum amount by way of compensation on accident / death. The said amount is not depending on any subsequent event but is relating to the rights of the person, i.e., dependant, to claim it in accordance with law. Once the amount is fixed in lump sum the only thing that remains to be done is to see whether the claimant is a dependant within the meaning of Section 2(1)(d) of the Act or not. The death of the

dependant is not the factor by which a claim filed by the dependant becomes non est. There is no specific provision in the Act which disentitles the dependant by subsequent event. To be more elaborate if a workman has died and the claim is filed by the sole dependant, as the claim could not be decided for a number of years and during that period the dependant had incurred liability / expenditure for maintenance in the expectation of the claim, then whether it would be justified to deny the claim to the legal representative because of the death of the dependent subsequently. The provisions of the Act are beneficial for the labourer and his family and, therefore, they have to be interpreted in the manner so as to advance the object rather than putting any obstruction in the implementation of justice.”

30. Thus, considering the view expressed by the High Courts in various decisions as referred above, including the decision of the learned Single Judge in **Margarida Gomes** (supra), it is not possible to agree with the view taken by the Full Bench of the Madras High Court in **B. M. Habeebullah** (supra). In the instant case, the respondent-insurer has arrived at an amicable settlement with the petitioner in the National Lok Adalat and accordingly, in terms of the said settlement, the compromise decree was passed. In terms of
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the provisions of Section 21 of the Legal Services Authorities Act, 1987, where the award is made by the Lok Adalat in terms of the settlement arrived at between the parties, it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court and no appeal lies against it to any court. It is well settled that if any party wants to challenge such an award based on settlement before the Lok Adalat, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution of India, that too on very limited grounds such as fraud etc. It is also well settled that the executing court cannot go beyond the decree unless the decree is a nullity for lack of jurisdiction in the court passing it and its nullity can be set up in an execution proceeding. In the light of the discussion of in the foregoing paragraphs, in the instant case the decree passed in Lok Adalat is not a nullity for lack of inherent jurisdiction so that its invalidity can be set up in an execution proceeding.

31. In the case of *State of Punjab and Others v. Jalour Singh and Others* (supra) relied upon by learned counsel for

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the petitioner, the Supreme Court, in para no. 11 has made the following observations:

“11. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

32. In view of the above discussion, I find no justification in the impugned order dated 07.08.2020 passed by the

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Commissioner for Employee's Compensation and Judge, Labour Court, Jalgaon in Misc. W.C.A. No. 7 of 2020 in W.C.A. No. 18 of 2015 seeking withdrawal of compensation amount deposited by the respondent before the Commissioner in terms of the compromise award passed in National Lok Adalat. This Writ Petition deserves to be allowed. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 07.08.2020 passed by the Commissioner for Employee's Compensation and Judge, Labour Court, Jalgaon in Misc. W.C.A. No. 7 of 2020 in W.C.A. No. 18 of 2015 is hereby quashed and set aside.
- III. The Misc. W.C.A. No. 7 of 2020 is hereby allowed in terms of its prayer clause and the petitioner is permitted to withdraw the amount of Rs.5,00,000/- deposited by the respondent-insurer in terms of the compromise decree.
- IV. The Writ Petition is accordingly disposed off.

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V. In view of disposal of the Writ Petition, nothing survives for consideration in Civil Application No. 5061 of 2020 and the same also stands disposed off.

(V. K. JADHAV, J.)