

(2002) 09 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 1248 of 2000

Anu Mary Tayade

APPELLANT

Vs

Commissioner of Workmen's Compensation and Others

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 4

Citation : (2004) ACJ 1088 : (2003) 1 ALLMR 51 : (2003) 2 BomCR 367

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Tanu Mehta Tiwari, for the Appellant; R.S. Apte, for the Respondent

Judgement

R.J. Kochar, J.—The impugned order dated 8-1-1999 in Application No. W.C.A.No. 131/C/20 of 1995 passed by the Commissioner for Workmens Compensation and Judge, Second Labour Court, Thane is under challenge under Articles 226 and 227 of the Constitution of India. By the aforesaid order the learned Commissioner has refused to condone the delay in filing the application for workmen's compensation u/s 4(a) of the Workmen's Compensation Act, 1923 claiming compensation from the respondent-Corporation for the alleged employment injury arising out of the accident during the course of his employment.

2. According to the applicant who died during the pendency of the petition on 19-4-2002, he was employed as a driver with the Corporation from 21-4-1986. According to him, during the course of and arising out of his employment he met an accident on 18-11-1990 whereby he sustained injuries which made him totally permanently disabled as a driver. The deceased applicant further alleged that he was not paid compensation in accordance with law. According to him, he was pursuing the matter in the following manner.

3. The deceased applicant had approached the Union as the Corporation had not paid workmen's compensation. The Union told him to bring civil surgeon

certificate. The Civil Surgeon, Thane certified him to be permanently disabled as a driver on 16-10-1991. The Union addressed a letter dated 18-10-1991 demanding from the Corporation that the applicant should be given compensation. It appears that there was no reply to the said letter addressed by the Union. The applicant himself wrote two letters dated 12-1-1992 and 9-10-1992 requesting the administration to give him compensation. One more important date which cannot be missed is that on 4-1-1991 he had addressed a letter to the Personnel Officer of the Corporation that he was totally disabled to work as a driver as he had sustained serious injury to his knee which was totally dislocated he therefore, tendered his resignation and requested the administration to employ his son as there was no earning hand in his family. In this letter he has also written that if his son would be employed he would not claim any compensation. Accordingly, it appears that on 10-10-1991 the applicant's son was employed by the Corporation. Even thereafter however, he continued to pursue his claim for compensation as aforesaid. He thereafter caused a notice to be issued on 2-8-1993 through his Advocate calling upon the administration to get him compensation on account of the employment injury. It appears that thereafter he could not file the application for workmen's compensation before the Commissioner as his son aged 30 years died at his native place on 25-12-1993. It appears that because of the tragic death of his son he was required to go to his native place. It appears that he must have collapsed due to this natural calamity and, therefore, he remained at his native place. The tragic death of his 30 years son must have made him lose sight of his claim for compensation. As the time is great healer for every injury, after sometime he must have realised that the source of livelihood at dried up and therefore, he returned to Thane in search of bread. It appears that with the help of the friends in the Union he filed the present application for workmen's compensation on 7-6-1995 claiming compensation from the Corporation under the said Act on account of the employment injury. Along with the said application he also filed an application for condonation of delay as the statutory period of limitation for filing such application was two years. However, the Commissioner is empowered to condone delay for sufficient cause shown by the Applicant. By the impugned order the Commissioner has refused to condone the delay and he dismissed the application for compensation. It appears that there was no end of the tragedies of the applicant. After the set back of the dismissal of the application he got another very severe and rude shock when he lost his second son aged 27 years on 24-3-1998. On account of this trauma it appears that there has been delay in filing the present petition and after filing of the present petition he himself died on 19-4-2002. He has left the legacy of the present petition for his wife. It appears that the son, who got employment with the Corporation in the place of the deceased applicant is not properly looking after the poor widow. She has now prayed for condonation of delay in filing of the application for workmen's compensation filed by her husband.

4. It appears that the learned Commissioner and Judge has not properly

considered the events which took place after the accident. It cannot be said that the petitioner was negligent. With all his meager, means and mite he was trying to pursue the remedy to get the compensation. No doubt the Corporation has also acted bona fide and in good faith by accepting his request to offer a permanent employment to his son. The administration has perhaps lost sight of section 17 of the Workmens Compensation Act that in no case there is an escape for the employer from paying compensation under the Act which prohibits contracting out. It appears that the officers of the Corporation remained under the impression that they were not liable to pay any compensation as they had employed the son of the deceased applicant. The law, however, does not recognise this good gesture shown by the Corporation. The deceased petitioner even after the employment of his son was pursuing to get compensation from the Corporation which fact is clear from the letters written by his Union, his Advocate and he himself. Very often poverty makes a man dishonest and ungrateful, too ! However, the employer cannot escape his liability to pay workmens compensation statutorily provided under the Act. The deceased applicant cannot to said to have given up his right for compensation as aforesaid he was pursuing his remedy according to his own mite and speed. He was further surrounded by the untold miseries inflicted on him by the nature. He lost his two major sons, who were the main pillars in his life. The deceased applicant was totally poverty struck. He was totally desperate. He finally approached the Workmen's Compensation Commissioner for relief. No doubt there was delay in filing the said application. There is further no doubt in my mind that the discretion exercised by the Workmen's Compensation Commissioner cannot be said to be wholly wrong. However, the learned Commissioner ought to have more carefully considered the chain of the events which I have narrated. From the aforesaid chain of the events one thing is clear that there was no deliberate negligence on the part of the deceased petitioner. The events brought on record establish sufficient cause for condonation of delay. On account of the aforesaid circumstances the delay in filing of the application deserves to be condoned.

5. Before I conclude I may mention that even if I am overwhelmed by the woeful situation of the deceased employee and his widow who has inherited the poverty of her deceased husband. I have erred, if at all it can be said to be an error, on the side of the weak without overstepping the facts, as mandated by the Supreme Court in the case of the KCP Employees Union v. KCP, 1978(I) L.L.J. 332 as under : "In industrial law interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on the law and facts, if there be such doubt, must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but with overstepping the proved facts,....." Let the widow not carry a heart burn for her life that her husband's case was not given justice on the merits but was dismissed on the ground of limitation.

6. The impugned order is therefore quashed and set aside. The Workmens Compensation Commissioner is hereby directed to dispose of the application for

workmens compensation as expeditiously as possible within a period of six months from the receipt of writ of this Court in accordance with law. The office is directed to send the writ forthwith. The writ petition is disposed of as above. Rule is made absolute. No orders as to cost.