



C.M.A(MD)No.1011 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2022

Pronounced on : 29.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.1011 of 2021

M.Periyasamy(Died)

Thiru Govindan

... Appellant / Claimant

Vs

S.Ravi

...Respondent / Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 30 of the Employees Compensation Act, to set aside the order passed in I.A.No.109 of 2019 in E.C.No.101 of 2018 dated 03.03.2021 on the file of the Employees Compensation Commissioner of Court, Madurai and allow this appeal as prayed for.

For Appellant : Mr.M.Mohan Gandhi

For Respondent : Mr.J.Sankarapandian



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C.M.A(MD)No.1011 of 2021

JUDGMENT

This petition is filed against the order in I.A.No.109 of 2019 in E.C.No. 101 of 2018, on the file of the Deputy Commissioner of Labour, Madurai. The petitioner has filed a petition before the Labour Commissioner to condone the delay of 134 days in filing a petition to implead himself as the legal representative of the deceased claimant. The petition was dismissed by the Labour Commissioner. Against that order, the appellant has come forward with this appeal.

2.Brief substance of the petition is as follows:

(i)The original petitioner M.Periyasamy, sustained injuries and he filed a petition in E.C.No.101 of 2018, claiming compensation of Rs.15,00,000/-. During the pendency of the petition, a petition was filed by the petitioner herein stating that the original claim petitioner died on 13.03.2019 and he filed a petition to condone the delay of 134 days in impleading himself as the claimant.

(ii)On 28.12.2016, at about 12.30 p.m., an accident has occurred, when the deceased Periyasamy was working in the crusher machine,. The said



C.M.A(MD)No.1011 of 2021

Periyasamy sustained injuries in his left hand and on left side of the hip. He filed a petition claiming compensation. Due to the injuries, Periyasamy died on 13.03.2019. Periyasamy was a bachelor. He was not having any direct legal representatives. But the said Periyasamy was maintained by the petitioner herein and his family members, for the past 20 years. They provided him medical help. He executed a will dated 31.01.2019, permitting the petitioner to continue the case and to receive the compensation amount and pray the delay to be condoned.

3.On the side of the respondent it is stated that there was no relationship of employer-employee between the respondent and the deceased. There was no accident on 28.12.2016 in the crusher machine. Under Section 2(1)(d)(i) (ii) and (iii) of the Workmen's Compensation Act, 1923, an elder brother cannot be a dependant under the Labour Act. As per the Act, the petitioner is not a dependant and the petition to be dismissed.

4.After hearing the parties, the Labour Commissioner has come to the conclusion that the petitioner herein, being a married elder brother, is not entitled to claim compensation and there is no merit in the claim petition. Hence he dismissed the petition for condone delay.



C.M.A(MD)No.1011 of 2021

WEB COPY

5.On the side of the appellant, it is stated that the deceased lost his left hand and he was admitted in the hospital as inpatient for 37 days. It was the petitioner herein who spent for the medical expenses and who take care of the deceased. The original petitioner died during the pendency of the claim petition. As the legal representative of the deceased, the petitioner is entitled to continue the case. A judgment of the Hon'ble Supreme Court reported in **2021 (2) TN MAC 305** in the case of **Oriental Insurance Co.Ltd., vs Kahlon @ Jasmail Singh Kahlon(deceased)**, is cited.

6.On the side of the respondent it is stated that being a married elder brother, the petitioner is not entitled to claim compensation. Only minor brother can claim compensation. The citation produced by the petitioner is with regard to the Motor Vehicle Act case and not with regard to Labour case and pray the petition to be dismissed.

7.An elder brother cannot claim compensation under Section 2(i)(d) of the Workmen's compensation Act. But the original claim petition was filed by the deceased himself. Whether the deceased petitioner was entitled to the



C.M.A(MD)No.1011 of 2021

award of compensation has to be decided in the original petition. The petitioner has filed this petition not as a dependant of the deceased. He has filed the petition only as the legal representative of the deceased. In a petition to condone the delay, the Labour Commissioner has discussed the validity of the claim petition which is unwarranted.

8.In the above circumstance, this appeal is allowed and the delay of 134 days in impleading the petitioner as a party in the I.A., is condoned. The matter is remitted back to the Labour Court for fresh disposal, in accordance with law.

29.08.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Employees Compensation Commissioner of Court, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

5 / 6



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C.M.A(MD)No.1011 of 2021

R. THARANI, J

pnn

Pre-Delivery Judgment made in
C.M.A(MD)No.1011 of 2021

29.08.2022