



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**19 FIRST APPEAL NO. 3559 OF 2023
WITH
CIVIL APPLICATION NO. 13322 OF 2021
IN FA/3559/2023**

**SHIVAJI SAMBHAJI KHULE
VERSUS
THE SUPERINTENDENT ENGINEER, M.S.E.D.C. LTD., AHMEDNAGAR AND
ANR**

Mr. R. L. Kute, Advocate for the Appellant
Mr. U. S. Malte, Advocate for Respondent Nos.1 and 2 (Through VC)

**CORAM : R. M. JOSHI, J.
DATE : 18th AUGUST, 2025**

PER COURT :-

1. By consent of both sides, this Appeal is heard finally at the stage of admission.
2. This Appeal takes exception to the judgment and award dated 19th August, 2013 passed by the Commissioner for Workmen's Compensation and Judge, 2nd Labour Court, Ahmednagar in Misc. Application (WC) No. 06/2013, dismissing the Application on the ground that the claim has been made belatedly after 20 years of the occurrence of the accident.
3. At the outset learned Counsel for the Petitioner submits, on instructions, submits that the Petitioner is ready to waive the interest on

compensation if granted to him for the entire period. He submits that the provisions of the Workmen's Compensation Act (for short 'the Act') is a welfare legislation and that proviso to Section 10 of the Act permits condonation of delay even if the claim has not been preferred within a period of two years from the occurrence of the accident. It is his submission that the Petitioner was paid medical benefits as well the leave wages by accepting the fact that the accident in question has occurred during the course of the employment on 12/09/1990. It is his submission that the Petitioner has made several representations in order to seek to claim of compensation and hence, ultimately Application came to be filed in the year 2013. To support his submission, he has placed reliance on following judgments:-

- (i) Suresh Kumar Vs. State of Haryana and Ors. in SLP (C) NO. 670/2020,
- (ii) Smt. Lilabai V. Mehrban Singh, Aironline 2019 MP 726,
- (iii) Anu Mary Tayade Vs. Commissioner of Workmens Compensation, Thane and others, 2003(2) Bom.C.R. 367.

4. Learned Counsel for the Respondents opposes the Petition essentially on the ground that once the dispute is made with regard to the nature of accident and as to whether the accident involves negligence of the Petitioner, the Respondent cannot be called upon to defend the said claim now practically after 32 years of the occurrence of

the accident. It is his submission that the evidence, document etc., cannot be said to be available with the Respondent in order to defend such claim.

5. There cannot be any dispute made with regard to the proposition sought to be canvassed by the learned Counsel for the Petitioner that the Act with the welfare legislation. Since it provides for financial relief to workmen who suffer injuries due to accident arising out of and during the course of employment. Though the Act provides for period of limitation of two years to prefer an Application for compensation from the date of occurrence of the accident, it further provides for condonation of delay in appropriate case. However, question arises as to whether any amount of delay could be condoned. Since no outer limit has been prescribed, in appropriate cases the delay could be condoned provided that the situation of the employer has not changed.

6. Herein this case, the accident has admittedly occurred on 12/09/1990. Further admittedly the Petitioner has sustained injuries therein which has resulted into the amputation of his left hand. On the basis of the medical certificate, his earned leave was sanctioned. Thus relying upon these facts it is sought to be argued that once there is no dispute about the fact of the occurrence of the accident and causing of the injuries to the Petitioner during the course of the employment

coupled with the grant of medical benefits and leave, it is a fit case for condonation of delay.

7. The grant of medical benefits and leave cannot be equited to the entitlement of the compensation under the provisions of the Act. It is not in dispute that if the accident has occurred due to the negligence on the part of the employee, he is not entitled to seek compensation. In this regard by communication dated 10/08/2005 it was specifically informed to the Petitioner that though the accident has occurred prior to 14 years, Petitioner is held to be responsible for the occurrence of the accident as reported by the then Executive Engineer. On this ground, the claim for compensation was rejected.

8. This communication indicates that though the occurrence of the accident and causing of the injuries and disability is not in dispute, there is a serious dispute made with regard to the entitlement of the compensation for the reason that the Petitioner himself is responsible for the accident. Admittedly, on account of disability, the Petitioner was provided light job and continued in service.

9. Since dispute has been made long back by the employer about the accident being caused due to the negligence of Petitioner, this stand cannot be treated as an after thought. Before authority under the

Act, when dispute would be adjudicated, employer must be in a position to defend the same, with evidence. It cannot be expected that the documents/evidence would be available with employer for indefinite period. In such circumstances, now after 32 years the Respondent cannot be called upon to defend the said claim. This Court finds substance in the contention of the learned Counsel for the Respondent that owing to the long period passed in between, the evidence in order to prove the negligence on the part of the Petitioner is not available.

10. In so far as the judgment of this Court in case of *Anu Mary Tayade* (supra), there was no dispute with regard to the entitlement of the deceased to get compensation under the Act. The compensation was denied by the employer on the belief that the compassionate appointment of the son of the deceased disentitles him the compensation under the Act. Thus, in that case five years delay was condoned, however, the issue of determination of the negligence was not involved therein. In fact it is specifically observed that there was no deliberate negligence on the part of deceased Petitioner in occurrence of the accident. Similarly, from the other judgments cited supra it cannot be said that the issue of negligence was involved and the employer was called upon to substantiate the negligence after lapse of considerable time.

11. Though the Courts are expected to be liberal in condoning the delay in case of the welfare enactments in favour of the workmen, however, this cannot be done in all cases and more particularly when the position of the employer is changed in terms of maintenance of the record, it would be impressible to the considered view of this Court to call upon the employer to defend such claim after lapse of 32 years as in this case. In so far as the waive of interest is concerned, though this could be a considered as a positive gesture on the part of the Petitioner, still the issue remains as to whether the employer can be called upon to prove the negligence of the employee after a lapse of 32 years. This Court, therefore, finds no reason to cause interference in the impugned order.

12. Hence, Petition stands dismissed. Pending Civil Application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp