

(2011) 08 MAD CK 0253

In the Madras High Court

Case No : Writ Petition No. 23699 of 2009 and M.P. No. 1 of 2011

The Management of MRF Ltd.

APPELLANT

Vs

The Presiding Officer, Second Additional Labour Court and
T.M. Balamani

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 08 MAD CK 0253

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Sanjay Mohan, for Ramasubramaniam Associates, for the Appellant;
V.P. Rajendran, for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner is the Management of MRF Limited. They have filed the present writ petition, seeking to challenge an order passed by the Second Additional Labour Court, Chennai in C.P. No. 469 of 2005 dated 18.09.2009.

2. By the impugned order, the Labour Court held that the second Respondent, who is the mother of late M. Vijayakumar is entitled to get 1/3rd of the amount due and payable to the said Vijayakumar, who was an employee of the Petitioner Management. Since the Management had paid the entire dues to the late Vijayakumar's wife Mrs. Rajalakshmi, the Management was directed to recover 1/3rd of the amount from the said Rajalakshmi and pay it to the second Respondent. Challenging the same, the writ petition came to be filed.

3. The writ petition was admitted on 19.11.2009. Pending the writ petition, this Court granted an interim stay for a period of eight weeks. Thereafter, no attempt was made to extend the interim order.

4. However, when the matter came up before this Court, Mr. Sanjay Mohan, learned Counsel appearing for M/s. Ramasubramaniam and Associates, counsel

for the Petitioner submitted that the Petitioner company is engaged in the manufacture of Tyres at Thiruvottiyur. M. Vijayakumar joined the services of the Petitioner Company as an Apprentice on 15.06.1998 and his services were confirmed on 15.12.2000. On 14.08.2003, when he was on duty, he met with an accident and despite medical treatment, he succumbed to injuries. During his service, the said Vijayakumar had submitted nomination forms to the Petitioner company such as Provident Fund, Gratuity, and MRF Social Welfare Committee, wherein, he had mentioned his mother Balamani as his nominee. He got married on 06.03.2003. Subsequent to his marriage, he submitted various nomination forms for changing his nomination. In these nomination forms, Vijayakumar had nominated his wife, Rajalakshmi as nominee and cancelled the earlier nomination made in favour of the second Respondent. The nomination forms were acted upon and the amount standing to the credit of the late Vijayakumar as well as his terminal benefits were paid to his wife Rajalakshmi. The amounts worked out to Rs. 7,25,743/-.

5. It was submitted by the learned Counsel for the Petitioner that under the Certified Standing Orders the term "Legal heir" has been defined, which refers to the widow of the deceased workmen; in the absence of the widow, the son or unmarried daughter of the deceased. It is only when those legal heirs are not available, then the father or mother can be the legal heirs.

6. When the second Respondent sent a legal notice to the Petitioner Company claiming 50% of the amount from the entire amount paid to the said Rajalakshmi, a reply was sent rejecting her request. The second Respondent also filed a Gratuity Petition before the Assistant Commissioner of Labour -I, Chennai under the Payment of Gratuity Act, claiming 50% of the gratuity amount. Her Gratuity Application in P.G. No. 116 of 2004 was dismissed on 20.12.2004. Her further appeal in P.G.A. No. 40 of 2005 was also dismissed by the Joint Commissioner of Labour, Chennai on 28.10.2005. Subsequently, the second Respondent and her husband filed a petition before the Assistant Commissioner of Labour, (Conciliation-II), Chennai claiming 2/3rd share from the amount paid to Mrs. Rajalakshmi and that was also rejected. It was thereafter, she has filed the claim petition before the Labour Court. The said claim petition was taken on file as C.P. No. 469 of 2005 and notice was ordered to the Petitioner Management.

7. The Petitioner Management had filed a counter statement dated 04.12.2006 refuting the claim made by the second Respondent. It was contended that since they had paid the amount to the nominee, who is the wife, no further claim can be made against the management.

8. Before the Labour Court, on behalf of the second Respondent, she examined herself as P.W.1 and on her side, 9 documents were filed and marked as Exs.P-1 to P-9. On the side of the Petitioner Management, one M. Benjamin Ravikumar was examined as R.W.1 and on their side, 12 documents were filed and marked as Exs.R-1 to R-12. Ex.R3 dated 28.03.2003 is the nomination form nominating Mrs. Rajalakshmi as the nominee for the claims of late Vijayakumar. Exs.R9 and

R10 are the rejection of the Gratuity claim made by the second Respondent.

9. The Labour Court observed that as per the legal heir certificate issued by the Tahsildar, there are three legal heirs, viz., V. Rajalakshmi, wife, T.M. Balamani, mother and R.T. Mariappan, father. Under the term of settlement entered into between the Management and the workers, the term legal heir includes wife and the mother as Class I heirs. The Gujarat High Court vide its judgment reported in Government of West Bengal Vs. Tarun K. Roy and Others, has held mother is also a legal heir and that a nominee does not get any additional right to avail the benefits and the nominee has the duty to disburse the same among the legally entitled legal heirs. The Labour Court held that since the mother of the deceased is also a legal heir, she is entitled to get the amount due and accordingly, a direction was given to the Management to pay her 1/3rd share of the amount.

10. It was claimed by the Management that towards the death of Vijayakumar due to the accident, arising out of and in the course of employment, the Workmen's Compensation claim of Rs. 4,15,967/- was deposited with the Workmen's Compensation Commissioner II, Chennai. The said officer after conducting the dependant's enquiry found that there were four legal heirs for Vijayakumar namely Rajalakshmi - wife, Vignesh - Minor Son, Mariappan - father and Balamani - Mother and had apportioned the amounts to all the four heirs. Since the statutory enquiry was conducted by the authority, the amounts were apportioned by the authority. But in respect of the claims disbursed by the company, the company is fully protected by the nomination form and there is no illegality in the amount disbursed to the said Rajalakshmi. If the second Respondent is aggrieved, she has to proceed against the said Rajalakshmi and not to file claim petition before the Labour Court. The Labour Court was erroneous in directing the Management to recover the amount and pay it to the second Respondent and such a direction cannot be granted to the management.

11. In this context, it is necessary to refer Rule 61 of the Employees Provident Fund Scheme 1952, wherein, it is stated that an employee who is a member of the scheme, if he has a family at the time of nomination must make one or more persons belonging to the family as the nominee and nomination made in cases where a person does not belong to the family is invalid. Under Proviso to Rule 61, it is stated that if a member of the scheme, makes a fresh nomination on his marriage, any nomination made before such marriage shall be deemed to be invalid. Though a nominee is entitled to receive the amount due, but the nominee, whether he or she cannot appropriate the entire amount and must hold the amount received as a Trustee and distribute the amount to all the legal heirs, who are entitled to get the amount. But on that score that certain amounts are not received by any one of the legal heir, the aggrieved parties cannot proceed against the employer but they must proceed only against the nominee who had received the entire amount from the employer. In effect claim can give rise to a new cause of action in the form of a civil litigation between the aggrieved person

and the nominee who had received the amount. The role of the employer do not come into the picture at all as long as the employer acquit themselves of having paid the amount to the nominee and there was a valid nomination in favour of the nominee.

12. In this context, it is necessary to refer to the judgment of the supreme Court wherein, the question relating to the role of a nominee came to be considered. In Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, , in paragraph 12, the Supreme Court observed as follows:

12... We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made u/s 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

Therefore, the Labour Court had erred in entertaining the claim petition filed by the second Respondent. Such a claim petition ought to have been rejected on the face of Exs.R3, R9 and R10.

13. In the light of the above, the writ petition stands allowed and the impugned order stands set aside. The dismissal of the writ petition will not dis-entitle the second Respondent from proceeding against the said Rajalakshmsi, wife of late Vijayakumar in the manner known to law. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.