

* **HIGH COURT OF DELHI : NEW DELHI**

FAO No.233 of 2009 & CM Nos.10125-26/09,

% Judgment reserved on: 27th August, 2009

Judgment delivered on: 1st September, 2009

National Insurance Co. Ltd.
Division No. 5, Hemkund, 7th Floor
New Delhi- 110 008.

Also at :

DRO-II

2E/9, Jhandewalan, Extension,
New Delhi

Through: Ravi Sharma, Manager

....Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

1. Smt. Pushpa,
W/o Late Sh. Raj Kumar

2. Master Shivam,
S/o Late Sh. Raj Kumar

3. Master Satyam
S/o Late Sh. Raj Kumar

4. Smt. Bimla Devi
W/o Late Sh. Asha Ram

All R/o H. No. 101/8, Street No. 3,
Kartar Nagar, Delhi.

5. Sh. Tek Chand Bhatti
S/o Late Sh. Mathura Singh

R/o H. No. 137, Nehru Gali
Maujpur, Delhi-110 05

...Respondents

Through: Nemo

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed by appellant-National Insurance Company Limited against order dated 30th May, 2008 passed by Commissioner Workmen's Compensation (short as 'Commissioner'), under Workmen's Compensation Act, 1923 (short as 'Act').

2. By impugned order, claim under the Act, filed by respondent nos. 1 to 4, was allowed.

3. Alongwith present appeal, application for condonation of delay has also been filed.

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4. As far as application for condonation of delay is concerned, appellant's case is that their advocate did not forward his legal comments on the order, as per procedure, he was requested to send his legal comments on the order passed by the Commissioner. On receipt of legal opinion of the Advocate for filing the appeal, papers were forwarded to one of their panel advocates at Delhi for filing the appeal without any further delay. Thus, delay which has occurred, is due to bona fide reason and was neither intentional nor willful.

5. Section 5 of Limitation Act, 1963 reads as under :

“5. Extension of prescribed period in certain cases:- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring

the appeal of making the application within such period.”

6. This section enables a “Court” to admit an appeal or an application after the expiry of prescribed period on sufficient cause being shown for the delay. So, a bare reading of this Section goes on to show that appellant has to show sufficient cause for not filing the appeal in the prescribed period.”

7. Reasons for delay, in filing the application, are as under:

“(i) That the Appellant is maintaining a panel of Advocates for conducting the cases of all its offices situated in India and as per the understanding between the appellant insurance company with their panel Advocates, they are supposed to send their legal opinion without any delay on the merits of the order as and when it is passed in any of the cases which are being handled by the concerned panel Advocate.

(ii) That in this, since the Advocate has not forwarded his legal comments on the order, as per the procedure, he was requested to send legal comments on the order passed by the learned Tribunal and upon receipt of the legal opinion of the Advocate for filing the

Appeal, immediate thereafter the concerned office of the Appellant, forwarded the papers to one of their panel Advocates at Delhi for filing the Appeal without any further delay.

(iii) That the Advocate thereafter prepared the Appeal and forwarded the same for the signatures of the Attorney of the Appellant insurance company and immediately thereafter, the Appeal was filed in the Registry of this Hon'ble Court.

(iv) That the delay of 401 days in filing the Appeal occurred on account of aforesaid bona fide reasons and circumstances and was neither intentional nor willful."

8. Though the appellant is a nationalized company but basic question to be seen is as to whether there is any sufficient cause for condonation of delay. It is correct that when State as an appellant is praying for condonation of delay, the Court has to consider various factors which are peculiar too and characteristic of the functioning of Government condition which requires adoption of pragmatic approach in justice oriented process.

9. In ***State of Haryana V/s Chander Mani and Ors, AIR 1996 SC 1623***, it has been observed :-

“When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the Community. It is axiomatic that decisions are taken by the officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise- is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression “sufficient cause” should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day’s delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be

cognizant to and requires adoption of pragmatic approach in the justice-oriented process. The court should decide the matters on merit unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the case whether any legal principles are involved for decision by the court or whether cases require adjustment and should authorize the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would also be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

10. In another decision of Supreme Court, ***R.B. Ramlingam Vs. R.B. Bhvaneshwari, 2009 (2) SCALE 108***, it was observed:

"We hold that in each and every case the Court has to examine whether delay

in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition. In exercise of discretion under Article 136 to decide whether delay should be condoned or not, this Court is not bound by considerations applicable to an Appellate Court but nonetheless general principles which would weigh with the Appellate Court in determining sufficient cause can be the guiding factor/guideline.”

11. It is well settled that whether delay is to be condoned or not, is the discretion of the Court but same has to be exercised judicially. Supreme Court in ***Ram Lal and Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361*** held:

“It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground

alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.”

12. Though appellant is a Government organization and is entitled to certain latitude due to the fact that various officials of appellant had been dealing with this file at different level. However, it is to be seen as to whether sufficient cause for condonation of delay as enumerated in the application, falls within the parameter of the above decisions of Supreme Court.

13. In entire application for condonation of delay, appellant nowhere stated as to on which date appellant applied for certified copy of the impugned order; when the same was received ; when matter was sent for legal opinion to file appeal; what is the name of

advocate from whom opinion was sought; on which date counsel gave his opinion and on which date appeal file was received by appellant for filing in this Court.

14. Not even a single date has been mentioned nor name of any official or advocate, who dealt with case at different levels, nor the period for which opinion file remained with either the officials of appellant or their advocate, has been mentioned. The application is absolutely vague and does not lead this Court anywhere.

15. It has nowhere been stated as to which of the official or advocate, of appellant company was at fault and what action has been taken against them. Admittedly, there is delay of more than one year and one month. From the averments made in the entire application, no sufficient cause has been shown for condonation of delay. Hence, this application is not maintainable and same is liable to be dismissed.

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16. Coming to the merits of this appeal, only question of law involved as per appellant is:

“Whether in view of the provision of Section 4(a) 2(ii) of the Workmen’s Compensation Act, the employer is liable to pay the interest as well as the penalty as provided under the Act in view of the mandatory provision of Section 4 (a) (1) and (2) of the Workmen’s Compensation Act ?”

17. Section 4(A) of the Act reads as under :-

“4A. Compensation to be paid when due and penalty for default-

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall---

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such

higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty :

Provided that an order for the payment of penalty shall not be passed under clause

(b) without giving as reasonable opportunity to the employer to show cause why it should not be passed.

Explanation:---For the purpose of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest payable under sub-section (3) shall be paid to the workman or his dependant, as the case may be, and the credited to the State Government."

18. Supreme Court in ***Pratap Narain Singh Deo Vs. Srinivas Sabata and Anr. (1976) 1 SCC 289***, has observed:

"It was the duty of the appellant, under Section 4A(1) of the Act, to pay the compensation at the rate provided by

Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under Sub-section (2) of Section 4 for, as has been stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of his negligence. Then there is the further fact that he paid no need to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

19. As per Section 4 (A) of the Act, penalty for default can be awarded by the Commissioner. Impugned order in this regard, reads as under :

"As far as the issue of payment of interest is concerned, it has been found/established and proved that the Respondent No. 1 had informed the

Respondent No. 2 within reasonable time but even then the compensation was not paid in time to the dependents of the deceased and was paid only on the direction of this court. Accordingly on 11-10-2006 the Respondent No. 2 was directed to deposit/pay the amount of interest for the period from the date of accident i.e. 24-06-2001 till the date of deposit of cheque of compensation i.e. 11-3-2005 @ 12% simple interest per annum as provided under the provisions of the Act on the amount of compensation i.e. rs. 3,32,055/-. But instead of the depositing the amount of interest as directed the Respondent No. 2 opted to remain absent after 1-11-2006. Therefore, there was no other alternative but to conclude the proceedings and to direct the Respondent No. 2 though this order to deposit the aforesaid interest amount i.e. 1,47,986/- by way of DD/Pay Order.”

20. I do not find any reason to disagree with the well reasoned findings of the Commissioner. Keeping in view the willful defiance on the part of appellant, Commissioner was justified in awarding compensation from date of accident.

21. Thus, no infirmity or ambiguity can be found with the impugned order. The present appeal is thus not maintainable and is liable to be dismissed.

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22. As appeal is not maintainable, this application for stay is also not maintainable.

23. Accordingly, present appeal as well as applications for stay and condonation of delay, stand dismissed with cost of Rs. 5000/-

24. Appellant is directed to deposit costs with Registrar General of this Court, within a period of one month from today, failing which same be recovered in accordance with law.

25. Trial court record be sent back.

26. List on 7th October, 2009 for compliance.

September 1, 2009
mr

V.B.GUPTA, J.