

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 295 of 2018**

1. Durga Bai Yadu Wd/o Late Govind Yadu Aged About 38 Years
 2. Rajeshwari Yadu D/o Late Govind Yadu Aged About 17 Years
 3. Kumari Nidhi D/o Late Govind Yadu Aged About 15 Years
 4. Rahul Kumar Yadu S/o Late Govind Yadu Aged About 13 Years
 5. Kumari Nisha Yadu D/o Late Govind Yadu Aged About 11 Years
 6. Aditya Yadu S/o Govind Yadu Aged About 10 Years
- Appellants No.2 to 6 are Minor Through Natural Mother Namely Durga Bai Yadu Wd/o Late Govind Yadu, Aged About 38 Years,
7. Smt. Uma Bai Yadu W/o Shri Gopal Yadu Aged About 54 Years
 8. Gopal Yadu S/o Ram Yadu Aged About 56 Years

All R/o Ward No.1, Bhagat Singh Ward Kundru, Tandwa, Raipur, District Raipur, Chhattisgarh, At Present Address Village Hapa, Police Station Chakarbhata, Tehsil and District Bilaspur, Chhattisgarh.

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Versus

1. Smt. Parvinder Kaur Bhatia W/o Parmjeet Singh Bhatia R/o Devendra Nagar, Raipur, Police Station Pandari, District Raipur, Chhattisgarh.
2. Sushant Sarkar S/o Manendra Sarkar R/o Sector-01 (A-5), Ekta Nagar, Gudiyari, Police Station Ganj, District Raipur, Chhattisgarh.

---- Respondents

For Appellants	:	Shri Govind Dewangan, Advocate.
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Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

20.02.2018

1. The present appeal under Section 30 of the Employees Compensation Act, 1923 (in short, the Act, 1923) has been filed by the claimants against the award dated 09.01.2018 passed by the Commissioner for Workmen Compensation, Labour Court, Bilaspur. Vide the impugned award, the Commissioner has dismissed the claim application of the claimants on the ground of delay.
2. The facts of the case is that Govind Yadu met with an accidental

death on 18.06.2012 when he was travelling in a Truck bearing registration No.CG-04-JB-5599 in which he was working as a Conductor. The legal representatives of the deceased filed a claim application under the Act, 1923, before the Commissioner, Labour Court, Bilaspur on 09.01.2018. On the very same day, the impugned order of rejection of claim application holding it to be barred by limitation was passed.

3. The counsel for the appellants submits that if for any reason the Commissioner found that the application was filed beyond the prescribed period of limitation, the Commissioner should have provided the claimants an opportunity to explain the delay. Not granting of an opportunity to explain the delay amounts to denial of fair trial and that the appellants shall be put to irreparable and substantial loss. The appellants thus prayed for setting aside of the impugned award and the matter be remitted back to the Labour court for a fresh adjudication on merits.
4. Given the said facts and circumstances of the case, it is relevant at this juncture to refer to Section 10(1) of the Act, 1923 which reads as under :

“No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death.”

5. Further, it would also be relevant to refer to 5th proviso to Section 10(1) of the Act, 1923, which reads as under :

“.....provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding

that the notice has not been given, or the claim has not been preferred, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.”

6. A plain reading of aforesaid two provisions clearly reflect that there has been ample powers conferred upon the Commissioner to condone delay, if sufficient cause is explained by the claimants before the Commissioner. What cannot be brushed aside is the fact that the provisions of the Act, 1923, more particularly when it is a case of death of an employee, the Commissioner for Workmen Compensation should be more liberal and sympathetic towards the claimants and more pragmatic approach should have been adopted by the Commissioner. Merely because the claim application has been filed beyond the period of limitation and that the claim application not supported with an application for condoning delay or not providing explanation for delay caused by itself would not be sufficient for the Commissioner to have outrightly rejected the claim application. Such an approach by the Commissioner clearly shows the hyper technical approach of the Commissioner without considering the rightful entitlement of the claimants.
7. What also is to be borne in mind by the Commissioner is that the very provision of law has been enacted for the protection of the legal heirs in a case of death and the injured in case of injury. The attitude of the Commissioner in rejecting the claim application on the very 1st day while filing by itself seems to be without granting an opportunity to the claimants to explain the delay caused which is not appreciable at all. The impugned order dated 09.01.2018⁷ thus is not sustainable. The

same deserves to be and is hereby set aside.

8. The appeal is allowed and the matter is remitted back to the Commissioner for granting opportunity to the claimants to explain the delay caused and thereafter to proceed and decide the claim application in accordance with law on its own merits.
9. Let the claimants appear before the Commissioner on 06.03.2018 along with copy of this order for further proceedings.

Sd/-

(P.Sam Koshy)
Judge

inder