

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8500 OF 2018

HDFC ERGO General Insurance Company Ltd.,
 Erstwhile, L & T General Insurance Company
 Limited, Through its Branch Manager,
 1st Floor, H.T. Parekh Marg, 165-166 Bakbay,
 Churchgate, Mumbai
 Through its Branch Manager/
 Authorized Signatory,
 Renuka Commercial Complex,
 Opposite Motiwala Complex,
 Nirala Bazar, Aurangabad

.. Petitioner
 (Original Respondent No.1)

Versus

1. Anita w/o. Bhausahab Nikam,
 Age 25 years, Occu. Household,
2. Ku. Akshara d/o. Bhausahab Nikam,
 Age 6 years, Occu. Education,
3. Ajinkya S/o. Bhausahab Nikam,
 Age 4 years, Occu. Nil,

Respondents No. 2 and 3 being Minors,
 U/g. Of their real mother Anita Nikam

4. Shivaji S/o. Gangaram Nikam,
 Age 59 years, Occu. Nil,
5. Anjanabai w/o. Shivaji Nikam,
 Age 54 years, Occu. Household,

All R/o. At Post Bhatana, Taluka Vaijapur,
 District Aurangabad

6. Gulab Lal Shaikh,
 Age Major, Occu. Business,
 R/o. At Post Bhatana, Taluka Vaijapur,
 District Aurangabad.

.. Respondents
 (R.No.1 to 5 original claimants
 No.6 original respondent no.2)

...
Mr. S. G. Chapalgaonkar, Advocate for Petitioner
Mr. Mayur Subhedar, Advocate holding for Mr. Chaitanya V.
Dharurkar, Advocate for Respondent no.6
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04-12-2021

JUDGMENT :-

Rule. Rule made returnable forthwith and heard finally with consent of learned Advocates for the parties.

2. This petition takes exception to the order dated 06-12-2017 passed by the Commissioner for Employees Compensation and Judge, Labour Court, Aurangabad, thereby dismissing Miscellaneous WCA Application No. 32 of 2015 seeking condonation of delay in setting aside *ex-parte* Judgment and Award in WCA No. 34 of 2013.

3. The petitioner is the Insurance company. Respondents no. 1 to 3 are legal heirs of the deceased worker. Respondents no. 4 and 5 are the parents of the deceased worker. Respondent no.6 is owner of the Truck.

. Respondents no. 1 to 5 filed WCA No. 34 of 2013 before the Commissioner for Employees Compensation and Judge, Labour Court, Aurangabad, claiming compensation for the death of

Bhausahab Nikam in vehicular accident dated 22-05-2013. The claimants claimed that the deceased was employed as a driver on the Truck bearing registration No. MH-19-Z-1374. The said vehicle is owned by respondent no.6 and insured with the petitioner-insurance company.

. In the cause title of the WCA, the petitioner has arrayed as respondent no. 1 as follows –

“L & T General Insurance Company Ltd.
Through its Manager,
Branch office at Near Amarpreet Hotel,
Above Kotak Bank, Near Milk Dairy, Jalna road,
Aurangabad.”

. This address, according to the petitioner, is of “L & T Finance Company Limited”. The notice issued to the petitioner dated 08.01.2014 was served on “L & T Finance Limited” on 10.01.2014.

. Since the petitioner failed to appear pursuant to the notice, the learned Commissioner passed an order of *ex-parte* against the petitioner. On 04-02-2015 WCA No. 34 of 2013 was heard and ex-parte Judgment and Award was passed against the petitioner, thereby awarding compensation of Rs.7,88,240/- along with interest @ 12% per annum from 31.05.2013 till realization of the amount.

. Pursuant to the award, the claimants filed execution

proceeding. In the execution proceeding, the petitioner was informed by the learned Advocate for the claimants that ex-parte Judgment/Award is passed against it and in the execution proceeding filed in WCA No. 34 of 2013, an attachment warrant is likely to be issued against the petitioner-company. The petitioner-company, thereafter, after perusing the record appeared in the execution proceedings and filed Miscellaneous Application No. 32 of 2015 in WCA No. 34 of 2013, thereby praying for setting aside the ex-parte Award and to permit the petitioner to put up its defence. Along with the said application, the application seeking condonation of delay of 145 days was also filed.

. By the impugned order, the learned Commissioner rejected the application for condonation of delay. Hence, the present petition.

4. Heard the learned Advocate for the petitioner and the learned Advocate for respondent no. 6. Though the respondents no. 1 to 5 are duly served, they have not caused their appearance.

5. The record indicates that in the petition, notice dated 08.01.2014 was served on "L & T Finance Company Limited", on 10.01.2014. There is a seal of "L & T Finance Limited" on the notice, acknowledging receipt of the notice. Therefore, it is clear

that the petitioner was not served in WCA No. 34 of 2013. The petitioner, therefore, did not cause its appearance in the said proceedings. When the petitioner was informed during the course of execution proceeding, the petitioner has immediately taken steps and filed Miscellaneous Application No. 32 of 2015 for setting aside impugned Judgment and Award in WCA No. 34 of 2013, along with application for condonation of delay. The petitioner has also led evidence by filing evidence affidavit. While rejecting the application, the learned Commissioner has held that the petitioner has failed to make compliance, and therefore, rejected the application filed by the petitioner. The impugned order is unreasoned order. It is not clear from the impugned order as to what compliance from the petitioner was expected by the learned Commissioner. The impugned order is, therefore, unsustainable and is liable to be quashed and set aside, and the writ petition deserves to be allowed. Hence, the following order :-

ORDER

- i) Writ petition is allowed.
- ii) The impugned order dated 06-12-2017 passed by the learned Commissioner for Employees Compensation and Judge, Labour Court, Aurangabad, in Miscellaneous WCA Application No. 32 of 2015 for condonation of delay in setting aside ex-parte

Judgment and Award in WCA No. 34 of 2013, is hereby quashed and set-aside.

- iii) The delay caused in preferring the Application for setting aside ex-parte Judgment and Award in WCA No. 34 of 2013, is hereby condoned, subject to the petitioner paying cost of Rs.5000/- (Rs. Five Thousand) to the respondents No. 1 to 5 to be paid before the learned Commissioner / Labour Court, Aurangabad.

After payment of cost, Miscellaneous WCA Application No. 32 of 2015 is restored.

- iv) The Commissioner shall consider the said application on it's own merits after hearing the parties and decide the same within a period of eight weeks from the receipt of writ of this order.
- v) Rule is made absolute in above terms.

(NITIN B. SURYAWANSHI)
JUDGE

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