
(1961) 03 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 50 of 1960

K.R. Beri and Co. and Others

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 20-03-1961

Acts Referred:

Employees State Insurance Act, 1948 — Section 66
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7(1)
Limitation Act, 1908 — Section 14
Workmens Compensation Act, 1923 — Section 12

Citation : AIR 1962 P&H 308 : (1961) 2 ILR (P&H) 721 : (1962) 1 LLJ 579

Hon'ble Judges : I.D. Dua, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

Mahajan, J.

(1) Two matters call for decision in this appeal. One is the question of limitation. The other is the question of liability of the appellant to reimburse the respondent. On facts there is no dispute excepting with regard to the second matter inasmuch as that matter has not been determined. So really it cannot be said that there is any dispute as to facts even on that. The appellant is the company engaged in the manufacture of cycle parts at Jullundur. Raj Kumar is one of their employees. He met with an accident while engaged in his employment with the appellant company (Messrs. K. R. Beri and Company) on the 19th of July 1955. The company as well as Raj Kumar are insured with the Employee's State Insurance Corporation constituted under the Employee's State Insurance Act 1948 which a Central Act. Temporary disablement benefit was allowed to Raj Kumar. On the 1st of October 1956, the Corporation filed an application u/s 66 of the Act for reimbursement against the company both for the temporary and permanent partial disablement benefit.

It may be mentioned that it was only after this application that the Medical Board on the 3rd of November 1956 held that Raj Kumar had been permanently

partially disabled and fixed the quantum of compensation at 50 per cent. It is common ground that the cause of action for reimbursement regarding permanent partial disablement benefit arose on the 3rd or November 1956. The application filed on the 1st of October 1956 was allowed so far as the reimbursement regarding temporary disablement benefit is concerned but was rejected regarding the permanent partial disablement benefit on the ground that it was premature. This led to the present application on 8th May 1958 u/s 66 of the Act for reimbursement of the permanent partial disablement benefit allowed to Raj Kumar. This application was opposed by the company on two grounds namely that it was barred by limitation and that there was no negligence or wrongful act on the part of the company which resulted in the accident giving rise to the claim of Raj Kumar. At this stage it will be proper to set out the relevant provisions of the Act. Section 66 and Regulation 45 are in these terms:

"Section 66. Corporation's right to recover damages from employer in certain cases; (1) Where any employment injury is sustained by an insured person as an employee under this Act by reason of the negligence of the employer to observe any of the safety rules laid down by or under any enactment applicable to a factory or establishment or by reason of any wrongful act of the employer or his agent, the Corporation shall notwithstanding the fact that the employer has paid the weekly contributions due under that Act in respect of such insured person be entitled to be reimbursed by the employer or the principal who is liable to pay compensation u/s 12 of the Workmen's Compensation Act, 1923, the actuarial present value of the periodical payment's which the Corporation is liable to make under this Act.

(2) For the purposes of this Act, the actuarial present value of the periodical payments shall be determined in such manner as may be specified in the regulations."

"Reg. 45. When claim becomes due--A claim for any benefit under the Act shall for the purposes of Section 80 of the Act, become due on the following days;

(a) for sickness benefit or for disablement benefit for temporary disablement for any period on the date of the issue of the medical certificate in respect of such period; provided that in cases where a waiting period is required the due date shall be deferred by the number of days of such waiting period;

(b) for maternity benefit, on the date of issue, in accordance with these regulations, of the certificate of expected confinement or on the day six weeks preceding the expected date of confinement so certified, whichever is later or, if no such certificate is issued, on the date of confinement;

(c) for disablement benefit; for permanent disablement, on the date on which an insured person is declared as permanently disabled in accordance with these regulations; and

(d) for dependant's benefit, on the date of the death of the insured person in

respect of whose death the claim for such benefit arises or the date from which a beneficiary becomes entitled to a claim, as the case may be."

Limitation for application is provided u/s 80 of the Act and Rule 17 of the Employees' Insurance Court Rules 1949. Both of them are in these terms;

"Section 80. Benefit not admissible unless claimed in time.--An Employees' Insurance Court shall not direct the payment of any benefit to a person unless he has made a claim for such benefit in accordance with the regulations made in that behalf, within twelve months after the claim became due;

Provided that if the Court is satisfied that there was reasonable excuse for not making a claim for the benefit due, it may direct the payment of the benefit as if the claim had been made in time".

"Rule 17. (1) Limitation.--Every application to the Court shall be brought within twelve months from the date on which the cause of action arose or as the case may be the claim became due;

Provided that the Court may entertain an application after the said period of twelve months if it is satisfied that the applicant had sufficient reasons for not making the application within the said period.

(2) Subject as aforesaid the provisions of Parts II and III of the India Limitation Act, 1908 shall so far as may be applied to every such application."

The period of limitation prescribed for an application u/s 66 in twelve months and the terminus a quo is the date on which the Medical Board declares a persons entitled to permanent partial disablement benefit. The Employees' Insurance Court gave the Corporation the benefit of the proviso to Section 80 and Rule 17 and held the application to be within limitation but for this application benefit the application, according to the Court, was clearly barred by time. With regard to the other matter on the question of quantum of reimbursement, the Court came to the conclusion that it was rightly claimed but with regard to the real matter namely as to whether there was any negligence or wrongful act on the part of the company, no finding has been given. Dissatisfied with this decision, the company has come up in appeal to this Court. Two contentions have been raised before me by Mr. Tuli, learned counsel for the company. The first contention is that the decision of the Court on the question of limitation is erroneous and on the facts and circumstances of this case, the Corporation is not entitled to the benefit of the provisions. He further the negligence or the wrongful act of the company, no order as to reimbursement should have been made.

(2) On the question of limitation, the argument of Mr. Tuli proceeds thus. The first application was made when the cause of action for permanent partial disablement had not arisen and, therefore, it was dismissed as premature and for proceedings which are taken at a time when cause of action had not arisen, no benefit u/s 14 of the Limitation Act can be allowed to the Corporation which has to file an application within the period prescribed u/s 80. He further contends

that in any case there is no explanation for the delay between the 20th of February 1958, dismissal of the first application, and 8th of May 1958, the date on which the present application was filed, and the period taken by the Corporation to present the second application after the dismissal of the first application cannot be considered to be a reasonable period, and therefore also they are not entitled to the benefit of the proviso to S. 80 and Rule 17.

This argument is met by the learned counsel for the Corporation on the short ground that it does not matter that the proceedings were premature. The earlier proceedings certainly were on the same cause of action and, therefore, he is entitled to the benefit of section 14 of the Limitation Act and if that benefit is allowed to him, it is stated by the learned counsel for the Corporation, then the application would be within time. For this contention, he placed reliance on *Maneklal Kalidas v. Shivilal Dayaram Luvar* AIR 1939 Bomb 26. This decision certainly supports his contention. On the other hand, Mr. Tuli relies on the decision of the Calcutta High Court in *Dwarkanath Chakravarti v. Atul Chandra* AIR 1919 Cal 381, where observations to the contrary were made by the Calcutta High Court and it was held that the benefit of Section 14 cannot be allowed to a party for proceedings prematurely instituted. Rustomji while dealing with this matter in his *Treatise on Limitation Act* (Sixth Edition) at page 159 observe as under:

"Failure of a suit on the grounds that it is not maintainable or that it disclose no cause of action or is premature; such cases are not covered by Section 14, as the suit fails, nor for defect of jurisdiction, etc., but because it is misconceived."

In view of this conflict of judicial opinion, it is proper that the matter is decided by a larger Bench. I accordingly direct that the papers of this case be placed before may Lord the Chief Justice for constituting a Division Bench or a Full Bench to dispose of the appeal particularly when a Letters Patent Appeal lies as of right and the matter is not free from difficulty.

JUDGMENT OF DIVISION BENCH

Inder Dea Dua, J.

(3) The facts so far as are necessary for our purposes, and which have given rise to this appeal, are sufficiently stated in the referring order and, therefore, need not be repeated. The question which calls for determination is whether the Employees Insurance Court was right in holding the application of the Employees' State Insurance Corporation to be within limitation.

(4) As observed by my learned brother Mahajan J., in his referring order, the period of limitation for the application by the Corporation u/s 66 of the Employees' State Insurance Act, 1948, is twelve months from the date on which the cause of action arose, or, as the case may be, the claim became due. According to Regulation 45 (framed u/s 97 of the Act), as stated in clause (c), the claim in question became due on the date on which the injured employee

was declared as permanently disabled in accordance with the Regulations. As laid down in the proviso both to Section 80 of the Employees' State Insurance Court Rules of 1949 (framed u/s 96 of the Act), if the Court is satisfied that the applicant had a "reasonable excuse; or a "sufficient reason" for not making the application within the prescribed period of twelve months, the delay in making the claim or bringing the application may be condoned.

(5) In the case in hand, it is not disputed that the Medical Board gave its report on 3rd November, 1956. The first application by the respondent, Employees' State Insurance Corporation, had however already been filed on 1st October, 1956; the accident in question having taken place on 19th July, 1955. Written statement to that application was filed by the employer-company, Messrs. K. R. Beri and Company, on 9th February, 1957, and replication by the Corporation was filed on 6th April, 1957. This application was disposed of on 20th February, 1958, and a decree for Rs. 39/6/- was passed; the remaining claim having been rejected as premature. The Court, however, directed the Corporation to make a fresh application for the recovery of Rs. 2,000/- from the employer. As a result of this order, the present application was instituted on 8th May, 1958. An objection was raised, among others, that this application was barred by limitation. It was dismissed initially on the ground that the applicant had not mentioned the date of the report of the medical examination. On appeal, this Court remanded the case by an order, dated the 27th February, 1959. In this order, it was mentioned by Chopra J. that it was common ground between the parties that the report of the Medical Board had been given on 3rd November, 1956, and that in the pleadings there was no dispute regarding the said date. Holding the rules of procedure to be meant for enabling the Courts to arrive at just decisions, the order of the Employees' Insurance Court can the 16th August, 1958, was set aside and the case remitted for being proceeded with in accordance with law.

(6) After remand, the Employees' Insurance Court presided over by Shri Kartar Singh, Senior Subordinate Judge, held that the present petition having been made in accordance with the directions given by the Employees' Insurance Court (then presided over by Shri Banwart Lal P. C. S.) in the decision dated the 20th February, 1958, the same was in order. The Court was further of the view that there was sufficient reason for not making the application within the prescribed period of twelve months. In this connection it was observed that the previous application having been dismissed on 20th February, 1958, there was no question of presenting the present petition before that date and after the order of dismissal the present application was presented within a period of less than three months. The Court agreed with the contention of the Government Pleader that certain formalities were to be undergone by the Corporation to make the present application, and that this was a reasonable ground for condoning the delay. The Insurance Court in this view held that it was a fit case in which the delay of less than three months should be condoned. On the merits, a decree for Rs. 2,000/- was granted in favour of the Corporation.

(7) On appeal, Shri Tuli, to begin with, contended that Section 14 of the Indian Limitation Act was the only provision which permitted the time spent in prosecuting an earlier proceedings to be excluded, while computing the period of limitation, and that in the present case the principle underlying Section 14 could not be invoked because on 1st October, 1956, the date of filing the previous application, no cause of action had yet accrued to the Corporation for applying u/s 66 of the Act such a cause of action only accrued on 3rd November, 1956, when the Medical Board gave its report. A premature application, according to the counsel, could not attract applicability of the principle, underlying Section 14. But when the counsel's attention was drawn to the fact that the Court below did not even purport to rely on the principle underlying Section 14 of the Limitation Act and that the decision condoning the delay by the Insurance Court has merely proceeded on the finding that there was sufficient reason for the Corporation not making the application within the prescribed period, Shri Tuli contended that the order of the Court below was based on no evidence and that the discretion exercised by it was therefore, not in accordance with the well-settled principles. The counsel also contended that the question of the proper exercise of discretion is a substantial question of law, and, therefore, capable of being reagitated on appeal. In support of this contention, he has drawn our attention to a large number of authorities, but I do not think it is necessary to specifically consider all of them in detail.

(8) On behalf of respondent, however, it has been argued that the question of the exercise of discretion can never raise a substantial question of law and that the discretion is by law vested in the Insurance Court and, therefore, this Court should not, on appeal, substitute its own discretion in place of that of the Court below. He has also, drawn out attention to a fairly large number of authorities, but I consider it equally unnecessary to consider in detail each one of them specifically. I would only deal with the important decisions cited at the Bar.

(9) In Deputy Commr., Hardoi, in charge Court of Wards, Bharawan Estate Vs. Rama Krishna Narain and Others, while speaking on behalf of the Court and dealing with the question of competency of appeal u/s 110, Code of Civil Procedure, observes as follows:

"It is obvious that the ground on which the appeal was dismissed by the High Court raises a question of law of importance to the parties, and that being so, on that ground alone the appellant was entitled to a certificate u/s 110, Civil Procedure Code."

In Nar Singh and Another Vs. The State of Uttar Pradesh, the following observations occur which might also, with advantage be reproduced here:--

"In the case of clause (c) both of Article 133(1) and Article 134(1), the only condition is the discretion of the High Court but the discretion is a judicial one and must be judicially exercised along the well-established lines which govern these matters, (see Banarsi Parshad v. Kashi Krishen, 28 Ind App 11 (PC)); also

the certificate must show on the fact of it that the discretion conferred was invoked and exercised; Radhakrishna Ayyar v. Swaminatha Ayyar 48 IA 31: (AIR 1921 PC 25) and Radha Krishna Das v. Rai Krishnachand 28 IA 182(PC). If it is properly exercised on well-established and proper lines, the, as in all questions where an exercise of discretion is involved, there would be no interference except on very strong grounds AIR 1946 100 (Privy Council) and AIR 1943 106 (Privy Council) But if, on the fact of the order, it is apparent that the Court has misdirected itself and considered that its discretion was fettered when it was not, or that it had none, then the superior Court must either remit the case or exercise the discretion itself. Brij Indar Singh v. Kanshi Ram ILR 45 Cal 94: (AIR 1917 PC 156).

(10) On behalf of the respondent, our attention has been drawn to Tractors (India) Ltd. v. Md. Sayeed AIR 1959 SC 1196, where while considering the scope of Section 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act, 1950, it is laid down that the simple question of fact to be tried by the Industrial Tribunal u/s 33, Industrial Disputes Act, was whether a prima facie case has been made out by the appellant against the respondent, and that on the findings made by the Tribunal, no question of law arose, much less a substantial question of law, with the result that the Labour Appellate Tribunal should have held the appeal before it to be incompetent, but what the Labour Appellate Tribunal purported to do was to appreciate the evidence for itself, which was outside its jurisdiction u/s 7(1)(a). Here, it may be mentioned that in the reported case, the Industrial Tribunal was found to have been conscious of the true legal position that u/s 33, Industrial Disputes Act, it does not sit in appeal over the decision of the employer, when it determined the question of law. The counsel also relied on East India Coal Co. Ltd. v. Parbati Sankar AIR 1959 SC 1222 where similar observations were made by the same Bench, which decided Tractors" case. The counsel for the respondent also made a reference to Patna Electric Supply Co., Ltd., Patna Vs. Bali Rai and Another, in which case the same position had been laid down earlier. Mt. Satto v. Amar Singh ILR 1 Lah 220: (AIR 1919 Lah 65), was then quoted; in this case an order whereby the High Court declined to exercise its discretion u/s 149, Code of Civil Procedure, was held not to raise a substantial question of law. Discretion to award interest was not considered by the Oudh Court to raise a substantial question of law in AIR 1942 478 (Oudh)

(11) The decisions cited on behalf of the parties really proceed on their particular facts and do not provide any well-recognised test. In Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others, , while considering the scope of the expression "substantial question of law" Gajendragadkar J. who delivered the judgment on behalf of the Court, spoke thus:--

"The first point which has been urged before us by the learned Attorney-General on behalf of the appellant is that the appeal preferred by the respondent before the Labour Appellate Tribunal was incompetent and should not have been entertained by it. u/s 7(1)(a) of the Industrial Disputes (Appellate Tribunal) Act,

1950 (48 of 1950), an appeal lies to the appellate tribunal from any award or decision of an industrial tribunal inter alia if the appeal involves any substantial question of law. The argument is that the respondent's appeal did not satisfy this requirement, and so the appellate tribunal has exceeded its jurisdiction in entertaining it. We are not impressed by this argument. It is clear that issue No. 1 which was referred to the tribunal is a general issue affecting more than 5000 employees of the appellant; and it is an issue the decision of which would necessarily raise questions of industrial policy and principle; whether or not the appellant was entitled to introduce an age of superannuation, and if it was entitled so to do, would the introduction of the system affect the rights of persons who had joined the appellant's service in the legitimate expectation that they would not be subject to any such rule? What would be the proper age of superannuation in a concern like the appellant's? In our opinion, questions like these which necessarily arose in deciding issue No. 1 are questions of law, and since they affect a large number of the appellant's employees, it cannot be said that the respondent's appeal before the Labour Appellate Tribunal did not involve a substantial question of law."

(12) I Kundan Sugar Mills Vs. Ziyauddin and Others, Subba Rao J., delivering the judgment of the Court, observed as follows while disposing of a similar argument:--

"Lastly, it is said that the Appellate Tribunal had no jurisdiction to aside the finding of the State Industrial Tribunal, as it did not give rise to any substantial question of law within the meaning of Section 7(1) of the Industrial Disputes (Appellate Tribunal) Act, 1950. The question raised was one of law, namely, whether the appellant had the right to transfer the respondent 1 to 4 from one concern to another. A substantial question of law was involved between the parties, and that raised also an important principle governing the right of an employer to transfer his employees from one concern to another of his in the circumstances of this case. We, therefore, hold that a substantial question of law arose in the case, and that it was well within the powers of the Labour Appellate Tribunal to entertain the appeal."

Again, in The Rashtriya Mill Mazdoor Sangh, Parel, Bombay and Another Vs. The Apollo Mills Limited and Others, , Hidayatullah J., while considering the argument that there was no substantial question of law, expressed the Court's opinion in these words:--

"It has been pointed out already that the failure to continue to employ labour was due to the short supply of electrical energy and the question is whether in these admitted circumstances, Standing Orders 16 and 17 read with Section 40(1) and item 9 of Schedule 1 of the Bombay Industrial Relations Act rendered the employers immune from a claim for compensation for loss of wages and dearness allowances. The respondents claimed that they did, while the appellant maintained that they did not and referred to Sections 40(2), 42(4), 73 and 78(1)A and item 7 of Schedule III of the same Act. This is a substantial question

of law, and the appeal was thus competent."

In my view, in the light of the observations made by the Supreme Court in the cases just cited, the question raised in the present case is really vital to the parties and is also of importance, because it raises a question of principle. Discretion to admit an appeal beyond the prescribed period of limitation is, as is well-settled, judicial and must be exercised on well-recognised principles. It is true in the matter of discretion no one case can be an authority for another, but at the same time discretion, when exercised, must proceed on evidence or on material which the Court can legally take notice of. In *Harchura Tea Estate Vs. Labour Appellate Tribunal of India*, a substantial question of law was held to include a question whether a particular case is based on any evidence or not.

(13) In the case in hand, there is absolutely no evidence on the record to which our attention has been drawn by the respondent showing any sufficient reason for the delay at least between 20th February, 1958, and 8th May, 1958. It is true that, while considering the question of "reasonable excuse; or "sufficient reason" within the scope of the provisos in question applying the analogy of Section 5 of the Limitation Act, the period during which another proceeding was being prosecuted by a party, may well be taken into account but then each individual day's delay has to be sufficiently explained in a reasonable manner. The mere prosecution of another proceeding is by itself never considered to be a conclusive circumstance. Good faith and due diligence are the essential pre-requisites for a litigant to establish, if he wants to rely on the principle, which is embodied in Section 14, even if we ignore the technicalities contained therein.

(14) Even considering the matter exclusively by reference to the language of the proviso in question, in my view, the expression "sufficient reason" must at least contemplate a reason, which should be considered sufficient from the point of view of a reasonably diligent man. In order, therefore, to justify failure or omission to make the application within the period of limitation and to make out a case for condonation of law, it was incumbent on the respondent to place cogent material on the present record, which would attract the applicability of the proviso. Our attention has not been drawn to any such material, which would explain the presentation of a premature application on 1st October, 1956. The Court below is also in error in observing that up to 20th February, 1958, there was no question of making the present application. If the Corporation had been reasonably diligent, after looking at the pleadings it would certainly have realised that the cause of action only arose to it after the report of the Medical Board. There was no legal bar, and certainly none has been pointed out to us, in making the present application at any time after the 3rd of November, 1958, the pendency of the previous application notwithstanding.

(15) But even if for the sake of argument, it be conceded that up to 20th February, 1958, the respondent had a sufficient reason for not filing the present petition, the question still remains as to whether any sufficient reason has been established by the respondent for the further delay up to 8th May, 1958. The

observations of the Insurance Court that certain formalities were to be undergone to enable the Corporation to present the petition can hardly constitute a sufficient reason for the delay from 20th February to 8th May, 1958. The evidence of A. W. I, who was Manager of the Ludhiana office of the State Insurance Corporation having jurisdiction also over Jullundur branch, has been read out to us but this testimony is completely devoid of any explanation, for the delay during the period mentioned above. All that is stated is that he sent intimation about the decision dated 20th February, 1958, to the Head Office on 22nd February and received back the application from 20th February, 1958, to the Head Office on 22nd February and received back the application on 5th May 1958. In my opinion, this is no explanation showing sufficient reason for such an inordinate delay in the Head Office, on which Courts of justice can possibly act; indeed, he has expressly stated that he cannot give any reason for not presenting the application from 20th February to 10th May, 1958. I am conscious of the rule that interpretation, which will work forfeiture of a right of action should, generally speaking, avoided if it can be done without doing violence to the statutory language, but at the same time rules of limitation are intended to induce claimants to be prompt in claiming relief and unexplained delay or laches on the part of those, who are expected to be aware and conscious of the legal position and who have facilities for getting proper legal assistance can hardly be encouraged or countenanced.

(16) I am aware of a Bench decision of this Court in which Soni J. took a lenient view of the laches on the part of the Government department there, with the observation that Government departments do not always act very promptly, but then those observations must, in my view, be read in their own context and in the light of the peculiar facts of that case, (see *Union of India v. New India Constructors*, Delhi AIR 1955 Pun 172). In *Union of India (UOI) and Another Vs. Shree Ram Kanwar and Others*, a Bench of this Court observed that the law of limitation operates equally for or against the private individuals as also of Government and no special indulgence can be shown to the Government, which, in similar circumstances, has not to be shown to an individual suitor; in case it is felt that the Ministries delay matters so much that the periods of limitation already prescribed in the limitation Act are not long enough, then the better course is to obtain amendment of the law rather than seek condonation of delay. The Court there expressed a definite opinion that delays in Government offices are not justified for invoking the power of the Court u/s 5, Limitation Act.

The appellant has placed great reliance on this decision and, by way of analogy, has submitted that similarly delay in the office of the respondent Corporation cannot, as a general rule, be upheld to be a sufficient reason. I do not think it is necessary for me to go the length to which the Bench in *Union of India (UOI) and Another Vs. Shree Ram Kanwar and Others*, went, for though a given duration of delay may be evidence of unjustified laches and want of due diligence in the case of a private individual, the same conclusion may be permissible on the same duration of delay in the case of Government department, in which latter case the

Court might well in its discretion legitimately choose to condone the delay. Of course, the statute makes no distinction between Government and private individual except when it so states, for instance in Section 27 and Article 149, Limitation Act, but it does not necessarily follow that while considering the provisions, which confer a discretion on the Court to condone delay in a given case for sufficient reason, the Court is debarred, as a matter of law, from drawing distinction between a private individual and Government.

It is obvious that a private individual has only to make up his own mind and it normally presumed factors and aspects of his case, whereas in the case of Government, public interest has to be duly considered and, comparatively speaking longer time must, looking at things in a practical, way be required for enquiry and consideration before taking final decision and then acting on it. It may thus not be wholly unreasonable to state that a duration of time, which may be sufficient for a private litigant may not necessarily be held to be so in the case of Government. As at present advised, therefore, I do not find it easy to persuade myself to subscribe, in an unqualified manner to the view (and I speak with utmost respect) that delay in Government offices can never, as a general rule, constitute a relevant consideration in determining the sufficiency of cause for condoning delay; each case must depend on its own circumstances and the Court has to determine in a practical way as to how far a litigant has been reasonably diligent in prosecuting his case.

It is, however, unnecessary to say anything more on this subject in this case, because on the existing material I am not satisfied that the respondent has shown any sufficient reason for not presenting the present petition before 10th May, 1958; indeed, there is not a word of explanation for the delay from 20th February 1958, to 10th May, 1958, and since the onus was on the respondent, failure to discharge the same must necessarily entail dismissal of the claim. In this case, on its peculiar facts, the department in question has, obviously, been grossly negligent in conducting and prosecuting its claim petition.

(17) The contention that the discretion of the Court below should not be interfered with on appeal can be disposed of on the short ground that there is absolutely no material on the record on which any judicial Tribunal can come to a finding that there is sufficient reason for not presenting the present petition before 10th May, 1958. The decision of the Court below is thus clearly arbitrary and unjudicial and, unsupported by evidence it is certainly contrary to law. The matter involves a question of principles and also being of great importance to the parties, it does, in my opinion, raise a substantial question of law.

(18) In view of the foregoing discussion, I have not the least hesitation in holding that the Court below has proceeded on no material in condoning the delay on the part of the Employees' State Insurance Court within the prescribed period of limitation. On this conclusion, it is hardly necessary to go into the question of the amount of claim. The appeal, therefore, succeeds and setting aside the order of the Court below I dismiss the petition of the corporation. On account of the

peculiar circumstances of the case, however, the parties are left to bear their own costs throughout.

Mahajan, J.

(19) I agree.

(20) Appeal allowed.