

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.29 OF 2013
WITH
CROSS OBJECTION ST. NO.10453 OF 2013
IN
WRIT PETITION NO.3705 OF 2012

1. Madhukar s/o Kothiram Game,
Aged aabout 73 years,
Occ. Nil

2. Vithabai w/o Madhukar Game,
Aged about 67 years, Occ. Nil
Both residents of Ward No.2,
Post Kelwad, Tah. Saoner,
Dist. Nagpur

... Appellants

-vs-

The Managing Director,
Ankur Seeds Private Ltd.
New Cotton Market Layout,
Nagpur

... Respondent

Shri Vishal Anand, Advocate for appellants.
Shri J. L. Bhoot, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : October 13, 2021

Oral Judgment : (Per : A. S. Chandurkar, J.)

The question that arises for consideration in this Letters Patent Appeal is whether an appeal under Section 30(1)(a) of the Employees Compensation Act, 1923 would lie against rejection of the claim for compensation on the ground that such claim is barred by limitation ?

2. The appellants initiated proceedings under Section 22 of the Employees Compensation Act, 1923 (for short, the Act of 1923) seeking compensation on account of the demise of their son in an accident while he was proceeding for duty at the respondent-Firm. These proceedings were filed on 25/08/2009 and the respondent opposed the aforesaid proceedings principally on the ground that same were barred by limitation as they were filed beyond the prescribed period of two years. The learned Commissioner recorded a finding that the accident in question had occurred on 07/06/2004, notice was issued by the appellants on 29/07/2009 and the claim for compensation under Section 22 of the Act of 1923 was filed on 25/08/2009. The proceedings were thus barred by limitation as prescribed by Section 10 of the Act of 1923. Incidentally the learned Commissioner also recorded findings on the evidence led by the parties that the appellants were dependent on the deceased and further that the accident in question arose out of and during the course of employment. In view of the finding that the proceedings were filed beyond limitation, the application for grant of compensation came to be dismissed by the learned Commissioner on 13/10/2011.

3. The appellants filed writ petition under Articles 226 and 227 of the Constitution of India for challenging the aforesaid order. The learned

Single Judge by order dated 20/10/2012 held that since the claim for compensation was disallowed, an appeal under Section 30(1)(c) of the Act of 1923 would be maintainable. On that ground the writ petition came to be dismissed. Being aggrieved the appellants have filed the present Letters Patent Appeal under Clause 15 of the Letters Patent.

4. Shri Vishal Anand, learned counsel for the appellants submits that since there has been no adjudication on merits of the claim for compensation as filed under Section 22 of the Act of 1923, no appeal would be maintainable under Section 30(1) of the Act of 1923. According to him since the application was dismissed on the ground of bar of limitation, no substantial question of law as contemplated by Section 30(1) would arise for adjudication. Hence the only remedy available was of filing a writ petition and the same ought to have been entertained on merits. To substantiate this contention the learned counsel placed reliance on the decision in ***Golla Rajanna and ors. vs. Divisonal Manager and anr. (2017) 1 SCC 45***. It was thus submitted that the writ petition ought to be restored and heard on merits.

5. Per contra, Shri J. L. Bhoot, learned counsel for the respondent supported the order passed by the learned Single Judge. According to him however an appeal would lie under Section 30(1)(a) of the Act of 1923 since the claim for compensation was disallowed. No case was made out by the

appellants for preferring the writ petition despite availability of an alternate remedy of statutory appeal under Section 30(1) of the Act of 1923. He also referred to the cross-objection filed by the respondent by which the findings recorded by the learned Commissioner in the proceedings were sought to be challenged. In support of his submissions learned counsel has placed reliance on the decisions in *Chandrashekhhar Azad vs. Workmen Compensation Commissioner 2002 (94) FLR 1227*, *General Manager BCCL vs. Amit Mahato 2002 (95) FLR 482* and *Oriental Insurance Vs. Daivshala 2012 (2) Mh.L.J. 813*. He therefore submitted that there was no reason to interfere with the order passed by the learned Single Judge.

6. We have heard the learned counsel for the parties and we have given due consideration to their submissions. It is not in dispute that the application for compensation filed by the appellants under Section 22 of the Act of 1923 came to be dismissed on the ground that the same was filed beyond the period of limitation. Though the learned Commissioner answered other issues as framed, in view of the finding that the application was filed beyond the period of limitation, no relief was granted to the appellants. In other words the claim for compensation was disallowed in its entirety. The provisions of Section 30(1)(a) of the Act of 1923 which are found relevant read as under :

“ Section 30. *Appeals* (1) An appeal shall lie to the High Court

from the following orders of a Commissioner, namely -

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum.”

Perusal of the said provision indicates that amongst other things if a claim is disallowed in full, an appeal would lie from the order passed by the Commissioner. Disallowing the claim in full could be for various reasons including the reason of the proceedings being filed beyond limitation or failure on the part of the claimant to prove his case on merits. The effect in both situations would be that the Commissioner would be disallowing the claim in full. In this regard we may refer to the decision of the Nagpur High Court in *Mt. Bhagwati and anr. vs. G.I.P. Railway AIR 1939 Nagpur 106*. The claim for compensation under the Act of 1923 came to be rejected on the ground that it was not made within the prescribed period. An appeal was filed under Section 30(1)(a) of the Act of 1923 wherein the respondent urged that the order passed by the Commissioner was not appealable. Considering said contention it was held by Niyogi, J. as under :

“ *It is urged for the respondent that the Commissioner's order is not appealable. Reference is made to Abdul Rahman and Co. vs. Narayan Fitter 16 NLJ 63. All that is laid down there is that under Section 30 of the Act no appeal lies unless a substantial question of law involves. Since the claim has been disallowed in full, the claimant is entitled to appeal under Section 30(1)(a) and it cannot be disputed that the appeal involves a substantial question of law. The result is that the appeal succeeds with costs. The case will now go back to the*

Commissioner (District Judge, Jubbulpore) for enquiry into merits.”

We are in respectful agreement with the aforesaid observations.

It is thus clear that even in a case where the proceedings are dismissed on the ground of limitation, it results in the claim being disallowed in full. In such contingency therefore appeal under Section 30(1) (a) of the Act of 1923 would be maintainable. The writ petition was therefore rightly not entertained.

7. Insofar as the contention raised on behalf of the appellants that when the claim is disallowed as being barred by limitation no substantial question of law would arise is concerned, the same cannot be accepted. Whether the rejection of the claim as being barred by limitation is correct or otherwise, would normally give rise to a substantial question of law. Needless to state that this aspect would depend on the facts of the case. Though it is urged by the learned counsel for the appellants that this Court should consider the challenge to the order passed by the Commissioner on its merits, in view of the fact that a statutory remedy is available to the appellants we are not inclined to entertain that request. Similarly, the grounds raise in the Cross-Objections can also be raised in the appeal, if filed. Since the decisions relied upon pertain to the merits of the case, we have not examined the same. Accordingly it is held that the appellants have remedy of preferring an appeal under Section 30(1)(a) of the Act of 1923 and not

under Section 30(1)(c) of the Act as held by the learned Single Judge.

8. As a sequel to the aforesaid discussion the following order is passed :

- (a) It is held that against the order passed by the learned Commissioner rejecting the claim for compensation as being barred by limitation, appeal under Section 30(1)(a) of the Act of 1923 is maintainable.
- (b) The appellants are at liberty to challenge the order dated 13/10/2011 passed in WCA No.C-51/2009 by preferring appeal as stated above. If such appeal is filed, the period from 10/05/2012 when the writ petition was filed till today shall be taken into consideration as the period spent in prosecuting these proceedings as contemplated by the provisions of Section 14 of the Limitation Act, 1963.
- (c) It is clarified that we have not examined the order passed by the Commissioner on merits and all points raised in appeal as well as cross-objections are kept open.

The Letters Patent Appeal and Cross-Objections are accordingly disposed of in aforesaid terms with no order as to costs.

JUDGE

JUDGE