

(2010) 07 GUJ CK 0081

In the Gujarat High Court

Case No : Spl. Civil Application No"s. 8951 to 8976 of 2008

United India Insurance Company Ltd.

APPELLANT

Vs

Kadar Harun Changda and others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Workmens Compensation Act, 1923 — Section 15(2)

Citation : (2010) 07 GUJ CK 0081

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Vibhuti Nanavati, for the Appellant; T.R. Mishra (Amicus Curaie) for Respondents No. 1-2, 2.2.2, 2.2.3, None Respondent No. 2 and Notice Served Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—Rule Learned Counsel Mr. T.R. Mishra waives service of rule on behalf of the respondents. With the consent of both the sides, the matters are taken up for final hearing today.

By way of these petitions under Articles 226 and 227 of the Constitution of India, the petitioner-United India Insurance Company Ltd. has prayed to quash and set aside the order passed by the learned Commissioner under the Workmen's Compensation Act, 1923 (for short, "the Act") in Workmen's Compensation Misc. Application Nos. 14/2006 to 29/2006 dated 28.12.2007, whereby, the said applications praying for condoning the delay caused in filing the claim petitions came to be allowed.

The facts in brief are that on 9.11.1993 the deceased-seamen were on their return voyage from Dubai to Mumbai in the Vessel, named, -MSV Islamia BDI 837, belonging to respondent No. 1 herein. However, the said Vessel never reached Mumbai and went missing for unknown reasons.

2. On 27.1.2006, the legal heirs of the deceased-seamen filed claim petitions before the competent authority under the Workmen's Compensation Act, 1923. Along with the said claim petitions, applications being W.C. Misc. Application Nos. 14/2006 to 29/2006 were also filed praying for condoning the delay caused in filing the claim petitions. The learned authority allowed the said Applications by passing the impugned order dated 28.12.2007. Hence, these petitions.

3. Mr. Vibhuti Nanavati, learned Counsel for the petitioner-Insurance Company, submitted that the application for condonation of delay had to be filed within a period of 18 months from the date of alleged incident, in view of the provisions of Section 15(2) of the said Act. He submitted that the claims were required to be lodged on or before May, 1995 but, the same were lodged only in January, 2006. Therefore, the learned authority has committed serious error in law in allowing the applications.

4. Learned Counsel Mr. T.R. Mishra, appearing as amicus curiae, submitted that the Court has to take into consideration a host of factors while dealing with an application for delay condonation.

Mr. Mishra submitted that the Vessel went missing on 9.11.1993 and the "missing persons" could be declared to be officially "dead" only after seven years, i.e. after 9.11.2000. He submitted that the legal heirs were told by the petitioner-Company to produce Death Certificates of each of the deceased in case they want to claim compensation. However, the said Certificates could not be procured within a reasonable period and therefore, the delay had occurred.

Learned Counsel further submitted that since the legal heirs were illiterate persons, they were not aware about the relevant provisions of law and hence, there was delay in filing the claim petitions. He has, therefore, submitted that the learned authority was justified in allowing the said applications.

5. Mr. Mishra has relied upon a decision of the High Court of Calcutta in the case of Sakina Bibi v. Shipping Corporation of India 2006 (3) CLR 783 (Cal.). In that case, the husband of the Appellant while in service of respondent-Corporation died of injuries caused in an accident on 2.3.1993. The legal heir of the deceased lodged claim for compensation in September, 1996. She had also filed application for condonation of delay. The learned authority rejected the delay condonation applications on the ground that they were time barred. On the facts of that case, the Court held that in such matters, the dependents be given sufficiently long time and thereby, condoned the delay.

Learned Counsel has next relied upon a decision of the Madhya Pradesh High Court in the case of S.N. Bihari Vs. Western Coal Field and Another, . In that case, the evidence on record showed that the claimant suffered occupational disease on account of inhalation of coal dust while working under the employment of respondent-Company and that he was in service of the respondent-Company on the date of filing claim even after sustaining the alleged occupational disease. On the facts of the case, the Court held that the claimant

had recurring cause of action and continuous cause of action to file claim and accordingly, the finding of the Commissioner that the claim was barred by time was held to be improper.

Learned Counsel has also relied upon another decision of the Madhya Pradesh High Court in the case of Shyamlal S/o Chinta Ram v. Divisional Railway Manager and another 2000 (2) LLJ 527 (MP) : 2000 (4) LLN 214, wherein it has been held that the Commissioner under the W.C. Act can consider sufficiency of cause for delay in making claim such as illiteracy of claimant, etc.

Learned Counsel has lastly relied upon a decision of the High Court of Judicature at Allahabad in the case of Suraj Pal and another v. Vinod Kumar Bajpai and Anr.1. In that case, the employee-driver of the respondent was not traceable and was last seen on 19.3.1991. The presumption of death would accrue on 19.3.1998. The application for compensation was presented on 27.4.1998. On the facts of the case, the Court held that the application filed on 27.4.1998 was not beyond the period of limitation.

Learned Counsel Mr. Mishra has, therefore, submitted that looking to the facts of the present case and the decisions of different High Courts, the learned authority was justified in condoning the delay. "Hence, this Court may not interfere with the impugned order.

6. Heard learned Counsel for the respective parties and perused the documents on record. There is no dispute regarding the fact that the Vessel in question went missing on 9.11.1993. Civil death of the "missing persons" could be presumed only after seven years and hence, the "missing persons" could be declared "dead" only after 9.11.2000. Effectively, a claim petition under the provisions of said Act has to be filed at any time after the said date but, not beyond the prescribed period of limitation.

7. Section 15(2) of the said Act deals with the period of limitation in such cases. A reference to the said provisions of Section 15(2) of the Workmen's Compensation Act, 1923 is apposite.

"Section 15. Special provisions relating to masters and seaman.--

(1)

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within one year after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was or is deemed to have been so lost."

8. As per the above proviso, the claimants were required to lodge their claim on or before 8.5.1995. However, considering the fact that the missing persons" could be declared to be officially "dead" only after 9.11.2000, i.e. seven years after they went missing, in my opinion, limitation would come into play only after

the said period of seven years. Even if we take the period of three years, as provided under the Limitation Act, 1963 in respect of suits for which there is no prescribed period, then also, the claim petition had to be filed on or before 9.11.2003. In the present case, the claim petitions came to be filed only in January, 2006. Therefore, under no stretch of imagination, the learned authority should have condoned the delay in filing the claim petitions.

9. It is said that "Ignorance of law is no excuse". Even if we accept that the legal heirs are ignorant and illiterate persons, the fact remains that the claim petitions came to be filed only in January, 2006. Such a long delay, if condoned, would amount to miscarriage of justice. Law has provided for entertaining and deciding any claim of compensation notwithstanding that the claim has been preferred not in due time, as provided in Section 10(1) of the said Act and for entertainment of such a claim which is not filed within the prescribed period of limitation, depends upon the satisfaction of the Commissioner under the said Act in regard to sufficiency of the cause. Sufficiency of cause has to be considered in such a manner so as to advance the cause of justice. At the same time, care is also required to be taken that the provisions of law do not merely remain on paper as a piece of legislation.

10. In my view, there is a considerable long delay in filing the claim petitions. Such long delay ought not to have been condoned by the learned authority. No lenient or sympathetic view could be taken when there is such a long delay. Hence, the impugned order passed by the learned authority deserves to be quashed and set aside.

11. In view of the above discussion, the petitions are allowed. The impugned orders passed by the learned Commissioner under the Workmen's Compensation Act, 1923 in Workmen's Compensation Misc. Application Nos. 14/2006 to 29/2006 dated 28.12.2007 are quashed and set aside. Rule is made absolute. No costs.

12. Before parting, the Court would like to appreciate the sincere efforts put in by learned Counsel Mr. T.R. Mishra, who has assisted the Court, in arriving at a just decision in the present group of petitions.