
(1983) 04 GUJ CK 0005
In the Gujarat High Court

Usman Rojan

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Limitation Act, 1963 — Section 5, 5

Citation : (1983) 2 GLR 1472

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—What should be the approach of the Employees" State Insurance Corporation, the ESI Court and other authorities constituted under the provisions of the Employees" State Insurance Act while deciding the question of condonation of delay in filing claim petition and/or appeal before the appropriate authority? Should it be technical and archaic having no regard for the realities of life? Or, should it be informed with the changed values of our society and should have close connection with the realities of life? This question is required to be resolved in this appeal filed by an insured employee who sustained employment injury to his right band thumb and whose appeal has been dismissed by the lower authorities on the sole ground of limitation although it is found that he had a good case on merits.

2. The appellant is an insured employee who was working as a weaver in Nagari Mills, a textile mill company and he met with an accident on October 23, 1978 on account of which he sustained injury on his right thumb. The Medical Board by its decision dated April 12, 1980 assessed the loss of earning of the workman at 5 percent. Against this decision of the Medical Board, the appellant-injured employee preferred an appeal before the Medical Appeal Tribunal being Appeal No. 391 of 1980. In filing this appeal there was delay of about four months. The Medical Appeal Tribunal rejected the appeal on the preliminary ground of limitation and during the course of the judgment observed as follows:

The Medical Board has, however, assessed 5% as total disablement and the

assessors have raised this assessment from 5% to 10% in favour of the appellant....

The Medical Appeal Tribunal after making the observations as above dismissed the appeal on the ground that the same was filed beyond the period of limitation.

3. Against the aforesaid decision of the Medical Appeal Tribunal, the appellant-injured employee preferred Second Appeal (ESI) No. 47 of 1982 before the Employees' State Insurance Court at Ahmedabad. The ESI Court also rejected the appeal of the employee on the ground that there was no sufficient cause for condonation of delay in filing the appeal before the Medical Appeal Tribunal and did not give any finding on merits and dismissed the appeal by its judgment dated October 22, 1982. During the course of the judgment the ESI Court in paragraph 4 discussed the grounds stated by the injured employee for condoning the delay and stated as follows:

First thing he (workman) states is that it was ignorance of law; that he did not know that he can prefer appeal against the decision of the Medical Board; that he did not know Gujarati and English; that the respondent had not intimated that he could prefer appeal against the decision of the Medical Board. When he came to know that he could prefer appeal, he had then lost the papers or they were misplaced and it was with great difficulty and long time that he got the same and so the appeal could not be filed in time....

After narrating these circumstances, the ESI Court scrutinised these grounds with meticulous details and found that the statement of the injured employee that he had received the intimation regarding the decision of the Medical Board late and other statements were not accurate and therefore, the ESI Court also refused to, go into the merits of the case.

4. During the course of the judgment, the ESI Court has made reference to the decision of the Supreme Court in the case of Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others, . That case was under the payment of Wages Act. The Supreme Court, while dealing with the relevant provisions of the said Act, has laid down the principle that the entire period of delay up to the date of filing of the application should be explained. The principle cannot be doubted. The point is, what should be the approach of the courts while interpreting the words "sufficient cause" occurring in Section 5 of the Limitation Act and similar other statutes.

5. In the instant case, Rule 20-A of the Employees' State Insurance (Central) Rules, 1950 provides that the Medical Appeal Tribunal may entertain an application after the period of three months, if it "is satisfied that the appellant had sufficient reasons for not presenting the application within the said period. The principle, that the entire period of delay till the date of filing of the application should be explained and that the delay of each day should be explained, has got to be understood in a rational, commonsense and pragmatic manner and the same cannot be understood in pedantic and impractical way. The

lower court, and particularly the ESI Court in this case, appears to have adopted a strict legalistic approach. Such approach does not take into consideration the socio-economic realities of life. Adherence to the principles of law without having understood or without having reference to the socio-economic realities of life is bound to result into mis-carriage of justice. True, our legal system is largely based on the principles of Anglo-Saxon system of laws. But it must be realised that after the adoption of the Constitution our values have changed. Citizens of the country pledged themselves to usher in an egalitarian society with emphasis on socio-economic justice. While interpreting the laws, the values enshrined in the Constitution must be reflected in the approach to be adopted by the courts. We cannot adhere to the principles blindly laid down for a society having cent per cent literacy standards. Ours is a society composed of more than 70 per cent of illiterates and most of the population is living in rural backward areas.

6. In the instant case, the ESI Court must have taken into consideration the fact that the injured employee was working as a Weaver, surely not a literate person so as to know the complex principles of interpretation of laws and the confusing rules evolved in respect of condonation of delay and such other things. It must have been realised, by authorities under the ESI Act that they were dealing with the case of a poor employee who is injured and who has no interest whatsoever to see that his case is not decided on merits. The authorities under the ESI Act must realise that they are constituted to assist and aid the workmen and the injured persons. Their primary object is not to see that there is technical compliance with the provisions of law. The primary object of the authorities constituted under the Act is to see that justice and substantial justice is done and the cause of injured employee is not defeated on technical grounds.

7. The concept of rule of law will have some meaning only if it has relevance to the realities of life. That is why it is said that the rule of law must conform to the rule of life and the realities of life in our society are that about 75 per cent of the population is illiterate and about 50 per cent of the population is living below the poverty line. In such a society, the highly technical and complex principles evolved during the colonial rule cannot be applied blindly if the aims and objects enshrined in the Constitution are to be achieved. This applies to all courts and much more to the courts established under the ESI Act.

8. The ESI Court is constituted under the Employees' State Insurance Act, 1948. Similarly the Medical Board is also constituted under the provisions of the Act and the Rules and Regulations framed there-under. The object of the Act is to make provision for certain benefits to employees in case of sickness, maternity and employment injury and further to make provision for certain other matters in relation thereto. Section 74 of the Act provides for the constitution of Employees' Insurance Court and empowers the State Government to constitute an Employees' Insurance Court by notification in the official Gazette for such local area as may be specified in the notification. Section 75 of the Act deals with the matters to be decided by Employees' Insurance Court. Sub-section 3 of

Section 75 takes away the jurisdiction of civil court in deciding or dealing with any question or dispute mentioned in Section 75 of the Act and it prevents the civil court from adjudicating upon any question which by or under the Act is required to be decided by the Medical Board or by a Medical Appeal Tribunal or by the Employees' Insurance Court. Regulation 75 of the ESI (General) Regulations, 1950 provides for the constitution of Medical Board and Regulation 76 provides for the constitution of Medical Appeal Tribunal. Over the decisions of the Medical Appeal Tribunal, further appeal can be preferred before the ESI Court constituted under the provisions of Section 74 of the Act.

9. Thus it appears clear that a special machinery is created under the provisions of the Act and Rules and Regulations framed there under to provide for granting benefits to employees in case of sickness, maternity and employment injury and certain other matters. Therefore keeping the objects in mind, the ESI Court and the authorities constituted under the ESI Act should never be oblivious of the fact that they are constituted for safeguarding the interests of workmen and for securing the benefits for them. They are not constituted for deciding matters in a technical and indifferent manner. Unfortunately the respondent-corporation, which is constituted under the Act to safeguard the interests of employees and secure the benefits available to them, raised this technical plea. If the claim of an employee is resisted on technical plea and the Corporation succeeds in the same (as it has happened in this case), what laudable object does it achieve thereby? It is expected of the officials of the respondent-corporation that they inform themselves of the changed values of our society and get rid of the technical and archaic principles evolved during colonial rule. Instead, they should make an attempt to", see that the case of no employee may suffer on account of technical non-compliance of the requirement of law. Unfortunately in the instant case, though the Medical Appeal Tribunal on merits held that the injured employee had a good case/on technical ground only, the Tribunal dismissed the appeal of the injured employee. Thus the cause of substantial justice has suffered at the altar of monster of technicality because the respondent-corporation raised such plea and pursued the same up to the level of this Court.

10. It is unfortunate that the attention of the ESI Court was not drawn to the decision of this High Court in the case of Karim Abdulla v. Bai Hoorbai reported in 16 G.L.R 835, wherein M.P. Thakkar, J. (as he then was) has laid down the following guidelines to be kept in mind whilst deciding the question of condonation of delay:

- (1) Ordinarily allitigant does not stand to benefit by lodging an appeal late.
- (2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause" , "of justice being defeated. As against this when delay is condoned the highest "that can happen is that a cause would be decided on merits "after hearing the parties.
- (3) "Every day"s delay must be condoned" does not mean that a pedantic un-

pragmatic approach should be made. The doctrine must be applied in a rational commonsense pragmatic manner.

(4) When substantial "justice and technical considerations are pitted against each other, cause of substantial justice "deserves to be preferred for the other side cannot claim to have a vested [right in] injustice being done because of a non-deliberate delay.

(5) There is no presumption that "delay is occasioned deliberately, or on account of culpable negligence or on account of mala fides. The presumption would be just the other way round.

(6) The attitude must be one informed with greatest awareness for the cause of justice.

(7) It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and expected to do so.

In a later decision the Supreme Court in the case of Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, , has observed to the effect that the public authorities, in all morality and justice, should not take up such technical pleas of limitation, etc. to defeat the just claim of the citizens. In the context of that case the: Supreme Court has observed as follows:

...The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence, for the purpose of resisting such a claim has become unavailable....

11. In the instant case, the injured employee stated that he was neither knowing Gujarati nor English. He was not knowing the provisions of law and that the papers were misplaced and with great difficulty he could find out. There is nothing on record to show that the reasons advanced by him were false. As stated hereinabove, in our society, illiteracy and poverty are so widespread that in certain cases even judicial notice can be taken thereof by the court. In the instant case, the lower court adopted too technical approach and scrutinized the grounds advanced by the appellant with meticulous details and found that the statements made by the appellant were vague and therefore not reliable. The

appellant may not be in a position to state as to when he actually received the information and as to where he actually misplaced the papers. The very idea of misplacing the papers implies that one would not know as to when and where he has kept the papers. If one knows these things, the very question of misplacing the papers would not arise. It may be noted that even the ESI Court has not come to the conclusion that the grounds advanced by the appellant were false. Simply because the appellant was inaccurate in giving the details in support of the grounds advanced by him, it cannot be said that there was no sufficient cause which prevented him from filing the appeal within the prescribed period of limitation.

12. Unfortunately the guidelines laid down by this Court in Karim Abdulla's case (supra) were not pointed out to the lower court by either side. Moreover the aforesaid decision of the Supreme Court also does not appear to have been cited before the lower authorities. Applying the principles laid down by this Court in Karim Abdulla's case (supra). It would be clear that there was no deliberate delay on the part of the appellant-injured employee in filing the appeal. In this case the substantial justice and technical lapse are pitted against each other and the cause of substantial justice deserves to be preferred, much more so, because the respondent is a Corporation established under the provisions of the Act to safeguard the interests of workmen and to secure the benefits for them. In view of this position it is clear that the approach adopted by the ESI Court and the other lower authorities constituted under the Act is fundamentally erroneous and they have committed an error in not condoning the delay in filing the appeal before the Medical Appeal Tribunal by the appellant-injured employee.

13. In the result, the appeal is allowed and the judgment and order passed by the ESI Court in Second Appeal (ESI) No. 47 of 1982 is reversed and set aside and the judgment and order passed by the Medical Appeal Tribunal in Appeal (MAT) No. 391 of 1980 decided on March 1, 1982, is also reversed and set aside and the matter is ordered to be remanded to the Medical Appeal Tribunal at Ahmedabad with direction to hear the appeal on merits and decide the same in accordance with law. As much time has elapsed since the date of the accident (i.e., October 23, 1978), it is directed that the Medical Appeal Tribunal, Ahmedabad, shall dispose of the appeal within a period of two months from the date of receipt of this Court's writ by the Tribunal. There shall be no order as to costs.