

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.209/2006**

% **27th May, 2014**

NEW INDIA ASS. CO. LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

SH. BALBIR SINGH & ANR. Respondents
Through: Mr. Kamaldeep, Advocate for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 30 of the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act') against the impugned judgment of the Commissioner dated 7.7.2006 which has allowed the claim petition filed by the respondent no.1 herein. Before allowing the petition on merits, the Commissioner has condoned delay of about 20 years in filing the petition.

2. On behalf of the appellant it is argued that no sufficient cause was shown for the Commissioner to condone the delay from 15.9.1982 to

FAO 209/2006 *Page 1 of 11*

17.12.2004 i.e the delay of more than 20 years. It is argued that the respondent no.1/claimant did not plead the necessary facts for such a large delay of 20 years to be condoned. It is contended on behalf of the appellant that as per Section 10(1) of the Act period of limitation is two years for filing of claim petition after the accident, and no doubt there is provision for condonation of delay by showing sufficient cause, however, if delay of 20 years is condoned, especially when there is no sufficient cause, a wrong precedent will be set for all future cases.

3. The undisputed facts in this case are that respondent no.1 was a driver on the truck owned by the respondent no.2 herein. The truck met with an accident on 15.9.1982 at about 11.30 A.M. at Jaipur highway. The respondent no.1 had in the year 1993, before filing the claim petition under the Employee's Compensation Act, filed a compensation case before the State Commissioner under the Consumer Protection Act, 1986. This petition seeking compensation was dismissed by the State Commission on the grounds of limitation on 18.12.1994. Even the appeal which was filed by the respondent no.1 was dismissed on 22.5.2002 though it was observed by the National Commission that the case of the respondent no.1 can be considered sympathetically. This observation however was of no legal effect /binding for giving of compensation, because, the petition under the

FAO 209/2006 *Page 2 of 11*

Consumer Protection Act was dismissed. Respondent no.1 thereafter filed a petition under the Motor Vehicles Act, 1988 on 27.5.2003 but withdrew the same on 16.12.2004 by praying for liberty to file the present petition under Employee's Compensation Act. MACT allowed withdrawal of the petition with permission to file a petition under the Employee's Compensation Act vide order dated 16.12.2004 and which reads as under:-

“16.12.2004

Present: Shri Kamal Deep, counsel for the petitioner with the Petitioner.

File taken up today on the application of the petitioner under Section 151 CPC seeking permission to pursue the petition before the Commissioner Workman's Compensation on the ground that the petitioner who had sustained permanent disability is facing acute shortage of money. In the interest of justice, the application is allowed. The petitioner is permitted to withdraw the present petition with liberty to file the claim before the Commissioner Workmen's Compensation within three weeks. It is hoped that the petition will be disposed of as expeditiously as possible and preferably within a period of six months. Copy of this order be given dasti to counsel for petitioner.

MACT/16.12.2004”

4. Giving of liberty by the MACT in the order dated 16.12.2004 can in no manner be a ground for automatic entitlement of condonation of delay because observations of MACT of granting liberty was only to prevent an objection of an earlier case filed before MACT being not pursued for hearing a petition under the Act, and liberty granted by the MACT cannot be

read as that the respondent no.1 was bound to have his delay condoned in filing his case under the Act.

5. In order to appreciate the issue of limitation, let us turn to the application by which condonation of delay was sought. Since the application is a short one, the same is reproduced in its entirety as under:-

“APPLICATION UNDER SECTION 151 CPC AND SECTION 5 OF LIMITATION ACT AS AN ABUNDANT CAUTION FOR CONDONATION OF DELAY IN FILING THE PETITION

MOST RESPECTFULLY SHOWETH:

1. That the petitioner was working with Respondent no.2 Company as a driver and was very hard working and very honest worker.
2. That while under the employment with the Respondent Company, the petitioner suffered serious injuries while alighting from the truck bearing no.NLK 9150 as a result of which the petitioner has become physically handicapped and has 100% permanent physical amputation of his legs and arms. The brief facts of the case are already mentioned in the petition, which may be read as part and parcel of the present application.
3. That the petitioner had earlier moved an application under the Motor Vehicle Act and after taking the liberty from the Hon'ble court of Mrs Reva Khetrapal Judge Mact as per the order dated 16.12.2004, to approach before the Commissioner Workmen's Compensation, the following petition is being pursued. The order is directed to approach before the CWC with in period of three weeks hence the application is moved as an abandoned caution.
4. That the petitioner was 25 years when he met with an accident. The petitioner is only 10th class pass and in fact was not aware of the workmen compensation or seek a claim. However, the petitioner had gone into depression due to the tragic loss 100% permanent total disablement. The petitioner is not in a position to work at all as he has lost his earning capacity.

5. That the petitioner has been taking steps to pursue the matter as stated in the petition and is approaching the court as per the order passed by the Judge MACT. There is no delay therefore in the above matter. The delay is therefore, not attributed to the deliberate attempt to delay the matter but due to the reasons beyond the control and comprehension. The petitioner is even otherwise approaching the court as a matter of right and matter of choosing the forum as envisaged in the Act and the inherent power vested with the Tribunal.

6. That the petitioner has got prima facie a very good case and is likely to succeed on merits.

7. That the petitioner will suffer an irreparable loss in case the petition is dismissed on the grounds of Limitation or on the other hand if the condonation of delay is not allowed.

PRAYER

In view of the aforesaid facts and circumstances of the case the petitioner respectfully prays as under:-

a) to allow the application by condoning the delay under the facts and circumstances as mentioned above.

b) to pass such other order of direction as this Hon'ble Court may deem fit.

APPELLANT

NEW DELHI

THROUGH

DATED:

(KAMAL DEEP)
ADVOCATE.”

6. A reading of the aforesaid application for condonation of delay shows that no sufficient cause can be said to have been given for condoning the delay in filing of the petition under the Act. Except mentioning the factum with respect to passing of the order by the MACT on 16.12.2004 no facts have been stated for the period from 1984 to 2004 which would amount to sufficient cause for condonation of delay. Therefore, even if we give

benefit to the respondent no.1 of the period spent before the Motor Accident Claims Tribunal i.e from 27.5.2003 to 16.12.2004, the respondent no.1 was still bound to explain the delay from 15.9.1984 to 27.5.2003 i.e the delay of about 18 years and which has not been done. Also there cannot exist sufficient cause because even the earlier petition filed under the Consumer Protection Act in the year 1993 was held to be time barred inasmuch as even under the Consumer Protection Act the limitation period is two years and the petition under the Consumer Protection Act was filed years after the accident. The accident in this case took place in the year 1982 and the case was filed under the Consumer Protection Act in the year 1993 i.e after a delay of about eleven years. Therefore, once the period of about eleven years delay was not condoned under the Consumer Protection Act the same operates as res judicata on the issue of condonation of delay in the present case also. Once there is an earlier judgment as to existence of or not of sufficient cause for condonation of delay by a judicial forum, and which is the State Commission under the Consumer Protection Act in this case, that judgment necessarily has to operate as res judicata as to the lack of sufficient cause being shown by the respondent no.1/claimant and another judicial forum on the same facts/ case filed by the same respondent no.1, cannot take a different view, and accordingly this Court would also be bound by the

FAO 209/2006

judgments passed by the State Commission and National Commission under the Consumer Protection Act holding that there is no sufficient cause for condonation of delay. In any case delay cannot be condoned because the respondent no.1 has not given sufficient reason comprising necessary facts for the period from 1984 to 1993 even before the Commissioner acting under the Act because I have already reproduced above the entire application for condonation of delay, and which application does not give any sufficient reasons for seeking condonation of delay from 1984 to 1993.

7. In view of the above, it is clear that sympathy cannot replace the requirement of existence of sufficient cause even if we accept the aspect that the subject Act has to be interpreted liberally because it is a social legislation. If delay is condoned in a routine manner, the same will have serious consequences not only upon the employer but also upon the insurance companies because over a period of time, valuable evidence gets lost and which factor is one of the principal reasons for providing of limitation for filing of proceedings in different courts/forums. The Commissioner has also failed to give the necessary discussion with respect to why delay can be condoned. This cursory manner of the Commissioner is an approach which leads to arising of a substantial question of law for this appeal to be allowed under Section 30 of the Act. In order to appreciate the

total lack of appropriate discussion by the Commissioner, the relevant paras of the judgment of the Commissioner is reproduced below:-

“ISSUE NO.1 & 2

That the accident has occurred on 15.09.1982. At the time of accident the petitioner was under the employment of respondent no.2. After the said accident the petitioner sustained multiple grievous injuries all over his body, which resulted in amputation of right leg. His hands were shortened and he had fractured ribs as submitted by the petitioner. That the injuries as stated were of nature that there was no chance of survival. He was admitted to the hospital with the same condition and remained in hospital for quite a number of years. The same condition continued for many years. After almost 4-5 years after the accident the petitioner was able to walk on calipers.

That the vehicle no.NLK-9150 was duly insured with the respondent no.1/Insurance Company for the intervening period when the accident happened, which is Exh.PW1/3. The premium was charged by the respondent no.1 for the third party liability and for two drivers and cleaner. That immediately after the accident on 15.09.1982 respondent no.2 informed the insurance company about the said accident who then lodged the complaint bearing no.5131/04/82/0162 with the intention that payment will be made immediately by the insurance company. The insurance company on their letterhead asked for documents on 25.09.1982 & 07.10.1982, which Exh. PW1/7 & PW1/9. The medical report of R1 is Exh.PW1/4 & Exh.PW1/5 which has been duly, certified by the penal doctor of respondent no.1 Dr. Sudhir K. Kapoor, Consultant Orthopedic Surgeon Grade-II, LNJP Hospital, New Delhi, where he has given his opinion on 20.10.1987 “that exact time cannot be predicated but likely to be continued for longtime” and in respect of disablement he has opined that “most likely it is permanent”. In respect of general condition of health and injury the Doctor stated “he is bedridden and still under treatment” and in the final remarks he has stated that “patient will need medical care for a longtime as the patient is likely to be bedridden.” As a matter of fact the opinion was given by two doctors other doctor was Dr.S.S. Yadav.

After going through the medical report it is quite clear that the petitioner was in a real bad shape to attend or pursue his own case.

Thereafter it has been observed that when the petitioner was able to walk on the calipers he started pursuing the matter with respondents. He also send the legal notices to respondent no.1 through registered A.D Cover and UPC for payment of compensation. The petitioner also submitted another set of documents i.e. policy form, driving licence, registration certificate, certificate of fitness, photocopies of medical report showing the treatment etc on 28.05.1993. That after cold response the petitioner filed an application before the State Commission in the year 1993. The State Commission dismissed the petition being time barred.

The appeal was preferred against the said order before the National Commission who observed in their order while disposing the above said appeal that the petitioner has since not repudiated the claim the matter should be considered sympathetically. It is stated by the petitioner that in the reply filed in the appeal before the National Commission respondent no.1 has taken preliminary objection that the petitioner, should approach Workman Compensation.

The petitioner then approached the before the Motor Accident Claims Tribunal and filed the claim on 27.05.2003, where the notice were also served upon the respondents. There the petitioner was directed to be pursue before the Commissioner Workman Compensation vide its order dated 16.12.2004, which is Exh.PW1/2. Liberty was also granted to the petitioner to approach within three weeks.

That while deciding the issue of limitation I will also decide the application moved by the petitioner for condonation of delay under Section 5 & 14 of the Limitation Act. In support of their plea by the petitioner they had submitted Hon'ble Supreme Court judgment Arms Group Enterprise Ltd. Vs. Waldorf Restaurant & Ors. in 2003(1) RCR 594 whereas it has been held in para 26 & 27 as under:-

“26. So far as plea of res judicata is concerned if find since both landlords and firm had filed cross suits against each other in both court came to common conclusion that the parties should litigate their rights in execution proceedings and nothing was decided on merits of rights and claim of the parties. Such a plea is no longer available to the parties against each other in execution proceedings.

27. As regards bar of limitation both the parties has instituted suits against each other the appellants cannot be held to be lacking in bonafides in resorting to the remedy of suit. The long period spent on

suit deserves to be condoned. Under section 14 of the Limitation Act the period spending in prosecuting civil proceedings before bonafide and with due diligence is liable to be excluded in computing the period of limitation for the suit or the application.

While referring to the case of Roshan Lal Kuthalaia and others Vs. R.B. Mohan Singh Oberoi, 1975 (4) SCC 628:-

“27. Certainly, Section [14](#) is wide enough to cover periods covered by execution proceedings-(See 1959 SCR 817 at 818). After all, Section 47 itself contemplates transmigration of souls as it were of execution petitions and suits. The substantial identity "of the subject matter of the lis is a pragmatic test. Moreover, the defects that will attract the provision are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits, comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act. Associated Hotels case (i.e. the very lis in its earlier round on the execution side) this Court pointed [1961(1) SCR259 at 272] that the question was one of initial jurisdiction of the Court to entertain the proceedings. Thus in this very matter, the obstacle was jurisdictional and the exclusionary operation of Section [14](#) of the Limitation Act was attracted.”

The petitioner has also moved an application before the Motor Accident Claims Tribunal where there is no limitation prescribed under the Act and the application therefore can be entertain since the accident has occurred involving Motor Vehicle. In contention the petitioner has submitted that since section 166(3) has been deleted the Tribunal can entertain the claim in support of its contention the petitioner has cited the judgment of Dhana Lal V/s. D.P. Vijay Vargiya & Ors. 1 (1996) ACC 603 SC, whereas it has been held in para no.5 of the judgment:

“.....in view of amending Act he become entitled to file such claim petition, the period of limitation having been deleted, the claim petition, which has been filed and pursued upon this court cannot be thrown out of the ground of limitation.”

Another fact which was brought to the notice was that the claim has not still been repudiated till date as stated before the National Commission and also in the cross examination before this court of Sh. R.P. Kandpal, Divisional Manager of M/s New India Assurance

Company.

It has also been observed that in the reply filed before the National Commission the preliminary objection taken by the Insurance Company was that the case was maintainable only before the CWC. I therefore feel that the limitation starts from the time when the claim was repudiated since the claim has not been repudiated by the Insurance Company and there is no limitation in filing the case before the Motor Accident Claim Tribunal and also while deciding the application under section 5 & 14 of the Limitation Act both the issues are therefore decided in favour of the petitioner in the light of the above judgments.”

8. The aforesaid paras show that there is no necessary discussion with respect to condonation of delay on the period of limitation provided under the Act and only a lip service is done to the requirement of sufficient cause. Therefore I hold that there is no sufficient cause for condonation of the huge delay of more than 20 years in the facts of the present case.

9. In view of the above, the appeal is allowed and the impugned judgment of the Commissioner dated 7.7.2006 is set aside. In case, the respondent no.1 has received any compensation pursuant to the order of the Commissioner, the appellant is at liberty to seek restitution in accordance with law. Parties are left to bear their own costs.

MAY 27, 2014
Ne

VALMIKI J. MEHTA, J.