

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.16893 of 2006

ORDER:

The petitioner herein seeks a direction to the respondents for settlement of a claim under Accident Insurance coverage, Abhaya Gold Saving Scheme.

Heard learned counsel for the petitioner and the respondents. Perused the material available on the record.

The first respondent-Nationalised bank introduced an insurance scheme called Abhaya Gold Saving Scheme with accident insurance coverage of Rs.1,00,000/- to the depositors. The petitioner's husband, one late Sri J.Chinna Rama Chetty, on being attracted by the said scheme, deposited the amount as required by the scheme with Abhaya Saving Account No.92 at Andhra Bank, Kuppam Branch, Chittoor District. According to the petitioner, her husband, consequent upon a bus accident on 28.05.1999, lost his life on 08.07.1999 after sustaining injuries. It is stated in the affidavit, filed in support of the Writ Petition, that the petitioner's son submitted a representation to the respondents, claiming the amount under Abhaya Gold Saving Scheme for the death of the petitioner's husband namely late Sri J.Chinna Rama Chetty. According to the petitioner all the necessary certificates such Death Certificate with the particulars for the reasons for death, news clipping, photo of the dead body, First Information Report and bills were submitted to the respondents and requested for supply of claim forms. It is

further stated that the first respondent-bank, vide registered letter dated 11.09.1999, requested the son of the petitioner herein to submit certain documents such as :

1. Post-mortem report.
2. Death certificate in original and acknowledgment of nomination forms.

Thereafter, on 20.09.1999 the first respondent-bank, while sending the documents, requested the second respondent to settle the claim of the petitioner herein and the same was also followed by letters dated 22.10.1999 and 29.11.1999. Thereafter, by way of a letter No.598/4A/319 dated 27.12.1999 the first respondent-bank, while requesting the second respondent to settle the matter at the earliest, sent the following documents:

1. Representation dated 27.12.1999, which is self explanatory, along with the below mentioned certificates.
 - a. Filed charge sheet, by the police authorities in the Court of Honourable Judicial Magistrate First Class, Kuppam.
 - b. Medical Certificate.
 - c. Health Certificate issued by the M.R.O., Kuppam, wherein it was mentioned that the death was happened due to bus accident.
 - d. Medical Certificate issued by the Government Hospital, Kuppam.

It is also evident from the material placed on record that, claiming compensation under the provisions of the Motor Vehicles Act, 1988, the petitioner herein and others filed M.V.O.P.No.369 of 1999, claiming compensation of a sum of Rs.3,00,000/- on the file of the Court of the VIII Additional District Judge (FTC)-cum-M.A.C.T., Chittoor and the said

Tribunal, by way of an award dated 30.03.2005, awarded compensation of Rs.1,27,000/-. According to the petitioner she also produced a copy of the said award and requested the respondents for settlement of the claim and for payment of the amount.

In the above background, alleging inaction on the part of the respondents in paying the amount covered by the above mentioned scheme, the present Writ Petition came to be filed.

Counter-affidavits have been filed by respondent Nos.1 and 2 denying the averments in the affidavit, filed in support of the Writ Petition and in the direction of justifying the impugned action.

It is contended by the learned counsel for the petitioner that the impugned action on the part of the second respondent is highly illegal, arbitrary and violative of Article 14 of the Constitution of India. It is further submitted by the learned counsel that there is absolutely no justification on the part of the second respondent in not paying the amount despite the orders of the Motor Accidents Claims Tribunal in M.V.O.P.No.369 of 1999 wherein the Tribunal categorically found, with regard to the status of the petitioner herein and others and with regard to the cause of death of her husband.

On the contrary, it is submitted by the learned counsel for the respondent Nos.1 and 2 that there is no illegality nor there is any infirmity in the impugned action and the Writ Petition is liable to be dismissed on the ground of delay. The information

available before this Court manifestly discloses that, after the death of the petitioner's husband, the first respondent-bank addressed a number of letters to the second respondent and also furnished the relevant information to the second respondent for settlement of the claim of the petitioner herein. It is specifically stated in the affidavit, filed in support of the Writ Petition, that, after adjudication of M.V.O.P.No.369 of 1999 by the MACT, Chittoor, a copy of the same was also produced before the second respondent, with a request to settle the claim. The Tribunal, in its award dated 30.03.2005, framed the following three issues for trial:

1. Whether the petitioners are the only legal representatives of the deceased?
2. Whether the accident was caused due to the rash and negligent driving of the driver of the bus bearing No.AP9Z 8534 ?
3. Whether the petitioners are entitled for any compensation?, if so, to what quantum?

While answering Issue No.1, as to the status of the petitioner herein, the Tribunal categorically found that the petitioners therein, including the petitioner herein, proved that they were the sole legal representatives of the deceased- Sri J.Chinna Rama Chetty. On Issue No.2 also the Tribunal categorically found that the driver was responsible for the accident and eventually, while answering Issue No.3 the Tribunal granted compensation. Therefore, there cannot be any impediment for the second respondent to settle the claim of the petitioner in the above said scheme and this Court does not find any valid reason or any justification on the part of the second

respondent herein in refusing to settle the claim of the petitioner herein. As regards the contention of the learned counsel for the respondents with regard to the delay, it is appropriate to refer to the judgment of the Honourable Apex Court in ***Tukaram Kana Joshi & Ors. Through Power of Attorney Holder v. M.I.D.C. & Ors.***¹. In the said judgment the Honourable Apex Court in paragraph Nos.12 to 15 held as under:

12. "No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non- deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. V. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. V. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. V. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op. Housing Society Ltd. V. M. Prabhakar & Ors., AIR 2011 SC 2161)

13. In the case of H.D. Vora v. State of Maharashtra & Ors., AIR 1984 SC 866, this Court condoned a 30 year delay in approaching the court where it found violation of substantive legal rights of the applicant. In that case, the requisition of premises made by the State was assailed.

14. The High Court committed an error in holding the appellants non- suited on the

¹ (2013) 1 SCC 353

ground of delay and non-availability of records, as the court failed to appreciate that the appellants had been pursuing their case persistently. Accepting their claim, the Statutory authorities had even initiated the acquisition proceedings in 1981, which subsequently lapsed for want of further action on the part of those authorities. The claimants are illiterate and inarticulate persons, who have been deprived of their fundamental rights by the State, without it resorting to any procedure prescribed by law, without the court realising that the enrichment of a welfare State, or of its instrumentalities, at the cost of poor farmers is not permissible, particularly when done at the behest of the State itself. The appellants belonged to a class which did not have any other vocation or any business/calling to fall back upon, for the purpose of earning their livelihood.

15. Depriving the appellants of their immovable properties, was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development".

In the instant case, in the considered opinion of this Court, in view of the absence of any third party rights, the claim of the petitioner cannot be denied on the ground of delay. Therefore, the contention of the learned counsel for the respondents, touching the aspect of delay, cannot be sustained and is, accordingly, rejected.

For the aforesaid reason the Writ Petition is allowed and the second respondent is directed to settle the claim of the petitioner herein and pay the same under Abhaya Gold Saving Scheme within a period of six months from the date of receipt of

a copy of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

07th June,2017
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A.V.SESHA SAI, J



