
(2012) 05 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : CIMA No. 130 Of 2005

Himachal Pradesh State Forest C. Ltd	APPELLANT
Vs	
Com. Workmen's Compensation and Others	RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Workmens Compensation Act, 1923 — Section 30(2)

Citation : (2012) 05 J&K CK 0002

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : Rakesh Sharma, for the Appellant; A. A. Hamal, Advocate and Mr. Vikas Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, Judge

1. This appeal is filed against the award dated 26.06.2003 passed by the authority under Workmen's Compensation Act, 1923 (Assistant Labour Commissioner), Kishtwar (for short 'ALC') as also against the award dated 11.06.2005 wherein the prayer of the appellant for setting aside the ex-parte award was rejected. Appellant filed appeal against the aforesaid awards which was dismissed by the court vide order dated 11th October, 2005, holding the same to be time barred in respect of the award dated 26th June, 2003 and further in respect of award dated 11th June, 2005, it was held that said awards are not appellable under the Workmen's Compensation Act, 1923 (for short 'Act'). Appellant feeling aggrieved of the said order challenged the same in LPA (C) No. 01/2006. Letters Patent Bench vide order dated 10th August, 2007, while allowing the appeal and setting aside the order impugned, remanded the case to

the appellate court for taking decision on the prayer of the appellant regarding condonation of delay in filing the appeal. It was also provided that while considering the prayer for condonation of delay in filing the appeal, the facts shall be taken into consideration as to whether the petition was properly instituted by the respondent-claimant by not impleading the principal employer as party respondent.

2. Learned counsel for the appellant, while referring to paragraphs (F) & (J) of the memo of appeal, submitted that delay caused in filing the appeal was neither deliberate nor intentional. Learned counsel submitted that when appellant was informed by the ALC by issuance of notice to appear and respond to the claim petition, he requested the authority for adjourning the case. Learned counsel submitted that thereafter no information was given to the appellant by the ALC and it was only when the copy of the ex-parte award was received by the appellant, he learnt about the same and thereafter application was filed seeking setting aside of the ex-parte award. Learned counsel for the appellant in support of his contention referred to and relied upon case titled Shanti Devi and ors. v. Ram Lal reported in 1988 KLJ 335 and submitted that there is no requirement in filing separate application for seeking condonation of delay. Learned counsel also referred to and relied upon case titled Sujan Singh and ors. v. Dina Nath (deceased) and ors. reported in 1988 KLJ 338 and submitted that after the notice was issued in the appeal, same could not be dismissed on the ground of having been filed beyond the period of limitation.

3. At paragraph (L) of the memo of appeal, it has been stated by the appellant that he got knowledge of the passing of the ex-parte award on 08.07.2003 on which date he received copy of the award from ALC through registered Post. At paragraph (M), it is stated that a decision was taken by the appellant to file an application seeking setting aside of the ex-parte award which was filed on 19th August, 2003 and same was dismissed by the ALC on 11th June, 2005.

4. Admitted fact position is that appellant got the knowledge of the passing of the ex-parte award on 8th July, 2003. Appellant has pleaded in the appeal that when he first received the notice for appearance, he had requested the authority for adjournment of the case as he was on leave. This assertion is made at paragraph (F) of the memo of appeal. At paragraph (G), it is

pleaded that thereafter no information was received by the appellant, which prevented him from causing appearance before the ALC.

5. Perusal of the impugned award reveal that when notice was sent to the appellant for causing his appearance before the authority, in response

thereto, a telegram from Forest Working Division Rampur H.P. was received by the ALC on 08.11.2002 that the Divisional Manager, Forest

Manager, being on leave, would not be in a position to cause the appearance before the authority. Award further reveal that the appellant had

prayed for fixing of another date and had also requested for supplying the copy of the application, so as to enable him to file the reply. It is also

provided in the impugned award that copy of the application was sent through registered post to the appellant and he was informed to attend the

court on 24.12.2002.

6. The stand taken in the appeal that after the receipt of the first notice by the appellant, request was made for adjourning the case and for making

available copy of the application and nothing was heard thereafter and he was not informed about the next date of hearing in the case, is belied by

the recitals made in the awards itself. The plea taken for seeking condonation of delay in memo of appeal is not bonafide one. It is nowhere stated

in the memo of appeal that whatever is stated in the award about this fact is wrong.

7. What emerges from the above referred facts is that the appellant has been grossly negligent in filing the appeal. As already stated at paragraph

(L) of the memo of appeal, it is admitted that copy of the award was received by the appellant on 08th July, 2003. The appeal in terms of Section

30(2) of the Workmen's Compensation Act, 1923, was to be filed within sixty days. Admittedly, the appeal has not been filed within sixty days.

No cogent and plausible cause has been projected for filing of the appeal at belated stage. The appeal, admittedly, against the order dated

11.06.2003, is not maintainable, which part of the order dated 11th October, 2005 of this court has not been interfered with by the Letters Patent

Bench and has attained finality. The appeal was dismissed by the court on 11th October, 2005, holding the same to be barred by time and also not

maintainable against other order. For the reasons stated in this order, delay in filing the appeal cannot be condoned. Appeal is held to be barred by

limitation and is, accordingly, dismissed.