

29.01.2021

Item No. 03

Ct. No. 04

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F.M.A.T. 392 of 2017
With
I.A. No. CAN 1 of 2017 (Old CAN 7277 of 2017)
With
I.A.No. CAN 2 of 2017 (Old CAN 7278 of 2017)

The Divisional Railway Manager, Eastern Railway,
Sealdah Division
Vs.
Smt. Gayetri Ghosh

Mr. Ashok Bhowmick

Mr. Dhiman Ray....for applicant/appellant

Mr. Prasenjit Debnath.....for respondent

Mr. Bhowmick, learned advocate appears on behalf of applicant praying for condonation of delay in filing the appeal. We find from report of Stamp Reporter that the appeal is delayed by 832 days.

Mr. Bhowmick submits, his client had pursued remedy of review. The time was consumed thereby. On being unsuccessful, the appeal. Mr. Debnath, learned advocate appears on behalf of respondent and submits, order of compensation regarding a workman, who has long died, is under challenge in this grossly delayed appeal. On observation made by Court of readiness to hear the appeal here and now, he submits, he is ready for hearing of the appeal.

In view of aforesaid, we condone the delay and allow I.A. no. CAN 1 of 2017 (old CAN 7277 of 2017).

By consent of parties the appeal is taken up for hearing on dispensing with all formalities including service of notice of appeal. The documents disclosed in the stay application, parties submit, are sufficient for the purpose.

Mr. Bhowmick submits, opposite party no. 1 in the claim case (Claim Case no. 614 of 2011 in the Court of Commissioner, Employees' Compensation, West Bengal) was named as Haradhan Saha. His client was opposite party no. 2. Opposite party no. 1 was said to be the contractor and his client, principal employer. As such, the judgment and order for payment of compensation by his client at Rs. 5,68,680/- along with interest @ 12% per annum from expiry of one month from date of accident till deposit.

He submits, his instructions are that the contractor engaged by his client was M/s. H.C. Saha. This was why the review. The review petition was rejected by order dated 16th December, 2016. His client is aggrieved as, on payment of the compensation, his client will have difficulty in recovering from the contractor, per entitlement under sub-section (2) in section 12, Employee's

Compensation Act, 1923. He submits further, in spite of classification of the appeal as appeal from original order, certified copies of both, impugned order as well as order in review have been annexed on his client being aggrieved thereby. Mr. Debnath submits, this point was never urged at the trial.

We find from order dated 16th December, 2016, rejecting the review, the Commissioner had said therein that only at the time of written argument it was mentioned that applicant failed to produce name of actual contractor. In the context it was further said as follows:

“.....It remains unexplained why Railway being the principal remained silent to disclose the name of actual contractor. The scope of review is very limited especially in a Quasi-judicial Body. Only on the ground of discovery of fresh evidence or apparent error on the face of record Quasi-Judicial Body may review on procedural defect not on merit. I think OP.2, the Railway present prayer to review the judgment on the ground stated therein is not maintainable before a Quasi-judicial Body. Because such review amounts to interfere in the merit of judgment. Hence.

*O r d e r e d
that the prayer for review is rejected.
According to this order the petition is disposed of.”*

Sub-section (2) in section 12 says, *inter alia*, where principal is liable to pay compensation, he shall be entitled to be indemnified by the contractor. Procedure is there in rule 39 of Workmen's Compensation Rules, 1924 (as pointed out by Mr.

Debnath) for appellant to prefer claim on payment of compensation.

We see no reason to interfere with either the order on review or impugned judgment. We confirm impugned judgment. The appeal is dismissed. As a consequence the stay application (I.A.no. CAN 2 of 2017 (old CAN 7278 of 2017) is also dismissed.

Mr. Bhowmick prays for stay of operation of our order. We have considered the prayer and reject it.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)