

1. 18-04-2022

sg Ct. 8

FMAT 790 of 2018
CAN 1 of 2018 (Old CAN 6020 of 2018)
CAN 2 of 2018 (Old CAN 6040 of 2018)

Food Corporation of India
Versus
Anadi Mondal

Mr. Shyamal Chakraborty, Adv.
Ms. Madhumita Kundu, Adv.
...for the appellant

Mr. Rwitendra Banerjee, Adv.
...for the respondent

In Re: CAN 1 of 2018 Old CAN 6020 of 2018)

There is a delay of 445 days in preferring the appeal.

The appeal is arising out of Claim Case No. 435 of 2007 filed under the Workmen Compensation Act before the Commissioner, Employees' Compensation, 3rd Court, Kolkata, West Bengal. The Claim Case was disposed of on 21st February, 2017. The appeal was preferred on 9th August, 2018. In the application for condonation of delay, the deponent sought to give explanation of delay by referring to various consultative processes through which the file has to travel before it fructifies in a memorandum of appeal being prepared and a final decision being taken for filing the said memorandum of appeal.

The learned Counsel for the appellant submits that since the appellant is a Government of India enterprise, the decision to file an appeal is required to be taken on various stages which, however, is not so much reflected from the copy of the petition. A liberal view may be taken in deciding the application for

condonation of delay. It is further submitted that the entire awarded amount has been deposited in the Employees' Compensation Court and no prejudice should be caused to the workmen in the event the appeal is heard on merits.

Although, the explanation is not so satisfactory but some causes have been shown in the said petition, which may be taken into consideration at this stage for condonation of delay, moreover, the appellant has deposited the entire awarded amount before the Employees' Compensation Court.

Under such circumstances, the application for condonation of delay is allowed. The delay of 445 days in preferring the appeal is condoned.

CAN 1 of 2018 Old CAN 6020 of 2018) is accordingly, disposed of.

In Re: FMAT 790 of 2018 and CAN 2 of 2018 Old CAN 6040 of 2018)

By consent of the parties, we propose to dispose of the appeal at the admission stage.

We have heard the learned Counsel for the parties. The nature of injury sustained is not in dispute. However, the extent of disablement is the subject matter of dispute in the appeal.

Mr. Rwitendra Banerjee, learned Counsel appearing on behalf of the respondent, in all fairness, has referred to Section 24A of the Employees' Compensation Act, 1923 (West Bengal Amendment) and submitted that the Trial Court could have disposed of the appeal by referring the nature and extent of injury to a medial referee to assess the nature and extent of disability

occurred due to such accident and the matter may be remanded to the Trial Court for consideration of the nature and extent of disability on an application that may be filed by the respondent.

In the instant case, the learned Employees' Compensation Court noted certain discrepancies in the evidence of the respondent with regard to the disablement but having regard to the admitted nature of the injury as revealed from the X Ray and various reports, we dispose of this appeal by giving an opportunity to the respondent/award holder to file an application for appointment of a Medical Referee and in the event the said application is filed within three weeks from date, we would request the learned Trial Court to decide the nature and extent of disability by referring the said issue to a Medical Referee as envisaged in Section 24A of the Employees' Compensation Act, 1923 and to rewrite the judgment afresh on consideration of such report.

The impugned order is set aside with the aforesaid liberty to the respondent. The respondent shall be at liberty to approach the Member Secretary, District Legal Services Authority to appoint an Advocate to represent the said respondent/claimant before the Commissioner, Employees' Compensation Court, (3rd Court), Kolkata.

The Member Secretary, Calcutta High Court Legal Services Authority shall immediately communicate this order to the Chairman, District Legal Services Authority, Malda for doing the needful.

The appeal and the application being CAN 2 of 2018 Old CAN 6040 of 2018) are accordingly, disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)