

ALL CEYLON COMMERCIAL AND INDUSTRIAL WORKMEN'S
UNION (ON BEHALF OF S. M. RANDENIYA)

v.

COLLETES LTD.

COURT OF APPEAL.

JAYALATH, J. AND RAMANATHAN, J.

C.A. 67/81.

L. T. 13/6430/77.

JUNE 18, 1986.

Industrial Disputes Act s. 31 B(1) – Death of workmen for whom Trade Union sued – Heirs and successors of deceased workman – Aggrieved person – S. 358 of Code of Criminal Procedure Act.

Where a Trade Union had filed an application under the Industrial Disputes Act s. 31B(1) on behalf of a worker, and the worker died pending appeal no question of substitution arises. The Trade Union can continue the appeal. The benefit of the decision will accrue to the heirs and successors of the workman in respect of compensation, gratuity, backwages and other emoluments as these are claims already due on the service rendered. However the question of reinstatement cannot arise.

The expression 'aggrieved person' would be applicable to the widow of the deceased.

APPEAL from order of the Labour Tribunal—preliminary objection.

R. Weerakoon for applicant-appellant.

Desmond Fernando with Javid Yusuf for employer-respondent.

Cur. adv. vult.

January 20, 1987.

RAMANATHAN, J.

A preliminary objection was raised by learned counsel for the employer-respondent. He submitted as this action had been filed by a Trade Union *on behalf* of a workman, who had died pending hearing of his appeal, the appeal must now abate as a Trade Union could not continue to act on behalf of the deceased.

The relevant facts may be briefly stated as follows: An application was filed by the All Ceylon Commercial and Industrial Workers' Union *on behalf* of S. M. Randeniya under section 31 B(1) of the Industrial Disputes Act on the 9th March, 1977. On the 3rd February, 1981 the

President of the Labour Tribunal dismissed the application. The applicant's union filed a petition of appeal on behalf of the applicant-appellant on the 23rd of February, 1981.

On the 21st September, 1985 Mrs. Randeniya filed an affidavit stating that her husband S. M. Randeniya died on the 5th of December, 1983 and requested the Court of Appeal to hear the appeal.

It was submitted by learned counsel for the employer-respondent that an application can only be made by a Trade Union on behalf of a workman who is a member of that union and the moment a person ceases to be a member of that union the nexus between the union and its member ends. Membership can end in one of several ways by resignation, expulsion or death. It was submitted that the relationship between the union and the member was a contractual one and a dead member cannot fulfil his contractual duties of payment of subscriptions or conform with the union rules and decisions.

It was submitted that on the death of Randeniya his membership ceased. Therefore the union cannot prosecute his appeal on his behalf.

The relevant section for consideration is s. 31 B(1) of the Industrial Disputes Act which reads as follows:

"A workman or trade union on behalf of a workman who is a member of that union may make an application in writing to a Labour Tribunal for relief or redress in respect of any of the following matters:—

- (a) the termination of his services by his employer.
- (b) The question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits."

We are of the opinion, as the application has been made by a Trade Union on behalf of a worker, the question of substituting anybody for the Trade Union does not arise. No doubt the worker on whose behalf the application was made by the Trade Union has died pending the appeal. The question is whether the application can still be continued by the Trade Union.

We are of the opinion, that the Trade Union can continue the appeal. We have considered the argument presented by learned counsel for the employer-respondent, that on the death of a workman the contractual relationship between the Trade Union and the worker ceased and as no further rights flowed from the contract the appeal must necessarily abate.

To our minds the heirs and successors of a workman should have the right to pursue any claims due as compensation for wrongful dismissal or claims by way of gratuity, backwages or other emoluments even after the death of the workman, as these are claims due on services already rendered by the workmen. However the question of reinstatement does not arise on the death of a workman.

Although the workman may have no award in his favour, at the time of his death the Union should be entitled to prosecute the workman's appeal as the Court of Appeal may hold that the services of the workman were unjustly terminated. However in the event of such a decision by an appellate court, the union would be able to recover compensation to which the heirs of the deceased would be entitled. This would be in our view a just and equitable solution to such a situation.

We are mindful of the provisions of section 358 of the Code of Criminal Procedure Act No. 15 of 1979 and we are of the view that the expression 'aggrieved person' would be applicable to the widow of the deceased as she would fall within the scope of a 'person aggrieved' within the meaning of section 16 of the Judicature Act. We are of the opinion, that this court also can act under Article 145 of the Constitution which permits this court to exercise its revisionary powers where the interests of justice require it.

We, accordingly hold that the All Ceylon Commercial and Industrial Workers' Union who filed this case on behalf of S. M. Randeniya can continue to prosecute this appeal.

For the reasons stated above we overrule the preliminary objection raised by learned counsel for the employer-respondent and fix the appeal to be heard in due course for argument.

JAYALATH, J.—I agree.

Preliminary objection overruled.