



MFA (ECC) NO. 27 OF 2024

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2025:KER:70744

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

MONDAY, THE 22ND DAY OF SEPTEMBER 2025 / 31ST BHADRA, 1947

MFA (ECC) NO. 27 OF 2024

AGAINST THE JUDGMENT DATED 09.01.2024 IN ECC NO.13 OF 2017 OF
INDUSTRIAL TRIBUNAL, ALAPPUZHA

APPELLANTS/APPLICANTS:

- 1 SIVAN, AGED 57 YEARS
S/O. THANKAPPAN, THATTARAMBEL HOUSE, KAYANAD, OORAMANA,
MARADY VILLAGE, MUVATTUPPUZHA TALUK, ERNAKULAM DISTRICT,
PIN- 686730
- 2 VIMALA SIVAN, AGED 55 YEARS
W/O. SIVAN, THATTARAMBEL HOUSE, KAYANAD, OORAMANA, MARADY
VILLAGE, MUVATTUPPUZHA TALUK, ERNAKULAM DISTRICT,
PIN - 686730

BY ADV SHRI.A.N.SANTHOSH

RESPONDENTS/OPPOSITE PARTIES:

- 1 RAJU. P.V
VELLIATTEL HOUSE, NIRAPPU, EAST VAZHAPPILLY, MULAVOOR
VILLAGE, MUVATTUPPUZHA, PIN - 686673
- 2 THE ORIENTAL INSURANCE COMPANY LTD
CORPORATE BUSINESS UNIT, 7, RED CROSS PLACE, 1ST FLOOR,
KOLKATTA, REPRESENTED BY ITS MANAGER, PIN - 700001

R2 BY ADV SRI.DINESH MATHEW J.MURICKEN

THIS MFA (ECC) HAVING BEEN FINALLY HEARD ON 22.09.2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



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JUDGMENT

1. Appellants in this appeal are the Applicants before the Employee's Compensation Commissioner. They are the parents of Sri. Ambady, who died in an accident on 05.01.2015 while working as a hydraulic lift operator in the quarry belonging to the First Respondent/First Opposite Party. The hydraulic lift belonged to the First Opposite Party and was insured with the Second Respondent/Second Opposite Party - Insurance Company.
2. The Commissioner found that there is an employer – employee relationship between the deceased employee and the First Opposite Party and that Rs.8,61,120/- is the compensation payable for the death of the deceased employee. But the Applicants were non-suited, finding that the Applicants had filed



P.L.P. No.4/2015 before the Lok Adalat held on 14.02.2015, conducted by the Muvattupuzha Taluk Legal Services Authority and settled the matter for Rs.10 lakhs as per Ext.X1 and that the Applicants admitted that they have received Rs.10 lakhs from the First Opposite Party in the proceedings conducted before the Lok Adalat. Hence, the Applicants have filed this Appeal challenging the Order of the Commissioner and claiming the compensation fixed by the Commissioner.

3. This Appeal was admitted on 03.09.2024 without formulating substantial questions of law. In view of the arguments addressed before me, I formulated the following substantial questions of law in this Appeal:

1. Whether a claim for compensation under the Employee's Compensation Act, 1923 can be settled by filing Pre-Litigation Petition under Section 22C of the Legal Services Authorities Act, 1987 and the compensation can be



received by the dependents of the deceased employee in view of the bar Section 8(1) of the Employees' Compensation Act, 1923 ?

2. Whether the dependents of the deceased employee could be non-suited from receiving the compensation awarded by the Employee's Compensation Commissioner on the ground that they had approached the Lok Adalat and obtained Ext.X1 Award and received the compensation of Rs.10 lakhs mentioned therein?
4. Since both the Counsel consented to address arguments on the substantial questions of law formulated, the matter was heard.
5. I heard the learned Counsel for the Appellants, Sri. A.N. Santhosh and the learned Counsel for the Second Respondent, Sri. Dinesh Mathew J. Muricken.
6. The learned Counsel for the Appellants contended that the very purpose of Section 8(1) of the Employee's Compensation Act,



1923 (for short, the EC Act) would be defeated if the Applicants are non-suited on account of Ext.X1 Award of the Lok Adalat. This issue is covered in the Division Bench decisions of this Court in ***Shah v. Rajankutty [2006 ACJ 793]*** and ***Varghese K.M. v. Thankamma @ Ponnamma and Others [2012 (2) KHC 661]***, in which it is specifically held that no employer can discharge the liability to pay compensation without making deposit before the Commissioner and that the Statute inhibits any direct payments to the claimants. In view of Section 8(1) of the EC Act, the payment made by the employer could not be taken into account while considering the Application for compensation filed by the dependents of the deceased employee.

7. *Per Contra*, the learned Counsel for the Second Respondent contended that the Applicants filed P.L.P. before instituting the present Application and the same was settled in the Lok Adalat.



Admittedly, the Applicants received Rs.10 lakhs from the First Opposite Party as per the award of the Lok Adalat, which is much more than the compensation found to be eligible by the Commissioner. Only if the Application is maintainable against the First Opposite Party, the liability of the Second Opposite Party as insurer arises for consideration. The learned Counsel cited the decisions of the Hon'ble Supreme Court in ***P.T. Thomas v. Thomas Job [(2005) 6 SCC 478]***, ***K.N. Govindan Kutty Menon v. C.D. Shaji [(2012) 2 SCC 51]*** and ***Madhya Pradesh State Legal Services Authority v. Prateek Jain and Another [(2014) 10 SCC 690]*** to enlighten the object of the Legal Services Authorities Act and in ***National Insurance Co. Ltd. v. Mastan and Another [(2006) 2 SCC 641]*** to demonstrate the concept of election of remedies. Learned Counsel contended that since the Applicants elected a remedy under the Legal Services Authorities Act, the remedy under the EC Act is not available to them.



8. I have considered the rival contentions.
9. It is admitted by the Applicants that they had received the amount of Rs.10 lakhs mentioned in Ext.X1 Award of the Lok Adalat. It is the case of the Applicants that even before Ext.X1 Award dated 14.02.2015, the Applicants and the First Opposite Party had executed Ext.D1 Agreement dated 24.01.2015 with respect to the payment of the compensation and they had received Rs.10 lakhs as compensation and that the amount of compensation of Rs.10 lakhs was received not on the basis of Ext.X1 Award but on the basis of Ext.D1 Agreement executed by the Applicants and the First Opposite Party. Though the Applicants contended that they had not approached the Permanent Lok Adalat, they did not take any steps to set aside the Award of the Lok Adalat. The P.L.P. was filed before the institution of the present Application for compensation under the EC Act. When the amount of compensation mentioned in Ext.X1



award is Rs.10 lakhs, and when the Applicants admit that they had received Rs.10 lakhs as compensation from the First Opposite Party, such receipt of compensation can only be referable to Ext.X1 Award of the Lok Adalat.

10. It is true that any payment for compensation for death made by the employer to the dependents of the deceased employee shall not be deemed to be payment of compensation under Section 8(1) of the EC Act.

11. Legal Services Authorities Act, 1987, is an enactment subsequent to the EC Act. Section 25 of the Legal Services Authorities Act, 1987 provides that the provisions of the said Act shall have overriding effect over anything inconsistent contained in any other law for the time being in force. The provisions of the Legal Services Authorities Act, 1987 have overriding effect on the provisions in the EC Act, which are inconsistent with the same. Section 22C(1) of the Legal Services Authorities Act,



1987, provides that any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of the dispute. Under the First Proviso to Section 22C(1), any matter relating to an offence not compoundable under any law alone is excluded from the jurisdiction of the Permanent Lok Adalat. Section 22C of the Legal Services Authorities Act, 1987, does not exclude the proceedings under the EC Act. Section 22C(2) of the Legal Services Authorities Act, 1987, provides that after an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any Court in the same subject. Since the Applicants invoked the remedy under the Legal Services Authorities Act and obtained compensation for the death of their son, they have no right to approach the Employee's Compensation Commissioner under the EC Act for obtaining the very same compensation.



12. Admittedly, they have received compensation much more than that which is found to be eligible by the Commissioner in the impugned Order. The very purpose of Section 8(1) of the EC Act is to prevent the employers from exerting undue influence or duress, from defrauding, from misrepresenting the dependents of the deceased employees, or from exploiting their weakness, who always belong to vulnerable and weaker sections of the society, and persuading them to settle the dispute by accepting a compensation lesser than that which is admissible to them. When the dispute with respect to the compensation for death between the employer and the dependents of the deceased employee is settled in the mediation/adjudication of the Permanent Lok Adalat, which is also a judicial body, there is no question of any undue influence, duress, defrauding, misrepresentation or exploitation on the part of the employer. The interests of the weaker party would be taken care of by the



Permanent Lok Adalat. Even in the absence of Section 8 of the EC Act, its purpose would be well served in the proceedings under Section 22C of the Legal Services Authorities Act. The interests of the dependents of the deceased employee would be protected in the proceedings under Section 22C of the Legal Services Authorities Act. Hence, the bar under Section 8(1) of the EC Act will not be applicable to the proceedings under Section 22C of the Legal Services Authorities Act. A claim for compensation for the death of an employee can be settled/adjudicated under Section 22C of the Legal Services Authorities Act. In *Mastan (supra)*, the Hon'ble Supreme Court considered the remedies available under the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923, and following the principle laid down in *R. v. Evans [118 ER 1178]* that "where, either of the two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and



he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter", held that a claimant who becomes entitled to claim compensation under both the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, because of a motor vehicle accident has the choice of proceeding under either of the Acts before the forum concerned; that by confining the claim to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned; that he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923; and that the emphasis in the section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. Once compensation for the death of the



employee is received by his dependents by resorting to the proceedings under Section 22C of the Legal Services Authorities Act, they cannot resort to the provisions of the EC Act, taking shelter under Section 8(1) of the EC Act in view of the doctrine of election.

13. In the decision of the Hon'ble Supreme Court in ***K.N. Govindan Kutty Menon (supra)***, after referring to the objects of the Legal Services Authorities Act, it is specifically stated that those entitled to free services are members of the Scheduled Castes and Scheduled Tribes, women, children, persons with disability, victims of ethnic violence, industrial workmen, persons in custody, and those whose income does not exceed a level set by the government. It is pertinent to note that industrial workmen are also included.

14. In ***P.T. Thomas (supra)*** and ***Madhya Pradesh State Legal Services Authority (supra)***, the Hon'ble Supreme Court described various



benefits of Lok Adalat under the Legal Services Authorities Act. In *P.T. Thomas (supra)*, it is held that there is no Court fee and if Court fee is already paid the amount will be refunded if the dispute is settled at Lok Adalat according to the rules; that the basic features of Lok Adalat are the procedural flexibility and speedy trial of the disputes; that there is no strict application of procedural laws like Civil Procedure Code and Evidence Act while assessing the claim by Lok Adalat; that the parties to the dispute can directly interact with the Judge through their Counsel which is not possible in regular Courts of law and that the award by the Lok Adalat is binding on the parties and it has the status of a decree of a Civil Court and it is non appealable, which does not cause the delay in the settlement of disputes finally. The dependents of the deceased employee can very well avail themselves of the benefits under the Legal Services Authorities Act, and it is an injustice if the said benefits are



denied to the dependents of the deceased employee. If the benefits under the Legal Services Authorities Act are not extended to the dependents of the deceased employee, it would amount to a negation of their fundamental rights guaranteed under Article 14 of the Constitution of India.

15. In view of the aforesaid discussion, I answer both the substantial questions of law in the affirmative and against the Appellants.

16. In view of the answers to the substantial questions of law, the Appeal fails and accordingly, the same is dismissed.

Sd/-

M. A. ABDUL HAKHIM

JUDGE

Shg/