
(2006) 06 CAL CK 0039
In the Calcutta High Court
Case No : F.M.A. No. 1753 of 2003

Sakina Bibi

APPELLANT

Vs

Shipping Corporation of India

RESPONDENT

Date of Decision : 30-06-2006

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 10(1)

Citation : (2006) 3 CHN 417

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Kamal Krishna Das, Upendra Roy and Rajesh Upadhyay, for the Appellant; Rajendra Bhattacharya, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This matter has been assigned to me by the Hon'ble Chief Justice in view of difference of opinion between the two learned Judges of a Division Bench while deciding a first miscellaneous appeal preferred against an order passed by the learned Commissioner of Workmen's Compensation, West Bengal, in Claim Case No. 3534 of 1996 by which the said Commissioner rejected the claim of the widow of the deceased employee on the ground that claim was barred by limitation and that no sufficient ground was made out for condonation of delay although on merit of the claim, the learned Commissioner held in favour of the applicant.

2. The appellant before this Court as a widow of one Haroon Khan, an employee of the respondent, claimed compensation alleging that in course of employment her husband received personal injury due to accident on 27th February, 1993 which resulted in his death on 2nd March, 1993. As the claim was lodged in the month of September, 1996, more than two years from the date of death, a prayer for condonation of delay was made in the claim application. The reason of delay shown was that immediately after the death of the employee, the appellant as well as the employee's union made various representations to the employer and the employer also assured that they would deposit the compensation before

the Court and went on postponing the dates but ultimately, refused to pay any compensation in the 3rd week of September, 1996. Hence, the delay.

3. The claim was contested by the employer by filing written statement thereby alleging that the husband of the claimant died a natural death and that there was no accident and as such, the claim of the applicant was unfounded. As regards the prayer for condonation of delay made in the application for compensation, the employer in paragraph 2 of the written statement simply stated that the ground shown in the claim petition was not sufficient for condonation of delay and as such, the application was liable to be dismissed on the ground of limitation alone.

4. At the time of hearing, the applicant herself gave evidence in support of her claim while one Ram Chandra Saha, an Assistant General Manager of the respondent gave evidence opposing the claim of the present appellant.

5. The learned Commissioner although turned down the defence of the employer that the employee died a natural death, and arrived at the conclusion that the death was due to accident, yet, the claim was rejected on the ground that sufficient cause was not shown for condonation of delay in presenting the claim.

6. Being dissatisfied, the claimant has preferred the present appeal.

7. As mentioned earlier, there was difference of opinion between the learned Judges of the Division Bench on the question whether sufficient cause was made out for condonation of delay.

8. P. K. Samanta, J. was of the view that it was evident from the various documents filed before the learned Commissioner, particularly Ext. 5 series, that the claimant-appellant started making demands for payment of various amounts under different heads soon after the death of her husband and particularly since the month of June, 1993 and in spite of clear refusal of payment of death-compensation by the respondent by its letter dated 8th January, 1994, the claimant-appellant did not prefer any claim petition before the Workman's Commissioner soon after such refusal. According to His Lordship, for the sake of argument, the delay up to 8th January, 1994 might have some justification as the claimant was not flatly denied the payment of death-compensation at any time before 8th January, 1994. Even then, His Lordship proceeded, taking the cut off date as on 8th January, 1994, the delay of more than two years from the said date for filing of the claim on 20th September, 1996 for compensation had neither any justification nor explanation. According to His Lordship, the appellant had not given any explanation whatsoever, far less to speak of any reasonable explanation, for the delay in making the above claim petition. His Lordship further held that the delay of more than two years from 8th January, 1994 was inordinate and without any justifiable reason.

9. Maharaja Sinha, J. was, however, of the opinion that in this case sufficient cause had been made out for delay in filing the claim application. His Lordship

held that the employer not having disputed the finding of the learned Commissioner on merit, if a meritorious claim was allowed to be defeated for the refusal to exercise discretion in favour of the appellant, then the whole object and purpose of conferring such wide discretion upon the Commissioner under the provision to sub-Section (1) of Section 10 of the 1923 Act would definitely be frustrated to a great extent. His Lordship relied upon various decisions of the Supreme Court in arriving at further conclusion that while condoning delay, the approach of the Court should be liberal and particularly, in this case, while considering the question of delay in preferring a claim u/s 10 of the Act, the Commissioner ought to have allowed the application. In the fact of the present case, according to His Lordship, there was enough evidence to support the statement of the appellant that she repeatedly approached the respondent for compensation for the death of her husband and such claim had been admitted by the Assistant General Manager while deposing on behalf of the employer. His Lordship, therefore, found that sufficient cause had been made out for condonation of delay.

10. In view of the aforesaid difference of opinion, the Division Bench passed an order for placing the matter before the Hon'ble Chief Justice for referring to one or more of the other learned Judges of this Court for deciding the following point:

Whether in the facts and circumstances and the evidence-on-record the Commissioner should have exercised his discretion under the proviso to sub-Section (1) of Section 10 of the Workmen's Compensation Act, 1923 in favour of the appellant irrespective of the cause for making a delayed claim especially when the Commissioner was satisfied with the genuineness of the claim.

11. Therefore, the only question that falls for determination before me is whether in the facts of the present case the Commissioner was justified in refusing discretion under the proviso to sub-Section (1) of Section 10 of the Workmen's Compensation Act in favour of the appellant.

12. I have already pointed out that in the body of the claim application, there is a clause for explanation for the cause of delay and following was the version of the applicant:

Immediately after the accident, the applicant as well as the Union has made various approaches to the O.P. for payment. The O.P. also assured for depositing compensation before the Court and went on postponing the dates and refused to pay any compensation on 3rd week of September '96.

Hence the delay in filing this case, if at all, which may kindly be condoned.

13. In reply thereto, the respondent-employer in paragraph 2 of the written statement made the following denial:

That the application is long barred by the law of limitation and the grounds as shown in the claim petition are not sufficient for condonation of delay and as such, the application is fit to be dismissed on this account alone.

14. From the pleading of the parties, it is apparent that the employer did not dispute the fact that the employer assured the claimant for payment but went on postponing the dates and ultimately, refused to pay any compensation in the 3rd week of September, 1996 as alleged by the appellant. What was simply put forward in defence was that the ground as shown in the claim petition was not sufficient. It necessarily follows that according to the employer, the ground that was stated in the claim petition for delay was not disputed but even if those are true, those did not constitute sufficient cause.

15. Therefore, the fact that the claimant repeatedly approached the employer and she was assured of consideration of her claim of death benefit but ultimately, such claim was refused in the 3rd week of September, 1996 was not denied in pleading. The sole witness for the employer, namely, Ram Chandra Sana in his examination-in-chief, did not utter a single word about the allegation of the claimant for the delay and in cross-examination, he admitted that widow of the deceased repeatedly approached them. He, however, denied the suggestion of the appellant that they assured her about payment.

16. Therefore, in the case before us, it is admitted position that although by letter dated 8th January, 1994, the employer refused the death-compensation on the ground that the husband of the claimant had a natural death, even thereafter, the widow made representation and also visited the employer on several occasions and such fact has not been denied in the written statement or in examination-in-chief. In cross-examination, the sole witness for the respondent admitted that she repeatedly visited them but he denied the suggestion that they ever assured her about payment.

17. In my view, the learned Commissioner, in the fact of the present case, first, committed a substantial error of law by not considering the fact that in pleading, the employer did not dispute the repeated visits of the claimant and the assurance given by the employer as alleged by the appellant. Secondly, the sole witness for the employer even in examination-in-chief did not say a single word in defence against prayer for condonation and in cross-examination, he admitted continual visits of the appellant. In such a situation, in my view, the Commissioner committed substantial error of law in accepting the defence of the employer that no assurance was given though such defence was never taken in written statement or in examination-in-chief. On the other hand, the assertion of the claimant is not so improbable so as to disbelieve such case as inherently impossible.

18. I, therefore, find that in the facts of the present case, the fact that even after receiving the letter dated 9th January, 1994 the claimant repeatedly visited the office of the employer has been proved and there is no justification of disbelieving the case of the applicant that she was assured of payment but ultimately, in the 3rd week of September, 1996, the employer flatly refused to any amount.

19. It appears from the record that death occurred on 2nd March, 1993 and according to the provisions of law, the claim ought to have been lodged by 1st March, 1995 whereas the same was lodged in the month of September, 1996 and in the process there has been a delay of about 19 months.

20. The legislature in its wisdom has fixed two years time from the death as the period of limitation for lodging claim under Workmen's Compensation Act. Therefore, the intention of the legislature was clear that in the matter of compensation after the death of an employee the dependant should be given such a long time which is more than the time-limit which is fixed for lodging claim in other type of accident-claim. In Section 10 itself the legislature has provided power of the Commissioner to condone delay if sufficient cause is shown for not lodging the claim within the said period. If after the death of an employee due to accident, the employer turns down the claim of the widow on the ground that the husband had a natural death and the Commissioner finds that such assertion is false, there is no justification of believing the mere denial of the suggestion that there was no assurance on the part of the employer of amicable settlement. When the employer in this case has been found to be a defrauder, who does not hesitate to put forward a false claim of natural death when the death of the employee really occurred due to accident in order to avoid payment of death-compensation, in my view, Maharaj Sinha, J. was quite justified in believing the uncontroverted case of sufficient cause in the petition when the employer did not dispute such fact in the written statement. I do not find any reason to believe the statement of DW-1 in cross-examination that the employer did not give any assurance. If an employer can go to the extent of totally suppressing the accident in order to get rid of payment of compensation due to the accident, their statement that there was no assurance of payment should not be believed.

21. I have also gone through the judgment delivered by Samanta, J. It appears that His Lordship was swayed by the fact that even after the employer in writing informed the widow that death-claim had been turned down on 8th January, 1994, there was no explanation from 8th January, 1994 till 20th September, 1996.

22. With great respect to His Lordship, I am unable to accept such reason. If the period of limitation is two years from the date of death, the applicant is not required to explain her conduct till 1st March, 1995 and she is under no obligation to elucidate her inaction from 8th January, 1994 till 1st March, 1995 which is well within the period of limitation. Moreover, by the letter dated 8th January, 1994, the employer denied the death-claim on the ground that there was no accident and that the death was natural and such defence has been found to be false and false to the knowledge of the employer. Once the sole witness for the employer admitted that the wife thereafter repeatedly visited them, there was no justification of disbelieving her claim that she repeatedly visited the employer and the employer assured her that they would deposit the amount before the

Commissioner when in written statement, nothing was said about the assurance. His Lordship further proceeded on the ground that it was not the case of the appellant that she did not get proper guidance to make her claim and on the contrary it appeared that her background and surrounding were not so rustic that she was not in a position to make a demand for payment of death-compensation by approaching the Commissioner after the same was refused by the respondent on 8th January, 1995.

23. In my view, if we believe the statement of the applicant that she was assured by the employer that payment would be made and ultimately, the employer turned from their promise in the 3rd week of September, 1996, that was a fraud on the part of the employer upon the widow of the employee and thus, no question of getting proper guidance arose and such was also not the defence of the appellant.

24. With great respect to Samanta, J., I am unable to persuade myself to subscribe to the view taken by His Lordship and I propose to agree with the conclusion arrived at by Maharaj Sinha, J. on the aforesaid reason assigned by me.

25. I, therefore hold that in the facts and circumstances of the present case and on the basis of the materials-on-record, the Commissioner should have exercised his discretion under the proviso to sub-Section (1) of Section 10 of the Workmen's Compensation Act in favour of the appellant and ought to have believed the version of the applicant that on the assurance of the employer she could not file claim within the period of limitation.

26. Let this answer be placed before the Division Bench for appropriate order.