

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10499 OF 2014

Mirza Mazher Baig s/o
Mirza Murtuza Baig,
Age : 40 years,
Occupation : Business.
Through SPA Holder,
Mohd.Sardar s/o Mohd.Mahbood Ali,
Age : 57 years, Occupation : Business,
Both R/o House No.15-01-477,
Old Feel Khana, Begum Bazar,
Hyderabad.

...PETITIONER

-VERSUS-

- 1 Smt.Devindar Kaur w/o
Balvindarsingh Sandhu,
Age : 33 years,
Occupation : Household,
R/o Gurudwara Gate No.2,
Kankayya Compound,
Nanded.
- 2 Nardeepsingh s/o Balvindarsingh
Sandhu,
Age : 14 years, Occupation : Education,
R/o As above.
- 3 Simerjeet Kaur d/o Balvindarsingh Sandhu,
Age : 11 years, Occupation : Education,
R/o as above.
- 4 Akashdeepsingh s/o Balvindarsingh Sandhu,
Age : 08 years, Occupation : Education,
R/o as above.

Respondent Nos.2 to 4 being minor are
represented through their guardian i.e.

Respondent No.1, who is their mother.

5 The New India Assurance Co.Ltd.,
Through its Regional Manager,
Regional Office, Surya Towers,
S.P.Road, Secunderabad-500003.
Andhra Pradesh State.

6 The New India Assurance Co.Ltd.,
Through its Branch Manager,
Lahoti Complex, Vazirabad,
Nanded.

...RESPONDENTS

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Advocate for Petitioner : Shri Mukhedkar Amit A.
Advocate for Respondents 1 to 4 : Shri R.N.Chavan h/f Shri Sharma Vijay.
Advocate for Respondents 5 and 6 : Shri Deshpande Prashant P.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 03rd March, 2017

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the order dated 19.08.2014 by
which Miscellaneous Workmen Compensation Restoration Application
No.3/2011 filed by the Petitioner, has been dismissed.

3 I have heard the learned Advocates for the respective sides.

4 Under the orders of this Court, the Petitioner has deposited an amount of Rs.4,50,000/- in this Court and Rs.2,00,000/- in the Labour Court, which is to the satisfaction of the judgment of the Workmen Compensation Court dated 01.12.2008 by which the claim for compensation bearing WCFA No.13/2006 was allowed.

5 Section 30 of the Workmen's Compensation Act, 1923, now known as the Employees' Compensation Act, does not provide for filing of an application for setting aside an ex-parte judgment after 03 years. Section 30 provides for preferring an appeal to this Court against the order awarding compensation along with interest and/or penalty. The proviso below Section 30(1)(d) mandates the aggrieved employer to deposit the entire amount assessed by the Commissioner and produce a receipt along with the appeal after which the appeal is entertained. Sub-section (2) provides for limitation of 60 days. Sub-section (3) provides for applicability of Section 5 of the Limitation Act, 1963 while considering any delay in filing of such appeal.

6 The Labour Court had issued notice to the Petitioner on the claim application of the Respondent. There is no dispute that the notice was served on one person by name Mohammad Ali, who was said to be a

part time clerk working with the Petitioner. Having received the notice, he had not informed the Petitioner. It is in this backdrop that the Labour Court had concluded that the notice was received by an employee of the Petitioner and the fact that he received the said notice would indicate that he was competent to accept such notice or else he would not have accepted it had he had no authority.

7 The Petitioner moved an application in 2009 for seeking recalling of the judgment dated 01.12.2008. The said application is said to have been filed under Order IX Rule 13 of the Code of Civil Procedure along with an application for condonation of delay. Considering the order that I intend to pass, I am not dealing with this issue in this matter as regards whether, such an application is maintainable when the first appeal under Section 30 of the Employees' Compensation Act is prescribed enabling the employer to approach this Court by depositing the entire amount.

8 The Labour Court entertained the application and condoned the delay. By order dated 19.08.2014, the Labour Court dismissed the restoration application filed by the Petitioner on the ground that as the Petitioner's employee has received the summons of the court, it is a legal presumption that the Petitioner is served. If the employee was without any

authority to receive the court summons, he would have declined to do so.

I do not find any error in the said conclusion drawn by the Labour Court.

9 However, there is an another angle to this case. The claim of the Respondents/ claimants has been allowed on the basis of the evidence adduced by the claimants before the Labour Court. Notwithstanding the negligence and laxity on the part of the Petitioner, the said judgment is ex-parte. The delay caused in moving the Workmen Compensation Commissioner/ Labour Court for seeking restoration has been condoned by the Labour Court and the Respondents/ claimants have not challenged that order dated 05.01.2011 before this Court. The order condoning the delay, having not been challenged, has attained finality.

10 The Petitioner has deposited the amount with penalty as assessed by the Labour Court. The Respondents submit that if the proceedings are restored, they should be allowed to withdraw 50% of the amount considering that the original judgment of the Labour Court is dated 01.12.2008 which is almost 09 years ago and the clock will be reversed if the request of the Petitioner is accepted. The Petitioner has opposed this request on the ground that the Petitioner has every hope of success before the Labour Court on restoration and if he succeeds, the amount withdrawn by the original Claimants would not be recovered.

11 It cannot be ignored that because of the conduct of the Petitioner, the Claimants, who have lost the only bread earner of the family, are without compensation though the Labour Court delivered the judgment awarding compensation on 01.12.2008. Considering the negligence and laxity on the part of the Petitioner and the effect that the restoration of the proceedings would have on the original Claimants, I deem it proper to allow 50% of deposited amount to be withdrawn by the claimants so as to reduce their hardships and rigours of litigation being suffered by them for the past 11 years.

12 Considering the peculiar facts as above, the impugned order of the Workmen's Compensation Court/ Labour Court dated 19.08.2014 is set aside keeping in view that the Petitioner has deposited Rs.4,50,000/- in this Court and Rs.2 lac in the Trial Court. Miscellaneous W.C. Application (Restoration) No.3/2011 is, therefore, allowed and WCFA No.13/2006 is restored to the file of the Labour Court, Nanded on the following conditions:-

- (a) The widow of the deceased i.e. Respondent No.1 herein (Smt.Devindar Kaur) shall withdraw an amount of Rs.2,25,000/- (Rupees Two Lac Twenty Five Thousand) from this Court and Rs.1 lac from the Labour Court, by way of 50%

withdrawal of the amounts deposited.

- (b) She shall file an affidavit-cum-undertaking before the Labour Court that in the event of any adverse order passed against her by the Labour Court in the said proceedings or if she suffers any adverse order in the litigation arising from the said claim before the superior court, she would deposit the withdrawn amount in the Labour Court, Nanded within a period of EIGHT WEEKS from the date of such an adverse order, if any, without interest.
- (c) The remaining amount of Rs.2.25 lac deposited along with accrued interest lying in this Court, shall be transmitted to the Workmen Compensation Commissioner/ Labour Court, Nanded in WCFA No.13/2006.
- (d) The said amount transferred, along with the remaining amount of Rs.1 lac lying in the Labour Court, shall be invested by the Labour Court in a Fixed Deposit Receipt in any nationalized bank till the decision of the Labour Court in WCFA No.13/2006.
- (e) The litigating sides before this Court shall appear before the Labour Court at Nanded on 24.03.2017. Separate notices need not be issued by the Labour Court.
- (f) The Petitioner shall file his Written Statement before the

Labour Court on the date of appearance, which is 24.03.2017, failing which it shall be presumed that the Petitioner is not interested in the litigation and in which circumstances, the judgment of the Labour Court dated 01.12.2008 shall stand restored and the proceedings will stand disposed of.

- (g) If the above direction is complied with, all the litigating sides are at liberty to lead oral and documentary evidence.
- (h) All the sides shall refrain from seeking unnecessary adjournments.
- (i) The Labour Court shall endeavour to decide WCFA No.13/2006 as expeditiously as possible and preferably on or before 29.12.2017.

13 Rule is made partly absolute in the above terms.