



W.P.No.147.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.11.2023

DELIVERED ON: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.14738 of 2009

M.P.No.1 of 2009

P.Cholaraja

...Petitioner

vs.

1.The Workmen Compensation Commissioner No.2,
(Deputy Commissioner of Labour No.2),
Teynampet, Chennai – 600 918.

2.Smt.Periya Nayaki
3.Anthony Mary
4.Sahaya Selvi
5.Irudaya Raj

6.The Oriental Insurance Company Ltd.,
Adyar Branch,
No.85, 1st Main Road,
Gandhi Road,
Chennai – 600 020.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the order in W.C.I.A.No.77/2008 dated 10.07.2009 passed by the 1st respondent and quash the same as illegal, improper, unreasonable, against the rule of law and natural justice and total non application of mind.



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For Petitioner : Mr.M.Dinesh
for Mr.S.Kumaresan

For Respondents: R1 & R6 – served
Mr.G.Mutharasu for R2 to R5

ORDER

The Writ Petition has been filed challenging the order passed by the first respondent in condoning the delay of 6065 days in filing workmen compensation claim petition.

2.Heard, Mr.M.Dinesh, learned counsel, for Mr.S.Kumaresan, learned counsel for the petitioner, and Mr.G.Mutharasu, learned counsel for respondents 2 to 5.

3.The learned counsel for the petitioner would submit that the respondents 2 to 5 had filed a Workmen Compensation Petition before the first respondent claiming compensation for a sum of Rs.5,00,000/- from the petitioner herein and from the sixth respondent. He would further contend that, the claim of the respondents 2 to 5 are that the husband of the second respondent, and the father of the respondents 3 to 5 one Loganathan was employed as a load man in the petitioner lorry bearing Registration No.TCX 7891 and he was drawing Rs.100/- per day.



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4.He would submit that the petitioner owned a lorry bearing Registration No.TCX 7891, but as per the claim of the respondents 2 to 5, before the first respondent, the husband of the second respondent did not work as a load man in the petitioner lorry and there is no employer and employee relationship between the petitioner and the husband of the second respondent and the petitioner did not employ any such load man. He would further submit that to substantiate their claim the respondents 2 to 5 had not filed any document. Admittedly, the husband of the second respondent had met with an accident on 30.09.1989, and he died on 07.10.1989.

5.He would further submit that the respondents 2 to 5 had filed a M.C.O.P.No.18 of 1990 before the Additional Sub Court at Chengalpet, and the same was dismissed for default on 09.01.1996. Thereafter, the respondents 2 to 5 have filed a W.C.I.A.No.77 of 2008 claiming compensation before the first respondent, after a lapse of more than 18 years and the same was filed with a condone delay petition of 6065 days for which the respondents 2 to 5 have not shown any just and sufficient reasons. He would further submit that it was an after thought for the respondents 2 to 5 to file an petition seeking workmen compensation. The same is filed with an intention to grab money from the petitioner.



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6.He would further submit that the respondents 2 to 5 had calculated the delay only from the date of dismissal of the M.C.O.P.No.18 of 1990, in the year 1996, but they should have calculated the delay from the date of occurrence. When there is no employer employee relation between the petitioner and the deceased, the petitioner is no way liable to pay the compensation as claimed by the respondents 2 to 5. The first respondent ought not to have condoned the huge delay, aggrieved by the same the petitioner has filed the Writ Petition to set aside the order passed by the first respondent in W.C.I.A. No.77 of 2008 dated 10.07.2009.

7.Countering his arguments, the learned counsel for the respondents 2 to 5 would submit that the husband of second respondent and father of respondents 3 to 5 worked as a load man under the care of the petitioner, in the lorry bearing No T.C.X.No.7891 and he was drawing a wages of Rs.100/- per day. He would contend that during the course of employment the workmen met with an accident on 30.09.1989 at 7.30 am when he was travelling with his co-employees, and he died on 07.10.1989.

8.He would further submit that the deceased was the only bread winner of the family and after his demise, the respondents 2 to 5 were not being paid with any compensation. Thereafter the respondents had filed a M.C.O.P.No.18 of



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1990 before the Additional Sub Court, Chengalpet and the same was dismissed for default on 09.01.1996. The same was not brought to the knowledge of the respondents 2 to 5 hence, they were not able to further prosecute the matter. The second respondent was not able to contact the counsel who had handled the matter in M.C.O.P and the elder son of the second respondent left the house and his whereabouts were not known, due to all these, the second respondent was mentally and physically affected and she was taking treatment in the hospital. After which the respondents 2 to 5 had approached the first respondent, as the case of the respondents 2 to 5 fall under the jurisdiction of the Labour Court, the respondents 2 to 5 had approached the first respondent, claiming compensation as well as to condone the delay in filing the petition.

9.He would further submit that, the first respondent has given a findings that it is evident that there was an inordinate delay in filing the compensation claim petition, but the petitioner has himself failed to explain as to how he will be affected if the delay is condoned and if the petition is not condoned and dismissed for the reason that the compensation petition was not filed within the due time, there are possibilities that the respondents 2 to 5 will not be able to get any benefits as they are entitled to if they would have filed the same within the time period. There is no infirmity in the order passed by the first respondent, hence seeks to dismiss this writ petition.



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10.I have heard the submission made by the learned counsel appearing on either side and perused the materials available on record before this Court.

11.The *lis* involved in this Writ Petition is to whether the first respondent was correct in entertaining the petition to condone the delay of 6065 days.

12.It is the case of the respondents 2 to 5 that the second respondent's husband who was working as a load man in the petitioner's lorry had died due to the accident. Originally, a Motor Accident Claims Petition had been filed before the Additional Sub Court Chengalpet in M.C.O.P.No.18 of 1990 and the same seems to have been dismissed for non-prosecution on 09.01.1996. Thereafter, the respondents 2 to 5 seems to have filed the present application under the Employees Compensation Act, 1923 before the first respondent in the year 2008 along with an application to condone the delay. The said application had been contested by the petitioner *inter alia* claiming that the deceased was not employed under him. The reasons attributed by the respondents/claimants 2 to 5 is that they were not informed about the dismissal of the Motor Accident Claims and thereafter due to the family circumstances, they were not immediately able to take out an application under the Employees Compensation Act, 1923. The Industrial Tribunal by placing reliance upon various judgments of the Hon'ble Apex Court and the High Court had taken a liberal view in condoning the delay.

13.The accident had taken place in the year 1989, the claim under the



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Motor Vehicles Act had also been initiated which came to be dismissed for non-prosecution in the year 1996 . The respondents/claimants had not taken any steps to restore the same. But after the period of two decades, they had filed the present application under the Employees Compensation Act, 1923.

14.Learned counsel for the petitioner in support of his contention that the petition for compensation can be both filed under the Employees Compensation Act, 1923 and the Motor Vehicles Act, 1988 and the compensation awarded in one would have to be adjusted in the other and had relied upon the judgments of this Court in C.M.A.Nos.3966 & 3967 of 2005 dated 21.07.2017. He had further relied upon a judgment of this Court in C.M.A.No.2964 of 2006 dated 12.10.2017, wherein this Court had excluded the interest for the period of delay and had held that the claimants would be entitled to interest only from the date of the claim petition.

15.On the contrary, learned counsel for the first respondent had relied upon a judgment of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Mastan and Another* reported in (2006) 2 SCC 641 and the judgment made in Civil Appeal No.1271 of 2010 dated 17.04.2014, wherein the Hon'ble Apex Court had held that in such circumstances where the claimants are entitled to invoke both the proceedings, then it is for them to elect any one of the



proceedings.

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16.I have perused the judgments relied upon by the respective counsel appearing on either side.

17.The Hon'ble Apex Court in the judgment reported in (2006) 2 SCC 641 had held as follows:

“Hon'ble Mr.Justice S.B.Sinha (per) 22.Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non obstante clause providing for such an option notwithstanding anything contained in the 1923 Act.

23.The “doctrine of election” is a branch of “rule of estoppel”, in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no



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application in the instant case.”

“Hon'ble Mr.Justice P.K.Balasubramanyan (supplementing) 34.On the language of Section 167 of the Motor Vehicles Act, and going by the principle of election of remedies, a claimant opting to proceed under the Workmen's Compensation Act cannot take recourse to or draw inspiration from any of the provisions of the Motor Vehicles Act, 1988 other than what is specifically saved by Section 167 of the Act. Section 167 of the Act gives a claimant even under the Workmen's Compensation Act, the right to invoke the provisions of Chapter X of the Motor Vehicles Act, 1988. Chapter X of the Motor Vehicles Act, 1988 deals with what is known as “no fault” liability in case of an accident. Section 140 of the Motor Vehicles Act, 1988 imposes a liability on the owner of the vehicle to pay the compensation fixed therein, even if no fault is established against the driver or owner of the vehicle. Sections 141 and 142 deal with particular claims on the basis of no fault liability and Section 143 re-emphasises what is emphasised by Section 167 of the Act that the provisions of Chapter X of the Motor Vehicles Act, 1988, would apply even if the claim is made under the Workmen's Compensation Act. Section 144 of the Act gives the provisions of Chapter X of the Motor Vehicles Act, 1988 an overriding effect.

35.Coming to the facts of the case, the claimant has not chosen to withdraw his claim under the Workmen's Compensation Act before it reached the point of judgment, with a view to approach the Motor Accidents Claims Tribunal. What he has done is to pursue his claim under the Workmen's



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Compensation Act till the award was passed and also to invoke a provision of the Motor Vehicles Act, not made applicable to claims under the Workmen's Compensation Act by Section 167 of the Motor Vehicles Act. The respondent claimant is not entitled to do so. The High Court was in error in holding that he is entitled to do so.

The aforesaid judgment had been followed in another judgment which had been placed before me in Civil Appeal No.1271 of 2010 and the order of the High Court had been set aside.

18. Therefore, as regards the right invoke both the available remedies is no longer *res integra*. Once when the claimants had exercised his right of election of availing a remedy under one statute, then he is estopped from invoking the remedy available under the other statute.

19. In the present case, the respondents/claimants 2 to 5 had availed their remedy under the Motor Vehicles Act, 1988 as early as in the year 1990 and had allowed the same to be dismissed for default and therefore, they would be only right in trying to resurrect the said claim petition under the Motor Vehicles Act, 1988 and they are estopped from invoking the provisions of the Employees Compensation Act, 1923. In that view of the matter, the order condoning the



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delay by holding that the petitioner would not be prejudiced as he can contest the claim petition is wholly erroneous and is therefore liable to be set aside.

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20.In fine, the Writ Petition is allowed, the order impugned in the Writ Petition is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

22.12.2023

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

The Workmen Compensation Commissioner No.2,
(Deputy Commissioner of Labour No.2),
Teynampet, Chennai – 600 918.



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K.KUMARESH BABU, J.

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**A pre-delivery order in
W.P.No.14738 of 2009**

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