
(1987) 07 MAD CK 0020
In the Madras High Court
Case No : Writ Appeal No. 208 of 1981

Rathikanthammal	Vs	APPELLANT
B. Pankajammal and Another		RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:

Citation : (1988) 1 LLJ 423

Hon'ble Judges : V. Ramaswami, J;Bellie, J

Bench : Division Bench

Judgement

Ramaswami, J.—This is an appeal against the order of the learned single Judge of this Court allowing a writ petition filed by the 1st

respondent. One J. D. Chandran was an employee under the father of the 1st respondent and was working as Manager in respect of the Transport

Company owned by the father. The said proprietor, Bhoopathy Naidu, died and his wife, ie., the mother of the 1st respondent, succeeded to the

stage carriage permit held by him. The said Chandran filed a petition u/s 33-C(2) claiming certain unpaid salary. Pending the application u/s 33-

C(2), the said Chandran died on 14th March 1976. The mother of the deceased, one Subhadrai Ammal, was brought on record as the legal

representative of the deceased worker on 1st April 1977 in I.A. No. 461 of 1976, overruling the objections raised by the 1st respondent and

holding that the legal representative of a workman can bring herself on record and claim the dues payable to the deceased workman. That order of

the Labour Court had become final. Unfortunately, however, the said Subhadrai Ammal also died before the petition was disposed of. Her son,

who is the brother of the deceased worker Chandran, filed I.A. No. 112 of 1978

in C.P. No. 20 of 1976 to bring himself on record as a legal representative. That application was ordered by the Labour Court on 6th July 1978. The 1st respondent questioned the validity of that order on the ground that in respect of an application u/s 33-C(2), only a worker can claim and pursue the same and the legal representative could not be brought on record. The learned single Judge allowed the writ petition holding that Section 33-C(2) does not envisage the continuation of the application by a legal representative after the death of the workman. It is against this order, the legal representative has filed the present appeal.

2. The question came up for consideration in a number of decisions in various High Courts. The learned Judge relied on a decision of the Delhi

High Court reported in *Yad Ram (Deceased) through his Lrs. Vs. Bir Singh and Another*, , a decision of the Orissa High Court reported in

Haramani Naik v. Management 1978. Lab. & I.C. 1630 and a decision of this Court reported in *V. Veeramani Vs. Madurai District Cooperative*

Supply and Marketing Society Limited, Madurai and Another, and held that the legal representative has no right to bring himself on record. The

decision in *V. Veeramani v. M.D.C.S. & M.S. Ltd. and Anr. (supra)* related to a reference u/s 10(1) and, therefore, is not much of assistance to

decide the issue. The Delhi High Court took the view that the right to file an application u/s 33C(2) is personal and so, it must die with him and this

decision was followed by the Orissa High Court. But the preponderance of the opinion of the other High Courts is to the effect that the question

will have to be considered in the light of the cause of action and if the cause of action can be said to survive, the legal representative must have a

right to file an application. In that view, the Bombay High Court in *Sitabai Naruna Pujari Vs. Auto Engineers*, and *Ambabai Manjunath Amin Vs.*

P.L. Majumdar Presiding Officer First Labour Court, Thane and others, , the Patna High Court in *Jharia Fire Bricks and Pottery Works (Pvt.) Ltd.*

Vs. Bhirgonath Sharma and Another, , the Kerala High Court in *Gwalior Rayons Vs. Labour Court and Others*, and the Gujarat High Court in

Bank of Baroda Vs. Workmen, have taken the view that the legal representative can be impleaded as a party.

3. We may point out that a Division Bench of this Court in *K.P. Marimuthu (Since Deceased), Ramayee, Mariamma, Devaki, Raman*,

Lakshmanan, Krishnaveni, Anbu Selvi, Bhagyalakshmi and Kumaravalli Vs. The Superintendent of Police, Dharmapuri, The Deputy Inspector

General of Police, Western Range, Coimbatore., Inspector General of Police, Mylapore, Madras and State of Tamil Nadu, which dealt with a

case of the right of a legal representative to bring on record any proceedings under Article 226, applied the test of survival of the cause of action

and impleaded the legal representative. Since there is no prohibition for the legal representative to continue an action u/s 33C(2), there is in our

opinion nothing to suggest that the principle of the survival of the cause of action should not be applied in the case of an application u/s 33C(2). It is

true that the cause of action may survive, but the remedy may be different. The suggestion of the learned counsel for the respondent is that even in

case where the cause of action survives, it is not necessary that the legal representative should be impleaded as a party, if there is an effective

alternative remedy. The alternative remedy suggested is that the legal representative will have a right of suit. It may be, if the worker claimant had

died before filing an application u/s 33C(2) leaving the claim against the management for recovery of money, the legal representative of the

deceased worker could resort to the filing of civil suit and claim the money after establishing the right of the worker against the management. The

same analogy could not be brought in in the case of a worker dying after he had filed the application u/s 33C(2). If the worker dies and along with

that the claim also will have to be dismissed, even though the cause of action may survive, then it might be possible if the legal representative files a

separate civil suit, for the management to contend that the dismissal of the claim petition filed by the worker will operate as res judicata, though,

in terms Section 11, the CPC is not applicable, atleast on the question of analogy that there should be an end to the multiplicity of proceedings. The

management also could not be said to be very management also could not be said to be very much seriously prejudiced by permitting the legal

representative of the worker to continue the proceedings once he had initiated the same. In the circumstances, we are of the view that the better

course will be to allow the legal representative to continue the application instead of driving him to file a fresh suit with necessary complications as

also with the question of limitation and other technicalities available in the suit. In this particular case, as already stated, there is also an additional

factor that on an earlier occasion, the Labour Court impleaded the mother of the deceased as a legal representative though it was contested and that order had become final and not questioned. Now, the present legal representative filing an application is only as a legal representative of the mother, though he happened to be a brother of the worker also and as such may be a legal representative of the worker. As the legal representative of the mother who had been already impleaded, there could be no doubt that the requirement of a worker filing an application may not be applicable.

4. For all these reasons, we are unable to agree with the learned Judge, that the application of legal representative was not maintainable. The appeal is accordingly allowed. The order of the learned Judge is set aside and the writ petition will stand dismissed. The Labour Court is directed to take up the claim petition C.P. No. 20 of 1976 on file and dispose of the same on a priority basis. However, there will be no order as to costs.