

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

MFA.No. 2 of 2015 (A)

AGAINST THE ORDER DATED 29-10-2012 IN WCC 24/2005 OF WORKMEN'S
COMPENSATION (DEPUTY LABOUR COMMISSIONER), KOTTAYAM.

APPELLANT/1ST OPPOSITE PARTY:

THE CHIEF ENGINEER,
ANDAMAN LAKSHADWEEP HARBOUR WORKS, PORT BLAIR,
ANDAMANS.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENTS/APPLICANTS AND 2ND OPPOSITE PARTY:

1. P.K.SUKUMARAN,
PUTHENPURACKAL HOUSE, CHITTADY POST,
KOTTAYAM - 686 512.
2. BHARGAVI,
S/O. SUKUMARAN, PUTHENPURACKAL HOUSE, CHITTADY POST,
KOTTAYAM - 686 512.
3. M.S.MOHAN
S/O. SURENDRAN, CONTRACTOR, ALHW,
R/O. DOLLY GUNJ, PORT BLAIR, ANDAMANS - 744 101.

R1, 2 BY ADV. SMT.SHAMEENA SALAHUDHEEN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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M.F.A.(WCC).No.2 of 2015
= = = = =
Dated this the 18th day of June, 2015

JUDGMENT

Ravindran, J.

We have by order passed today dismissed C.M.Application No.110 of 2015 to condone the delay of 735 days in filing this appeal. This appeal is accordingly dismissed as barred by limitation.

P.N.Ravindran, Judge

Anu Sivaraman, Judge

sj

C.M.Application No.110 of 2015
In
M.F.A.(WCC).No.2 of 2015

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**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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C.M.Application No.110 of 2015
In
M.F.A.(WCC).No.2 of 2015
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Dated this the 18th day of June, 2015

ORDER

Ravindran, J.

The prayer in this application is to condone the delay of 735 days in filing M.F.A.(WCC) No.2 of 2015.

2. M.F.A.(WCC) No.2 of 2015 arises from the order passed by the Court of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kottayam on 29.10.2012. By that order, the Court of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kottayam awarded the sum of Rs.4,42,740/- as compensation to respondents 1 and 2, who are the parents of the deceased workman engaged by the appellant and the third respondent herein and directed the appellant herein to deposit the said sum together with simple interest @12% from 30.03.2004, the date of the accident, within 30 days of receipt of a copy of the order.

3. The certified copy of the impugned order discloses that it was

applied for on 01.01.2014 and the copy was delivered on 06.01.2014. The period of limitation prescribed for filing an appeal under section 30(2) of the Workmen's Compensation Act, 1923 in this court is 60 days. Computed with reference to the date of the impugned order, the appeal ought to have been filed in this court on or before 28.12.2012. As this court was closed for the Christmas vacation, the appeal ought to have been filed on 01.01.2013, when this court reopened after the vacation. The instant appeal was filed on 09.01.2015 with a delay of 735 days. The delay of 735 days in filing the appeal is explained in paragraphs 2 to 7 of the affidavit filed in support of the appeal.

4. The substance of the averments therein is to the effect that a copy of the order dated 29.10.2012 was received in the office of the Chief Engineer and Administrator on 11.06.2013, that thereupon it was forwarded to the Ministry of Shipping for advice and further action, that the Ministry issued directions as per letter dated 04.10.2013 to file an appeal and thereupon, the sum of Rs.9,58,850/- was deposited on 01.01.2014 before the Commissioner for Workmen's Compensation, Kottayam. There is however no explanation as to the reason why notwithstanding the instructions issued by the Ministry of Shipping, New Delhi on 04.12.2013 and deposit of the sum of Rs.9,58,850/- on

01.01.2014, an appeal was not filed thereafter for more than an year. The affidavit proceeds to say that thereafter by letter dated 04.12.2013, the Department of Legal Service, Ministry of Law and Justice directed the appellant to file an appeal in the court having jurisdiction for the reason that the Commissioner for Workmen's Compensation had while passing the order not taken into account the agreement entered into between the appellant and the fourth respondent herein. The deponent has also averred that a copy of the aforesaid letter dated 19.07.2014 was forwarded to the Assistant Solicitor General of India in this court, that thereafter an appeal was prepared and forwarded to the office of the Chief Engineer on 19.08.2014 for vetting. There is however no explanation as to the reason why even thereafter the appeal was not filed till 09.01.2015. The affidavit also discloses that in the meanwhile a writ petition was filed in the High Court of Calcutta on 01.12.2014 and it was dismissed as withdrawn on 11.12.2014.

5. It is evident from the facts stated in the affidavit filed in support of the application to condone the delay that a copy of the impugned order was received in the office of the Chief Engineer on 11.06.2013. Instructions were issued by the Ministry of Shipping,

Government of India on 04.12.2013 to file an appeal. The appeal was however not filed for more than a year. It was only on 09.01.2015 that the instant appeal was filed. The explanation offered in the affidavit filed in support of the application to condone the delay does not, in our opinion, constitute sufficient cause for the long delay of 735 days in filing the appeal. There is no explanation as to the reason why notwithstanding the directions issued by the Ministry of Shipping, Government of India, steps were not taken to file an appeal in time.

After going through the affidavit filed in support of the application to condone the delay and after hearing the submissions made at the Bar, we are not persuaded to hold that the appellant has shown sufficient cause for the long delay of 735 days in filing the appeal. The application fails and is accordingly dismissed.

P.N.Ravindran,Judge

Anu Sivaraman, Judge

C.M.Application No.110 of 2015
In
M.F.A.(WCC).No.2 of 2015

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**P.N.RAVINDRAN &
ANU SIVARAMAN, JJ.**
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JUDGMENT

Ravindran, J.

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P.N.Ravindran,Judge

Anu Sivaraman, Judge

sj