

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 272 of 2015****Judgment Reserved on 11/11/2021****Judgment Delivered on 16/11/2021**

Shramik Thawale @ Sanni S/o Shri Ashok Rao Thawale, aged about 29 years R/o Kumharpara, Jagdalpur, District Bastar (C.G.).

---- Appellant**Versus**

1. Anil Kumar Sao S/o Shri Kanhaiya Sao R/o Bhattipara Bastar, District Bastar (C.G.).
2. The National Insurance Co. Ltd., Through Branch Manager Branch office above the Central Bank Near R.M.S. office Jagdalpur District Bastar (C.G.).

---- Respondents

For Appellant	:	Mr. A.L. Singroul, Advocate
For Respondent No. 2	:	Mr. G.B. Kutumba Rao, Adv.
For Respondent No. 1	:	None though served

Hon'ble Shri Justice Deepak Kumar Tiwari
CAV JUDGMENT

Heard.

1. This miscellaneous appeal has been filed under Section 30 of the Employee's Compensation Act, 1923 (henceforth 'the Act') against the order/award 15/01/2015 passed by the Commissioner, Employees Compensation Act, Labour Court, Jagdalpur in case No. 59/2012/W.C. Act/ Non Fatal whereby the claim petition filed under Section 22 of the Act by the appellant/claimant has been dismissed on the ground of limitation.

2. Brief facts of the case are that the appellant was engaged as driver by respondent No.1 for his vehicle bearing registration No. CG17 D 0685 . On 08/10/2008, the appellant was driving the said vehicle from Dongargarh to Jagdalpur and lost his control over the vehicle due to mechanical failure in break. As a result, the accident took place and the appellant got injuries. There were fractures in both the legs of the appellant due to which he got disability up to 50%. The matter was reported to the police. The appellant preferred claim petition under Section 22 of the Act along with application under Section 10 (1) of the Act for monetary compensation.
3. The Employer and Insurer of the vehicle entered into the proceedings of the Labour Court and resisted the claim of the appellant/claimant. The Labour Court on the basis of pleadings and material available on record framed as many as 5 issues for adjudication of the claim petition. The witnesses have been examined by the appellant/claimant and respondents. The Labour Court finally dismissed the claim petition on the ground of limitation holding that the claim petition was not preferred within 2 years of the occurrence of the accident and the appellant/claimant has not shown sufficient cause for condoning the delay in filing the claim petition.
4. I have heard learned counsel for the parties and perused the record.
5. The substantial question of law arises for adjudication of this appeal is as under:-

“Whether the Commissioner, Works Man Compensation Labour Court, Jagdalpur was justified in rejecting the

application under Section 22 of the Employee's Compensation Act, 1923 on the ground that it was barred by limitation."

6. Section 10(1) of the Act provides as under:-

"10. Notice and claim.-(1) 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:"

7. The fifth proviso to Sub-section (1) of Section 10 of the Act provides 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."

8. A plain reading of the above provisions shows that filing of an application under Section 5 of the Limitation Act is not the *sine qua non* for condonation of delay in preferring the claim beyond the period of two years as prescribed under Section 10(1) of the Act. If the Commissioner is satisfied that the failure to give the notice or to prefer the claim was due to sufficient cause, he has jurisdiction to condone the delay.

9. The Apex Court in the matter of ***M.S. Grewal v. Deep Chand Sood*** AIR 2001 SC 3660 : (2001) 8 SCC 151 has held as under:

“Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since the technicality cannot and ought not to outweigh the course of justice.”

10. Further in the ***Jagannath Gupta vs. Awadh Ram and Ors*** MANU/CG/0128/2009, this Court has observed about condonation of delay as under :

“It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. The Act is a public welfare legislation and the application by the victim of an accident should not be thrown aside by the legal authority prescribed under the Act merely on technical grounds which included ground of limitation.”

11. In the instant case, the accident took place on 08/10/2008 and claim petition has been preferred on 28/09/2012. The learned Court below has taken very rigid and hyper technical approach while deciding claim petition. In para 10 of the impugned order though the appellant has submitted that he had obtained disability certificate on 24/08/2012 and immediately thereafter he filed the claim petition, the tribunal mentioning the fact that the appellant is driver and literate person, therefore, the reason

assigned for delay is not acceptable, thus, the learned Court below rejected the claim petition.

12. In the present case the appellant has filed documents which are receipt of courier service dated 01/12/2010 and postal receipt which show that in the year 2010 also, the appellant had preferred an application with relevant documents before the concerned Superintendent of Police and prayed to supply him necessary documents enabling him to file the claim petition.
13. It is a settled law that rules of limitation are not meant to destroy the right of the parties. They are meant to see that the party do not resort to dilatory tactics but seek their remedy promptly. Here in the present case, the owner of the vehicle, instead of settling the dispute, contested the application on technicalities. The object for which the Act 1923 has been brought that the compensation should ordinary be given to works man who sustained personal injuries by accident in the course of their employment, is defended by such a hyper technical approach. So this Court finds that the appellant/claimant has shown sufficient cause for delay in filing the application under Section 22 of the Act.
14. Accordingly, this Court in light of fifth proviso to sub Section (1) of Section 10 of the Act, hereby, condones the delay in filing the original application before the concerned tribunal. The matter is remanded to the Commissioner of Works Man Compensation, Labour Court, Jagdalpur for afresh consideration who shall decide the claim petition of the appellant in accordance with law, preferably within a period of 6 months from the date

of receipt of copy of this order. The parties are directed to remain present before the Lower Court on 15/12/2021.

15. Consequently, this MAC is allowed to the extent indicated above.

Sd/-

(Deepak Kumar Tiwari)
Judge

Rahul