

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 373 of 2015**

- Smt. Chandramani Nayak Wd/o Late Rajanu Nayak aged about 28 years, R/o. Village Sonarpal Matidev Para P.S. Bhanpuri District Bastar (C.G.).

---- Appellant/Claimant**Versus**

1. Mahendra Prasad S/o. Late Nathuni Prasad Gupta aged about 42 years R/o. Village Sonarpal P.S. Bhanpuri District- Bastar (C.G.) (Employer)
2. The Oriental Insurance Co. Ltd. Through Branch Manager Branch office Laxman Avenue Medical College road Jagdalpur District- Bastar (C.G.) (Insurer).

---- Respondents

For Appellant	:	Shri P. Dhurandhar, Advocate.
For Respondent No.1	:	Shri A. L. Singroul, Advocate.
For Respondent No. 2	:	Shri R. N. Pusty, Advocate

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****03.05. 2019**

(1) The instant appeal has been preferred by the appellant, who is unfortunate widow of deceased/employee – Rajnu Naik, under Section 30 of the Employees' Compensation Act, 1923, (henceforth 'the Act, 1923') against the Judgment dated 11.12.2014 passed by Commissioner for Employees' Compensation-cum-Labour Court, Jagdalpur (hereinafter referred to as Commissioner), in case No. 78/2013/W.C.Act/Fatal dismissing the claim petition filed by the claimant on the ground of delay in filing the claim petition.

(2) Facts of the case leading to filing of the claim petition are that Rajnu Naik was under the employment of respondent No. 1- Mahendra Prasad as driver to drive Jeep bearing registration No. C.G. 17/T/0164 owned by respondent No. 1. The said Jeep was insured with Respondent No. 2- i.e. the Oriental Insurance Company Limited. On the date of accident i.e. 10.02.2010, Rajnu Naik (since

deceased) was working under the employment of respondent No. 1 as a driver and when he by driving the said vehicle was coming from Jagdalpur to Sonarpal, at that very time offending vehicle Truck bearing registration No. C.G. -04/J.A. / 4663 coming from opposite, dashed the jeep of the Rajnu Naik (since deceased), as a result of which he sustained multiple injuries and died on the spot. Therefore, claimant, filed an application under Section 22 of Act, 1923 before the Commissioner along with application under Section 10(1) of the Act, 1923 with affidavit as the claim petition filed by the claimant was barred by limitation.

(3) Learned Counsel for the appellant/claimant submits that learned Commissioner has not properly considered and decided the application filed by the claimant for condoning the delay in filing the claim petition. He further submits that appellant/ claimant filed an application under 10(1) of Act, 1923 along with claim petition stating that respondent No. 1, who was the owner of the vehicle and employer of the deceased, engaged a counsel namely Shri Upendra Rao for filing the claim petition on behalf of the appellant/claimant and claimant after signing all the relevant documents for filing the claim petition handed over the same to the counsel engaged by respondent No.1.

Claimant being a rustic villager, on the faith upon employer, handed over all the relevant documents after signing it, to the said counsel but after some time when the appellant/claimant enquired about the status of the claim petition, she came to know that the counsel engaged by her through the employer has died without filing the claim petition and, thereafter, she again arranged the documents and filed claim petition along with application under Section 10(1) of the Act, 1923 for condonation of delay in filing the claim petition along with affidavit before the Commissioner.

The reason given in the affidavit by the claimant was neither controverted by the Insurance Company nor by the owner of the offending vehicle. Therefore, the contention of the claimant regarding delay in filing the claim application is just and proper and sufficient cause was shown by the claimant but unfortunately that application was not considered by the Commissioner. No proper opportunity was given to the claimant to prove the above fact and merely by observing that no any explanation for day to day delay has been given, the application under Section 10(1) of the Act not decided. He further submits that the Commissioner has not considered income of the deceased for calculation of compensation and no any award is passed in that regard therefore, the fresh trial is required in this case.

(4) Learned counsel for the Non-applicant Nos. 1 and 2 opposed the

contention made by the appellant counsel and supported the award impugned.

(5) I have heard learned counsel appearing for the parties and perused the material available on record including judgment impugned.

(6) The claimant in her application under Section 10(1) of the Act for condonation of delay in filing the claim petition has specifically averred that she was misled by Non-applicant No. 1/employer that the claim petition has been filed, however, when she enquired about the matter she came to know that the advocate Shri Upendra Rao engaged by non-applicant No. 1 for the claimant has already expired and her claim petition was not even filed. She has further stated that she did hand over all the relevant papers to the counsel (Shri Upendra Rao) after signing the same for filing the claim petition before the Court. Indisputably the claimant is a woman residing in village Sonarpal District- Bastar which is a tribal area and the claim petition was filed by her only as there is no other male member in her family dependent upon the deceased. The application for condonation of delay was duly supported by an affidavit of the claimant. Though reply to the said application was filed by the non-applicant No. 2 but no affidavit in support thereof was filed. Non-applicant No. 1 did not file reply to the application of condonation of delay and remained *ex-parte* and as such the allegation made by the claimant in her application under Section 10(1) of the Act remain uncontroverted on the part of the Non-applicant No. 1.

The Commissioner without considering the above aspect of the matter rejected the application filed under Section 22 of the Act, 1923 without considering the application under Section 10(1) of the Act by merely recording a finding that the claimant has not explained day today delay in filing the claim petition and as such has not shown sufficient cause for inordinate delay of three and a half years in filing the claim petition. The learned Tribunal has not framed any issue looking to the pleadings of the parties regarding the limitation. Further, the Commissioner has not assessed the compensation by taking into account the income of the deceased.

Hence, considering the facts and circumstances of the case, oral and documentary evidence adduced by the parties, the provisions of the Act which are for welfare of the employees and their family members, manner in which the application under Section 10(1) of the Act has not been decided by the Commissioner and no any specific issue regarding issue of limitation was framed, this Court is of the opinion that the matter needs to be remanded to the

Commissioner for deciding the same afresh on all issues including the issue of limitation.

(7) Accordingly, the appeal is allowed, the impugned judgment is set aside. The matter is remitted to the concerned Commissioner for deciding the claim petition afresh on all issues including the issue of limitation on its own merit in accordance with law in light of observations made hereinabove after affording due opportunity of hearing to the parties.

It is made clear that nothing in this order shall be construed as an expression of an opinion on merits of the case and the Commissioner to decide the claim petition on its own merit in accordance with law.

(8) Needless to mention the Commissioner shall provide proper and sufficient opportunity to the parties to adduce evidence, to amend the pleadings and to file additional documents, if any.

(9) Record of the Commissioner be sent back forthwith.

(10) Parties are directed to appear before the Commissioner on **27th June, 2019**. No order as to costs.

Sd/-

(Gautam Chourdiya)
Judge