

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 1323 of 2010

1. Raghunath Manjhiwar, aged about 40 years, S/o Shri Ramnath Manjwar, R/o Village- Naktikhar, Tahsil & District Korba C.G.
2. Smt. Kailaso Bai W/o Shri Raghunath Manjwar, R/o Village- Naktikhar, Tahsil & District Korba C.G. **--- Petitioners**

Versus

1. Ghanshyam Gupta, Proprietor, Hasdeo Lime Industry, Lime Kiln, Village and Post Gorhi, Tehsil Korba, Distt. Korba C.G.
2. The Commissioner Workmen Compensation, Korba C.G.

---- Respondents

For Petitioners : Mr. Rajnish Singh Baghel, Adv.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

22.06.2018

1. Despite service of notice by publication no representation is made on behalf of respondent No.1. Since the petition is of the year 2010 and respondent No. 1 did not choose either to appear in person or represent his case by any counsel though service has been effected by publication of notice, therefore, I am inclined to hear the case finally in absence of respondent No.1.
2. Heard.
3. The petition is against the order dated 18.02.2010 passed by the Commissioner for Workmen Compensation, Labour Court Korba in Misc. Case No.32/W.C. Act/2009 whereby the

application for restoration of Case No.16/WCAct/2009 to its original number was dismissed.

4. The facts of the case would reveal that two persons i.e., the petitioners herein filed a Petition bearing No.16/WCAct/2009 under the Workmen Compensation Act seeking compensation for the death of their child during the course of employment with respondent in the year 2009. After filing of the said petition, the case was fixed for filing of written statement/ reply by the respondent on 04.04.2009. However, on that date, neither the petitioners nor their counsel were present, consequently it was dismissed in default. Subsequently on 04.06.2009, an application for restoration i.e., Misc. Case No.32/W.C. Act/2009 was moved by the petitioner before the Commissioner for Workmen Compensation wherein it was stated that the petitioners were suffering from Jaundice and Malaria and they were totally dependant on their advocate and the advocate namely Dilip Kumar Yadav who was appearing on behalf of the petitioners failed to appear on 04.04.2009, which resulted in dismissal. Subsequently the application for restoration filed was also dismissed on 18.02.2010. Hence this petition.
5. A perusal of the record would show that the restoration application was filed on 04.06.2009. It was pleaded in the application that on 02.06.2009 when the Junior Advocate of Dilip Kumar Yadav during inspection of the court diary on 02.06.2009 found that the case was dismissed on 04.04.2009 and for the first time they came to know about the dismissal

of the case on 02.06.2009 and the restoration application was preferred immediately after two days. The respondent refuted all the averments of the application for restoration and eventually the Commissioner, workmen compensation dismissed the petition for restoration.

6. A perusal of the order would show that for the death of daughter of petitioners, an application under section 22 of the Workmen Compensation Act 1923 was filed by the petitioners on 02.2.2009. Subsequently when the case was fixed before the Court below on 04.04.2009, no one had appeared and the workman compensation case was dismissed. In the application for restoration, reasons were assigned that the petitioners were suffering from Malaria and Jaundice, consequently they could not appear on 04.04.2009. It was further stated that on 04.04.2009 Advocate, Dileep Kumar Yadav who was engaged on behalf of the petitioners could not appear and it was informed by his Junior that the case was listed for 02.06.2009. Therefore, wrong date was noted. On 02.06.2009 when the Junior Counsel appeared before the Court it was found that the case was already dismissed on 04.04.2009. therefore, immediately application was filed on 04.06.2009.
7. Here in the present petition, no representation is made by the respondent No.1 despite service of notice by publication. The Courts while adjudicating a lis cannot ignore the fact of social background of persons and the nature of cases. The people when are deprived and are not aware of their legal

rights, the legal aid is provided to the down-trodden people. In the case in hand, the application under the Workman Compensation Act was filed seeking compensation for the death of daughter of the petitioners. The facts would suggest that when they were struggling to come to terms with tragedy, the slim hope before the Court was belied. The background of petitioners shows that they had the rural background, therefore they are not expected to work like persons in walled city with all awareness. Therefore, in the case of like nature pious objective of the Workman Compensation Act cannot be ignored to leave the impact as unclear and unknown with continuation of dismissal. It is expected that the Court cannot adopt technical approach in such type of cases looking to the social background of the persons. It is also not expected that on each and every date, the parties are required to remain present in person before the Court and normally it happens that the parties are represented through their counsel and the counsels are meant to represent and defend the case of their clients.

8. It has been stated that a wrong date was noted in the case diary and when the counsel appeared on 02.06.2009 he came to know that the petition stood dismissed for want of prosecution on an earlier date i.e., 04.04.2009. Immediately after two days, the application for restoration was filed on 04.06.2009. As per the settled principles, the dismissal of a case for single default of appearance would be too harsh for an abrupt and inglorious end of a claim before a court of law.

Therefore, when the applications are filed to restore the same, the Courts are expected to look into the matter not only in the technical angle but also it needs blending of humanity looking to the nature of the case for which the restoration is sought. Otherwise the Court would start emitting danger signals.

9. Under the circumstances, in the opinion of this court, the dismissal order dated 04.04.2009 for want of prosecution appears to be too harsh and defeats the right of the petitioners for the reasons that the daughter of the petitioners is alleged to have died during the course of employment with respondent. Consequently, the order dated 18.02.2010 whereby the application seeking restoration of the original case was dismissed is set aside.
10. In the result, the petition is allowed. Case No.16/ W.C.Act/ 2009 pending before the Commissioner, Workmen Compensation, Korba, is restored to its original number. The petitioners, if so advised, may appear before the court below through their counsel on 16.07.2018.
11. Taking into the nature and background of the case, the Commissioner for Workmen Compensation is directed to decide the case within a further period of six months from the date of receipt of the order.

Sd/-
(GOUTAM BHADURI)
JUDGE