

(1992) 04 MAD CK 0050
In the Madras High Court
Case No : A.F.O. No. 870 of 1985

Nagapattinam Import and Export Corporation

APPELLANT

Vs

K. Lakshmi

RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:

Workmens Compensation Act, 1923 — Section 28

Citation : (1993) 1 ACC 357 : (1993) ACJ 61 : (1992) 65 FLR 928 : (1993) 1 LLJ 873 : (1992) 2 LW 301 : (1992) 2 MLJ 348

Hon'ble Judges : Mohinder Narain, J

Bench : Single Bench

Advocate : Neelamegan, for the Appellant;

Judgement

Mohinder Narain, J.—Opposite party II in W.C. Application No. 37 of 1981 on the file of the Deputy Commissioner of Labour,

Commissioner for Workmen's Compensation, Tiruchirapalli, has filed this civil miscellaneous appeal against the order in the said W.C. Application

No. 37 of 1981 in which the Authority has fixed the compensation at Rs. 16,800 and directed that the said sum shall be deposited by the second

opposite party within thirty days from the date of the order;

2. The facts leading to this appeal are :

The respondent has filed W.C. Application no. 37 of 1981 u/s 10 of the Workmen's Compensation Act, 1923, (hereinafter referred to as "the

Act"), claiming compensation from the opposite parties for the fatal accident occurred to her husband Karuna Vijayan, arising out of and in the

course of his employment on August 27, 1973, on the following grounds :

She is the wife of Karuna Vijayan. He met with an accident on August 27, 1973 arising out of and in the course of his employment under the

opposite parties, resulting in his death. She is the dependent of the deceased. His monthly wages at the time of his death was Rs. 200. Hence she

has made the claim for Rs. 2,500 under the Act. She has also filed a petition with supporting affidavit for condoning the delay in presenting the applications for compensation.

The first opposite party raised the claim on the following grounds :

The first opposite party came into existence only in October, 1973. This opposite party does not own the boat involved in the accident. The delay of eight years in filing the petition cannot be excused.

The second opposite party resisted the claim on the following grounds :

The delay in filing the petition is inordinate and cannot be condoned. The applicant has no right to claim any compensation as she had received Rs.

2,500 on December 29, 1973 in full quit of her claim. Hence the dismissal of the petition is prayed for.

After elaborate enquiry, the lower authority had condoned the delay in presenting the application. The lower authority had held that since the

payment of Rs. 2,500 in full quit was not registered u/s 28 of the Act, it cannot be taken cognizance of and had fixed the compensation at Rs.

16,800 and had directed the second opposite party to deposit the said amount. Aggrieved by the said order, the second opposite party has come

forward with this civil miscellaneous appeal.

3. Mr. G. Neelamegan, learned counsel appearing for the appellant, submitted that the accident occurred on August 27, 1973 and the claim

application was filed on April 24, 1981, nearly eight years from the date of the accident and no valid reason had been given for condoning the

delay and the period fixed under the Act is only two years and hence the application ought to have been dismissed on the grounds of limitation. He

further submitted that the applicant had received Rs. 2,500 in full quit as evidenced by Ex. R-1 receipt, and it would not come within the ambit of

Section 28 of the Act and hence the reasoning of the lower Authority that since it was not registered u/s 28 of the Act, it cannot be taken

cognizance of, is not correct, and in view of Ex. R-1 receipt, the claim ought to have been dismissed. There was no representation either in person

or through counsel for the respondent. I have carefully considered the two submissions made by Mr. G. Neelamegan.

4. Though u/s 10 of the Act, the period of limitation is fixed as two years provision is made for condoning the delay in Section 10(1) of the Act,

and it reads as follows :

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding the notice has not been

given, or the claim has not been preferred in due time as provided in this sub-section if he is satisfied that the failure so to give the notice or prefer

the claim, as the case may be, was due to sufficient cause.

In the instance case, the applicant had filed petition on April 20, 1981 with an affidavit in which she has given in detail the reasons for the delay in

preferring the application. The lower Authority had referred to it in page 2 of its order. It appears from her affidavit that she is an illiterate widow,

without any help, and she could not do things as early as possible and that she had tapped the doors of the concerned Authorities without any

successes and had resorted to the Legal Aid Committee, Madras, which had transmitted her claim to the District Legal Aid and Advisory

Committee, Nagapattinam, and then particulars were asked for and in the process considerable time had lapsed and thus she was constrained to

prefer the application belatedly. The lower Authority had accepted the reasons given by the applicant and had condoned the delay. I do not find

any ground to interfere with this finding. In Page 4 of the order, the lower Authority has considered the question of delay and had found that it has

been validly explained. The applicant first approached the Boat Workers' Association, which initiated proceedings in the Labour Court and due to

cyclone in 1977 the entire records were damaged and then she approached the legal Aid Committee, Madras and took up the matter and after

certain particulars were gathered, the application was filed. The reasoning of the lower authority is very fair and acceptable. Hence, I am unable to

accept the submission made by Mr. G. Neelamegan that no sufficient reason was given for the delay in preferring the application.

5. Regarding the payment of Rs. 2,500 in full quit as evidenced by Ex. R-1, I am in agreement with the lower authority that it requires registration

u/s 28 of the Act. The relevant part of section 28(1) reads as follows :

Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half monthly

payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal liability a

memorandum thereof shall be sent by the employer to the Commissioner who shall, on being satisfied as to its genuineness, record the memorandum

in a register in the prescribed manner.

Though the receipt is to evidence payment of Rs. 2,500 in full quit, in pith and substance, it amounts to settlement of claim of the applicant for the

death of her husband in the course of the employment. Unless such a reasonable interpretation is given regarding the purview of Section 28 of the

Act, the employers would offer a paltry sum to the dependent of an employee who would be in dire need of money and get a receipt in full

settlement of the claim and that the very object of this Act. Only to save the dependents from such contingency, Section 28 of the Act has been

incorporated in the Act. So I am clear that unless such a receipt is registered u/s 28 of the Act as per procedure laid in the said section, it cannot

be used as an answer to the claim of the applicant. In view of the above, I do not accept this submission made by Mr. G. Neelamegan having

failed, this appeal has to be dismissed.

6. At this Stage, Mr. G. Neelamegan made a final submission that since Rs. 2,500 has already been paid, that amount should be deducted from the

amount awarded by the lower authority. He further states that the applicant has admitted having received Rs. 2,500 and executed the receipt. So

that amount will have to be deducted from the amount awarded as compensation. Except regarding the above direction, namely, deduction of Rs.

2,500 from the compensation amount awarded by the lower Authority, the order of the lower Authority has to be confirmed, and this civil

miscellaneous appeal is disposed of accordingly.