

(2016) 08 RAJ CK 0107
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 477 of 2003

The New India Assurance Company Ltd.	APPELLANT
Vs	
Smt. Premkuwar	RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Limitation Act, 1963 — Section 14, 29(2)

Citation : (2016) 3 DNJ 1431 : (2016) 4 TAC 191

Hon'ble Judges : Mr. Arun Bhansali, J.

Bench : Single Bench

Advocate : Mr. M.R. Singhvi, Senior Advocate assisted by Mr. Bhavit Sharma, Advocate, for the Appellant; Mr. R.K. Charan and Mr. Hari Singh, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Arun Bhansali, J.—This appeal under Section 30 of the Workmen's Compensation Act, 1923 ("the Act") has been filed by the appellant Insurance Company aggrieved against the judgment dated 21/5/2001 passed by the Commissioner, Workmen Compensation, Chittorgarh ("the Commissioner") whereby, the application for compensation filed by the respondents no. 1 to 5 has been accepted and award of Rs. 1,03,990/- has been passed by the Commissioner.

2. An application under Section 10 of the Act was filed on 9/4/1999 by the respondents no. 1 to 5 inter alia with the averments that on 11/12/1995 one HMT Tractor No. RJ-09-R-1947 met with an accident; at the time of accident the Tractor was being driven by Bheru Singh son of Vijay Singh, which resulted in death of said Bheru Singh on the spot. The deceased was engaged as driver on the Tractor and at the time of accident he was in the employment of non-claimants and the accident occurred during the course of employment. It was claimed that the claimants are entitled to compensation from the owners and the Insurance Company. It was indicated that the deceased was being paid Rs.

2000/- as monthly wages and he was aged 30 years at the time of accident. It was also indicated that the claim was preferred before the Motor Accident Claims Tribunal, Nimbaheda, the said Tribunal on 21/4/1997, on account of lack of jurisdiction, returned back the claim and now the application is being filed after two years of the accident along with an application under Section 5 of the Limitation Act, 1963 ("the Limitation Act"). With the above averments, it was claimed that compensation in terms of the Act be awarded. Along with the application for compensation, another application under Section 5 of the Limitation Act was filed inter alia indicating that the claim filed before the Motor Accident Claims Tribunal was ordered to be returned on 21/4/1997, the applicant is illiterate lady, very poor and "pardanasheen" and on account of sudden death of her husband was disturbed and as the responsibility to look after the children and mother-in-law fell on her, besides various social and economic disturbances, she was disappointed on account of return of claim petition by the Tribunal, various relatives tried to make her understand regarding making the application and after taking advice from the counsel, the same was being filed on 9/4/1999. It was contended that the time spent in filing the proceedings before the wrong court and after return of the same, the delay deserves to be condoned. It was prayed that the delay occurred not on account of any negligence but on account of her illiteracy, unawareness and on account of responsibility which fell on her on account of sudden death of her husband. It was prayed that delay be condoned.

3. A reply to the application for compensation was filed by the employers-non-claimants No. 1 to 3 inter alia indicating that the vehicle was insured with the Insurance Company and it is the responsibility of the Insurance Company to make payment of the amount of compensation. Though the factum of employment was not denied, it was claimed that the deceased was being paid Rs. 1000/- per month.

4. On behalf of the Insurance Company a reply was filed, wherein, the insurance of the Tractor was accepted. The fact of employment was denied for want of knowledge and it was contended that the age and salary be proved. It was also submitted that the application for compensation has been filed after inordinate delay without any reasonable cause and the reasons indicated for the delay are not sufficient. In additional plea, it was contended that the deceased was not in possession of a valid driving licence and, therefore, the Insurance Company was not liable.

5. Based on the averments of the parties, six issues were framed by the Commissioner. On behalf of the claimants, two witnesses, Smt. Premkuwar and Gajraj, were examined, on behalf of the non-claimants no. 1 to 3, statements of Madan Lal were recorded and on behalf of Insurance Company, statements of Arun Kumar Saxena were recorded.

6. After hearing the parties, the Commissioner came to the conclusion that the reasons indicated for delay in filing the application for compensation were just

and sufficient and condoned the delay; the deceased was employed with the non-claimants no. 1 to 3 and the death occurred on account of accident arising out of and in the course of employment; the age of the deceased was 30 years and his salary was Rs. 1000/- per month; the Insurance Company has failed to lead any evidence regarding the fact that the deceased was not in possession of a valid driving licence and, therefore, it was held that the deceased was in possession of a valid driving licence and the claimants were entitled to compensation to the tune of Rs. 1,03,990/-. Penalty of Rs. 5,000/- was imposed on the employers.

7. It is submitted by learned counsel for the appellant Insurance Company that the Commissioner committed an error in condoning the delay in filing the application inasmuch as the accident occurred on 11/12/1995 and the application was filed on 9/4/1999; there was no reasonable cause for the delay in filing the application as already an application was filed before the Motor Accident Claims Tribunal, Nimbaheda, which was returned for being presented to the competent forum by order dated 21/4/1997 and the application was presented almost after two years of the said return and, therefore, the application deserved to be dismissed as barred by limitation. It was submitted that the provisions of Section 10 of the Act provides for limitation of two years and the present application has been filed after almost 3? years and the Commissioner has not recorded any cogent reasons for condoning the delay and, therefore, the findings in this regard deserve to be reversed. It was further submitted that, admittedly, no medical proof/evidence was produced by the claimant regarding her mental condition and merely on account of oral submissions the huge delay could not have been condoned by the Commissioner and, therefore, the award deserves to be quashed and set aside. It was further submitted that the deceased was not in possession of any licence and the Commissioner has wrongly assumed negative burden on the appellant Insurance Company to prove that the deceased was not in possession of a valid driving licence and, therefore, the finding on the said aspect also deserves to be set aside. It was submitted that even if the application was maintainable after condonation of delay, the Insurance Company cannot be held liable for payment of compensation on account of violation of Policy conditions as the driver was not in possession of a valid driving licence and the liability to pay compensation rests solely on the employers and, therefore, the judgment impugned deserves to be set aside.

8. Reliance was placed on *Damini v. MD, Jodhpur Vidhyut Vitran Nigam Ltd. and ors.* : 2015 (3) RJT 1668 and *P.K. Ramachandran v. State of Kerala and anr.* : AIR 1998 SC 2276.

9. Learned counsel for the respondent claimants submitted that illiteracy and the social condition of the claimants is writ large on record inasmuch as claimant no. 1-Smt. Premkuwar has put her thumb impression on the application and the claimants are residents of Ganglas Village Ashind District Bhilwara. The claimants are the wife of the deceased along with three minor children and mother of the deceased and, therefore, the submission regarding the fact that claimants are

illiterate, poor and "pardanasheen" are not in dispute. It was submitted that as advised the claim was filed before the Motor Accident Claims Tribunal, same was returned back and, therefore, on account of mental state of the claimants, where on the one hand they had lost the earning member of the family and on the other hand their application was not entertained by the Tribunal, the claimants went in deep shock and could not do the needful for presenting the application before the appropriate forum i.e. before the Commissioner under the Act. It was submitted that the aspect of reasonable cause has to be examined in the context of the parties involved and in the circumstances of the case it cannot be said that there was any malafide involved in not filing the application in time and, therefore, the Commissioner was justified in condoning the delay. It was submitted that aspect relating to condonation of delay does not give rise to any substantial question of law which is necessary for maintaining the appeal under Section 30 of the Act, therefore, the appeal deserves to be dismissed.

10. It was further submitted that the deceased was regularly engaged as a driver and he was carrying the driving licence, the same was not available with the family of the deceased and once the Insurance Company had raised the plea that the deceased was not in possession of a valid driving licence, the burden lay on the Insurance Company to prove the same.

11. In the alternative, it was submitted that in an application under the Act, such a investigation is not envisaged and, therefore, the appeal deserves to be dismissed.

12. Learned counsel for the employers, in the first instance, submitted that the application was barred by limitation and, therefore, the same should have been dismissed by the Commissioner as the explanation given for the delay cannot be said to be reasonable by any stretch of imagination. It was further submitted that in any case, the Insurance Company has been rightly held liable for payment of compensation inasmuch as the fact as to whether the driver was in possession of a valid driving licence or not is of no consequence in proceedings under the Act as the only requirement for the Commissioner is to examine whether the deceased was in employment of the employer and whether the accident occurred out of and in the course of employment and once the same is established, the Insurance Company is liable to make payment of compensation.

13. Reliance was placed on the judgment in the case of Damini (supra) and Oritental Insurance Co. Ltd. v. Hazira Begum and ors. : TAC 1995 (1) 375 (Kant.).

14. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

15. Provisions of Section 10 of the Act provide that a claim is required to be preferred within two years of the occurrence of the accident or, in case of death, within two years from the date of death. The proviso to Section 10 (1) provides that the Commissioner may entertain and decide any claim for compensation notwithstanding that the claim has not been preferred in due time as provided, if

he is satisfied that the failure to prefer the claim was due to sufficient cause.

16. In the present case, death of Bheru Singh occurred on 11/12/1995. The application for compensation was filed by the claimants before the Motor Accident Claims Tribunal, Nimbaheda, though the date of filing the said application is not available on record, the order dated 21/4/1997 passed by Motor Accident Claims Tribunal (Ex.4) indicates the application as application no. 17/96 and the same has been ordered to be returned on 21/4/1997 holding that the Motor Accident Claims Tribunal had no jurisdiction. From the application number it is apparent that the proceedings before the Motor Accident Claims Tribunal were filed immediately after the accident/death occurred in the year 1996 itself and the matter remained pending with the Motor Accident Claims Tribunal till 21/4/1997 and after ordering return of the claim on 21/4/1997, the present application before the Commissioner was filed on 9/4/1999.

17. Provisions of Section 14 of the Limitation Act, which deals with exclusion of time of proceeding bona fide in the court without jurisdiction provides that in computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another proceedings shall be excluded where the proceedings relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

18. In view of the provisions of Section 14 read with Section 29(2) of the Limitation Act, the period during which the claim remained pending before the Motor Accident Claims Tribunal is required to be excluded as it is nobody's case that the said proceedings were not being prosecuted with due diligence and/or were not bona fide. Once the said period is excluded i.e. period upto 21/4/1997 is excluded, the present application, which has been filed on 9/4/1999 i.e. within two years from the return of application by the Motor Accident Claims Tribunal on 21/4/1997, the same cannot be said to be barred by limitation.

19. Even if, the time when the application before the Motor Accident Claims Tribunal was filed, which date is not available on record, is taken into consideration, there is not much delay in filing the application and delay, if any, therefore, deserved to be condoned. The reasons indicated in the application i.e. illiteracy, poverty, "pardanasheen", burden to survive after the death of sole bread earner with three minor children and mother-in-law are sufficient reasons for the condonation of delay and, therefore, the submissions made by counsel for the appellant regarding the application being barred by limitation and/or the error committed by the Commissioner in condoning the delay cannot be sustained.

20. So far as the judgment in the case of Damini (supra) is concerned, the matter pertained to Fatal Accident Act and it was held that the proceedings under the Fatal Accident Act were suit and provisions of Section 5 of the Limitation Act were not applicable. The said judgment has no application to the present case as

proviso to Section 10 of the Act specifically provides for condonation of delay in filing the claim.

21. So far as the judgment in the case of P.K. Ramachandran (supra) is concerned, the said judgment only lays down that the courts have no power to extend the period of limitation on equitable grounds unless there is a reasonable or satisfactory grounds. There is no quarrel with the said principle laid down by the Hon''ble Supreme Court, however, the same has no application to the facts of the present case.

22. So far as the liability of the appellant Insurance Company is concerned, it was claimed in the reply that the deceased was not in possession of a valid driving licence. The employers and claimants claim that the deceased was in possession of a valid driving licence, however, no driving licence was produced on record. The Insurance Company produced a witness, who in his statements indicated that it was the Policy requirement that the driver must be in possession of an effective and valid driving licence, the insured had lodged the claim regarding loss to the Tractor and for non-production of driving licence the claim was rejected. In cross examination, the said witness admitted that no document was produced rejecting the claim and that copy of the licence can be procured from the Regional Transport Officer. From the said statement on behalf of the Insurance Company, the appellant has failed to indicate any effort having been made by the Insurance Company to find out the status about the licence of the deceased and only an assertion was made regarding lack of licence, which is not sufficient for exonerating the Insurance Company from the liability.

23. Besides the above, the issue pertaining to the investigation about the validity and availability of driving licence in matters under the Act was examined by Hon''ble Karnataka High Court in the case of Hazira Begum (supra), wherein, it was inter alia observed as under:-

"9. That apart, according to me, all these investigations in a proceeding under the Workmen's Compensation Act, 1923, hereinafter referred to as the Act, is totally foreign. This legislation was enacted to assuage and remedy the poverty that might befall on the workman who is a victim of an accident. We find the following passage in the Object and Reasons for the legislation published as early as in 1922 :

"The general principles of workmen's compensation command almost universal acceptance, and India is now nearly alone amongst civilised countries in being without legislation embodying those principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practise is by no means general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents."

10. The compensation that is being paid is to the workman and not either to driver, skilled artisan or mechanic, as the case may be. The accent of the legislation is on the question whether the victim of the accident was a "workman" as defined in the Act. If the legal representatives of the deceased establish that the deceased was a "workman" as defined under Section 2(n) of the Act, then the provision of the Act is attracted. Section 3 holds the employer liable for payment of compensation if such a workman suffers personal injury in an accident arising out of and in the course of employment. Section 4 quantifies the compensation payable. The legislation thus anchors the claim on three premises, namely :

(i) Workman

(ii) Personal injury/Death

(iii) Accident arising out of and in the course of employment.

If these three requirements exist, then, the employer is liable to pay compensation under the Act. The question whether the worker violated any of the condition of agreement between the employer and the Insurance Company may not be a germane issue. The expression "arising out and in the course of employment" has been judicially interpreted by various decisions. In this connection, it may be apposite to refer to the following passage occurring in the decision reported in *Chillu Kaher v. Burn & Co.*, AIR 1953 Cal.516.

"Reading the reports in the books, it is impossible to avoid the feeling that a desire to assist a workman in distress, who has undoubtedly suffered from causes arising out of his employment, has often led to a stretching of the language of the statute. Even in the cases where the decision was in favour of the workman, the observations of the learned judges make it perfectly clear that they felt the pressure of reason on the other side and perhaps decided in favour of the workman in pursuance of what they conceived to be the policy of the Act. Mr. Sanyal pointed out, and in my opinion rightly, that with the progress of the times, the conception of the circumstances in which the workman is entitled to compensation has widened and become more and more liberal. Even if, therefore, the view taken by the Highest Courts in recent times, on facts which are more or less similar to the facts one has to deal with, be a view which only a stretched construction of the Act can bear, it will not be wrong to follow it so long as it is not something violently opposed to fundamental principles."

11. This was the view expressed in 1953 and much water had flown since then under the bridge. In the decision of this Court in *National Insurance Co. Ltd. v. Balawwa*, ILR 1993 Kant 1843, a Division Bench of this Court echoed the same opinion. It was stated as hereunder :

"16. It is well recognised that Workmen's Compensation Act is beneficial social legislation, the object of which is to provide security to certain class of workmen and that the provisions of the Act should be construed in a broad and liberal

manner so as to advance the object of the enactment and not in a way which would defeat it."

12. Therefore, even if a stretched view is taken in interpreting the statute, it will not be wrong to do so - Unless of course, as stated above, it will be opposed to fundamental principles.

13. A scan of various decisions of the High Court will disclose that where a workman engaged in the employer's business and who was doing the very thing he was employed to do then the mere fact that he was not acting strictly by the letter of law, will not make the accident any the less "arising out of and in the course of employment." It follows therefore, the owner and Insurance Company are both liable in such an event."

24. It was held that the investigation regarding the possession of a valid driving licence with the workman is totally foreign in the proceedings under the Act, which view appears to be justified in view of the Object & Reasons of the Act and its over all scheme.

25. In the facts and circumstances of the case and in view of the law laid down in the case of Hazira Begum (supra), the plea raised by the Insurance Company regarding lack of effective and valid driving licence with the deceased and that the Insurance Company is not liable to make payment of compensation cannot be accepted.

26. In view of the above discussion, there is no substance in the appeal and the same is, therefore, dismissed. No order as to costs.