
(1991) 01 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous (First) Appeal No. 274 of 1982

Santosh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1993) ACJ 627

Hon'ble Judges : B.C. Varma, Acting C.J.; R.D. Shukla, J

Bench : Division Bench

Advocate : Ravish Agarwal, for the Appellant; S.K. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, Actg. C.J.

1. This and the other connected appeals (Miscellaneous Appeal Nos. 272 of 1982 Surajkali v. Union of India, 273 of 1982 Dilip Kumar v. Union of India, 275 of 1982 Ashok Kumar v. Union of India and 276 of 1982 Kumari Sarla v. Union of India) which are all being disposed of by this order, are filed u/s 82-F (2) of the Indian Railways Act against orders whereby the appellants' claim has been dismissed by the Ad hoc Claims Commissioner, Railway Accident, Bilaspur, as barred by limitation.

2. On 16.7.1981, railway accident took place as a result of which Surajbhan travelling in the train died and his minor sons and wife sustained injuries. By notification, dated 27.11.1981, Mr. V.C. Agarwal, the then Additional District Judge, was appointed as Ad hoc Claims Commissioner. He started functioning from 1.3.1982. On 15.1.1982, application for compensation was filed jointly by Surajkali, widow of deceased Surajbhan and the appellants in all these appeals. All these appellants were then minors. Any such application for compensation is required to be filed within three months of the accident by force of Section 82-C

(2) of the Act. An application was, however, made on 15.1.1982 for condoning the delay in making that application. This application was thus made within one year of the accident and by force of provisions of Sub-section (2) of Section 82-C, the Claims Commissioner could condone the delay in making that application on "good cause" shown for the delay. An objection was then taken by the respondent railway that such joint application was not tenable. Consequently, claim on behalf of the present appellants was withdrawn and the original application was amended whereby claim was restricted only for compensation for the death of Surajbhan. That application was allowed. Permission was granted to withdraw the claim on behalf of the present appellants and permission for filing fresh claims on their behalf was also granted subject to law of limitation. By order dated 26.4.1982, delay in filing the claim petition was condoned. That order indicates that the affidavit filed by Surajkali explaining the delay was not rebutted. The Claims Commissioner also found that Surajkali was unable to move out because she had herself sustained injuries. For these reasons, the Commissioner found that the "good cause" was shown for condoning the delay. The petition was, therefore, entertained and finally allowed. No appeal has been preferred against it and that award has, therefore, become final.

3. On 6.5.1982, fresh applications on behalf of the minor sons of the deceased Surajbhan through their next friend Surajkali were filed. They were accompanied by applications for condoning the delay in filing those applications duly supported by affidavit of Surajkali. Same grounds as were urged in the original application were reiterated. It does not appear from the record that any reply or affidavit opposing those applications was filed. However, by order dated 14.5.1982 (impugned order), the Claims Commissioner found that despite disabilities due to illness and physical infirmity, Surajkali could file those applications and, therefore, that illness and infirmity could not prevent her from making the applications earlier. Consequently, the applications for condonation of delay were rejected and all the claim petitions have been dismissed as barred by time. It is worthy of note that the Ad hoc Claims Commissioner continued to be the same person who earlier condoned the delay in filing the original claim petition on similar grounds.

4. Mr. S.K. Mukherjee, appearing for the respondent, raised certain preliminary objections. According to him, the claim petition should have been filed against the Union of India and, therefore, neither the application before the Claims Commissioner nor the present appeals are maintainable. Suffice it to say that an objection of this kind may be taken by the respondent when an occasion arises to oppose the claim petition on merits. Learned counsel also further urged that since the claim has not been adjudicated, the appeal is not tenable as the appeal u/s 82-F lies only against award. In so arguing, the learned Counsel forgot to bear in mind the ultimate decision by the impugned order. It is clearly stated in that order, "As a result, the main petition (i.e., petition for compensation) is also dismissed as barred by time". Clearly, therefore, as the claim petition itself has been dismissed, the appeal is certainly maintainable. The preliminary objections

are, therefore, rejected.

5. On merits, our opinion is that the order impugned cannot be sustained. It is now well settled that the discretion to condone delay cannot be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. This discretion should, however, be exercised on its own fact and with a view to secure furtherance of justice. It has been held while interpreting "sufficient cause" appealing in Section 5 of the Limitation Act that the term calls for a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of bona fides is imputed to the appellants. Persons' good faith in prosecuting the proceedings must be kept in mind. It has further to be seen that in cases of appeals filed beyond the period of limitation, provisions of Section 5 of the Indian Limitation Act have been made applicable by force of Sub-section (4) of Section 82-F. This means that a person seeking condonation of delay in filing the appeals u/s 82-F beyond the period of limitation has to prove "sufficient cause" before the delay in filing the appeal can be condoned. However, in case of seeking condonation of delay in making the application for compensation before the Ad hoc Claims Commissioner, only "good cause" is to be shown. To us, it appears that the legislature has deliberately provided two different standards to seek condonation of delay in making the claim petition before the Claims Commissioner and in filing appeal before the High Court against the award of the Claims Commissioner. One, therefore, must bear in mind this distinction while dealing with an application to condone delay in making a claim petition. In AIR 1948 362 (Nagpur) it is observed that there is a clear distinction between the two phrases "good cause" and "sufficient cause". The court was dealing with the provisions of Order 9, Rule 7 and Order 9, Rule 13, CPC and, in that context, observed that there may be a good cause for the non-appearance though not a sufficient cause. In that case, the illness established by medical certificate was held to be a "good cause" for setting aside the ex pane decree. In our opinion, the learned Claims Commissioner forgot this distinction while rejecting the application for condonation of delay. In the instant case, at one stage the same Claims Commissioner held that the applicants' guardian mother was prevented due to her illness to make an application before the Claims Commissioner within three months and that was held to be a good cause for entertaining the claim petition filed beyond three months but within one year of the accident. One fails to see how the same illness of the mother of the appellants did not commend itself to the Claims Commissioner to condone the delay now. It is noteworthy that on the objection being taken by the respondent, the claims made on behalf of the appellants and all the minors were withdrawn and the Claims Commissioner was pleased to permit them to file fresh petitions. Those petitions were presented only after a few days of the withdrawal of the claims. There was no other change in the circumstances which could distinguish the original application from those now under consideration. This apart, the fact that no counter-affidavit was filed opposing the application also is a factor which should weigh in allowing the applications. In our opinion, the very fact that the

applications are permitted to be made within a year of the accident on good cause being shown reflects that ordinarily the application should be entertained if made within one year of the accident on good cause being shown which term in the context used must receive liberal consideration.

6. For the aforesaid reasons, we are of the opinion that no legitimate resistance can be offered to the applications made for condonation of delay in making the claim petitions. We hold that the appellants in all these appeals have shown good cause for condoning the delay in making the applications. Those applications must, therefore, be allowed.

7. Consequently, the appeals are allowed.

The impugned order rejecting the applications for condoning the delay and the claim petitions is hereby set aside with costs. Counsel's fee Rs. 200/-. Only one set of fee is allowed. The case shall go back to the Ad hoc Claims Commissioner who shall entertain the claim petitions and decide them in accordance with law. As the matter has been delayed considerably, we direct him to expedite the disposal of the claim petitions. The parties shall appeal" before the Claims Commissioner on 18.2.1991 and no fresh notice shall be necessary.