

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 568/2018

Reserved on : 30.01.2023

Date of Decision : 14.02.2023

IN THE MATTER OF :

ORIENTAL INS CO LTD Appellant

Through: Mr.S.P.Jain, Advocate

versus

DALGANJAN SINGH & ANR Respondents

Through: Mr. R.K.Nain and Mr. Chandan
Prajapati, Advocates for LR's of
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present appeal filed under Section 30 of the Employees' Compensation Act, 1923 (hereinafter, referred to as the 'EC Act'), the appellant/Insurance Company has assailed order dated 04.10.2018 passed by the learned Commissioner, Employees' Compensation in Case No.EC-18/SWD/2016/11542-44, whereby it has been directed to deposit compensation amount of Rs.4,99,152/- alongwith simple interest @ 12% p.a. from the date of accident till realization.

2. The facts, as available on record, are that a claim petition was filed on

behalf of respondent No.1/claimant, stating that while being employed with respondent No.2 as a driver on truck bearing No.HR-47A-5844 (owned by respondent No.2), he had met with an accident on 03.07.2000. While he suffered injuries, the second driver had died on the spot. The claim petition was allowed vide order dated 18.05.2016 and a compensation of Rs.4,99,152/- alongwith simple interest @ 12% p.a. awarded to the claimant.

The said order was challenged before this Court by way of an appeal bearing FAO No.353/2016. Considering that the order dated 18.05.2016 was silent on the aspect of condonation of delay, the matter was remanded back to the learned Commissioner by this Court vide order dated 24.05.2017, to pass a reasoned judgment on whether or not delay in filing the claim petition ought to be condoned. The order dated 24.05.2017 passed by this Court in FAO No.353/2016 was not challenged by the appellant. Eventually, the concerned Commissioner passed the impugned order observing that the application for condonation of delay filed by the claimant deserved to be allowed.

3. Mr. S.P. Jain, learned counsel for the appellant, contended that despite specific directions by this Court to pass a reasoned order, the impugned order passed by the Commissioner, Employees' Compensation is bereft of any reason.

4. Mr. Chandan Prajapati, learned counsel for LR of respondent No.1, on the other hand, submitted that the impugned order is a well-reasoned order and deserves to be sustained. It was contended that the appellant had become aware of the accident in question when a claim application before the Motor Accident Claims Tribunal was allowed in favour of the dependants of a second driver accompanying the claimant, who had

succumbed to his injuries. In support of the contention that the claimant's right to compensation had crystallised on the date of the accident, reliance was placed on the decision of the Supreme Court in Pratap Narain Singh Deo v. Srinivas Sabata and Another reported as **(1976) 1 SCC 289**.

5. I have heard the learned counsels for the parties and gone through the material placed on record.

6. At the outset, it is noted that in view of order dated 24.05.2017 passed by this Court in FAO 353/2016, the issue in the present case is limited to examining as to whether the learned Commissioner recorded a reasoned finding in the impugned order on the aspect of claimant disclosing *sufficient cause* for not filing the claim petition in due time.

7. Pertinently, the accident in question had taken place in the year 2000. Though an FIR was registered on the date of the accident, the claim petition came to be filed in the year 2013 i.e. after a gap of 12 years 9 months and 20 days. This delay of almost 13 years in filing the claim petition is to be seen in light of the fifth proviso of Section 10(1) of the EC Act. Section 10 of the EC Act reads 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:

xxx

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. ...”

(emphasis added)

8. At this stage, it would be expedient to take note of the decision of the Supreme Court in Balbir Singh v. New India Assurance Co. Ltd. through its Divisional Office, Civil Appeal No.3910/2019 wherein while condoning the delay and taking into account physical state of the appellant, it was held as follows:-

“The first respondent filed an appeal before the Delhi High Court challenging the order passed by the Commissioner. The appeal was allowed by the Delhi High Court and the order passed by the Commissioner dated 7th July, 2006 was set aside. The High Court went wrong in setting aside the order of the Commissioner on the ground that there was no discussion regarding limitation and no reasons were given by the Commissioner to condone the delay. There is a clear finding by the Commissioner that the first respondent did not repudiate the contract and hence it cannot be said that the period of limitation had started. There is a detailed consideration by the Commissioner about the disability of the Appellant for a long period of time and the fact of his approaching the Consumer fora and the Motor Accident Claims Tribunal.

Taking into consideration the present physical state of the appellant, the fact that he has been fighting for rightful compensation for the past 30 years and the fact that the claim is not barred by limitation, we set aside the judgment of the High Court and restore the order dated 7th July, 2006 passed by the Commissioner.”

9. A perusal of the records of the present case reveals that in the claim petition, the claimant had claimed himself to be a resident of *Village Mavai*,

District Kannauj, U.P. while respondent No.2/employer was stated to be a resident of New Delhi.

10. The claimant had filed an application in terms of fifth proviso of Section 10(1) of the EC Act seeking condonation of delay, wherein it was stated that the accident had taken place on 03.07.2000 and thereafter, he remained under treatment for a long time as his left leg was amputated. It was further stated that after the accident, the claimant had visited respondent No.2 seeking his help, who initially assured him regarding compensation but later threatened with dire consequences if the claimant continued to visit.

Respondent No.2/employer had filed a reply to the said application, wherein it was averred that the appellant was informed immediately after the accident and as such, it was the appellant who was liable to pay.

11. Notably, alongwith the claim petition, the claimant had filed a disability certificate, wherein his disability was assessed @ 60% in relation to lower left limb. The certificate also mentioned that the condition of the claimant was not likely to improve. Even re-assessment was not recommended.

12. Considering the averments made, the material on record and the view expressed by the learned predecessor of the Commissioner, a conclusion to the effect that the appellant had timely knowledge of the accident in question was arrived at and the delay in filing of the claim petition by the claimant condoned by the learned Commissioner.

13. In view of the foregoing, I find no ground to interfere with the impugned order. Needless to add, labour statutes such as the EC Act constitute '*beneficial legislation*' for the welfare of employees and should be liberally construed in their favour [Refer: Jaya Biswal and Others v. Branch

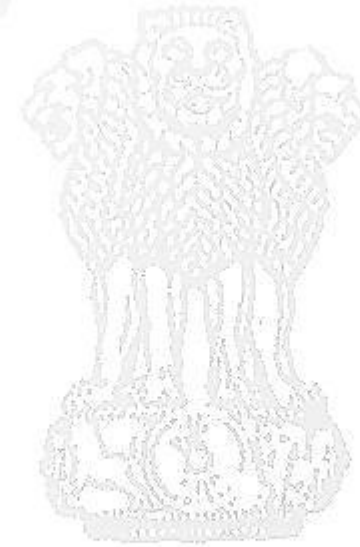
Manager, IFFCO Tokio General Insurance Company Limited and Another
reported as **(2016) 11 SCC 201]**.

14. Consequently, the appeal is dismissed. The compensation amount be disbursed forthwith to the claimant(s) along with interest, if any.

15. A copy of this judgment be communicated to the concerned Commissioner for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 14, 2023/v



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