

**2023 STPL(WEB) 43 SC
SUPREME COURT OF INDIA**

(ABHAY S. OKA AND RAJESH BINDAL JJ.)

SHANTABAI ANANDA JAGTAP & ANR.

Appellants

VERSUS

JAYRAM GANPATI JAGTAP & ANR.

Respondents

Civil appeal no. 5786 of 2012-Decided on 4-7-2023

Workmen Compensation – Delay of Nine years- Condonation of delay declined

JUDGMENT

Rajesh Bindal, J.-The order dated 09.04.2010 passed by the High Court of Judicature of Bombay in First Appeal No.591 of 2009 upholding the order dated 04.07.2008 passed by the Commissioner for Workmen’s Compensation at Sangli (for short “the Commissioner”) has been impugned by the legal heirs of the workman.

2. It is a case in which an application was filed by the legal heirs of the deceased Machindra Ananda Jagtap, who died in a road accident while driving jeep no. MH-10-8363 on 17.08.1993. The jeep was owned by Jayram Ganpati Jagtap and insured with the United India Insurance Co. Ltd. The claim was on the basis of the fact that the death of the Machindra Ananda Jagtap had occurred during the course of his employment, hence, his legal heirs are entitled to receive compensation. Claim of Rs.1,13,855/- along with interest and penalty was made. The application was filed with the Commissioner on 02.08.2004 under the Employees Compensation Act, 1923 (for short “the 1923 Act”).

3. The Commissioner rejected the application on the ground of delay as well as on merits. The claim petition was also held to be not maintainable in view of Section 167 of the Motor Vehicles Act, 1988 (for short “the 1988 Act”). The High Court upheld the order touching the issue of delay and not dealing anything on merits. The High Court found that the delay being enormous, the Commissioner had rightly declined to condonation of delay. However, the claim petition was held to be maintainable.

4. The argument raised by the learned counsel for the appellants is that it is a case in which the death of Machindra Ananda Jagtap had occurred in road accident while he was in employment of Jayram Ganpati Jagtap (respondent no.1). The accident took place on 17.08.1993. Immediately thereafter, as advised, a claim petition was filed before the Motor Accidents Claims Tribunal (hereinafter referred to as “the Tribunal”) which was disposed of on 07.03.2003. The claim was accepted against the offending vehicle. However, the vehicle being not insured, the award was passed only against the owner of the vehicle, which remained unexecuted. An affidavit dated 01.05.2023 has been filed in this Court stating that the award could not be executed till date. No claim was made against the respondents. After the aforesaid award was passed by the Tribunal, as advised, the appellants filed a claim petition before the Commissioner on 02.08.2004. The same was rejected on account of delay as well as on merits. The delay in filing the application before the Commissioner was not deliberate. In fact, the family of the deceased was left high and dry after the death of a young bread earner in the family. The High Court should have exercised jurisdiction vested in it to condone the delay and grant relief to the appellants. The deceased was working with the respondent no.1 on a monthly salary of

Rs.2000/-. The compensation which the appellants would be entitled to has to be calculated in terms of the formula laid down under the 1923 Act.

5. No one has appeared for respondent no.1/ the employer despite service.

6. The learned counsel for the Insurance Company submitted that it is a case in which there was no relationship of employer and employee between the deceased and the respondent no.1. They were both related to each other. It was even admitted by the claimant that no record was produced to show his employment. It was only created to claim compensation.

7. Heard learned counsel for the parties and perused the record/ relevant documents.

8. From the facts on record, it is evident that Machindra Ananda Jagtap died in a road accident on 17.08.1993. Immediately thereafter, his legal heirs filed a claim petition under Section 166 of the 1988 Act before the MACT, Hukkeri in 1993 bearing MACP No. 1458 of 1993. Same was adjudicated upon by the Tribunal vide Award dated 7.3.2003 awarded compensation of Rs.81,600/- was assessed to be payable to the appellants. The award of the Tribunal attained finality as nothing was pointed out at the time of hearing that it was challenged any further. Thereafter, the appellants filed application before the Commissioner seeking compensation under the provisions of the 1923 Act. However, a perusal of the order passed by the Commissioner shows that the claim petition was dismissed as the appellants had exercised the option for claiming the compensation under the Motor Vehicles Act, 1988 and hence they could not claim benefit under the 1923 Act. However, the fact remains that the aforesaid findings recorded by the Commissioner were set aside by the High Court and the application was held to be maintainable against which no appeal has been filed by the aggrieved party. The Commissioner had dismissed the application on the ground of delay also. Besides this even employer and employee relationship was not proved to claim compensation. The High Court upheld the findings of the Commissioner on the delay in filing of claim petition. However, nothing was discussed on the issue of employer and employee relationship.

9. Two issues arise in the present appeal. Firstly, whether there was sufficient cause for condonation of approximately 9 years and five months delay in filing the Application before the Commissioner under the 1923 Act. Secondly, in the event the aforesaid hurdle is crossed, whether the relationship of employer and employee has been proved.

10. In our opinion, the issue regarding relationship of employer and employee between the deceased and the respondent no.1-Jayram Ganpati Jagtap needs to be considered first.

11. As far as the relationship is concerned, the Commissioner had framed the following issue:

“Do the Applicants prove that, the accident of deceased was arose during the course of and out of his employment with Opponent NO.1?”

12. In the evidence led by the appellant no.1, she admitted in her cross-examination that the owner of the vehicle was brother of her husband. It was further admitted that they were having common ration card. They were members of the same Joint Hindu family. Salary certificate of the deceased was produced on record, however the same was not proved. There is nothing to suggest that the so-called employer had admitted the relationship of master and servant. Even before this Court, the learned counsel for the appellants has not been able to refer the evidence produced on record to show that there existed the master and servant relationship between the deceased and the respondent no.1, namely, the owner of the vehicle who has not chosen to put in appearance despite service.

13. The conduct of the parties it is evident from the award of the Tribunal where with a view to receive compensation from the offending vehicle, the owner of the vehicle had appeared in the witness box and stated that he was paying salary of Rs. 2,000/- to the deceased and a daily allowance of Rs. 25/-. In case that was so, nothing prevented the owner of the vehicle, who is said to be the

employer, to have appeared before the Commissioner and admitted the relationship of employer and employee. In fact, the conduct of the parties now shows that they intended to claim compensation from the offending vehicle. In a calculated move, no claim was made against the owner of the vehicle or the Insurance Company of the vehicle, being driven by the deceased, before the Tribunal.

14. The relationship of employer and employee has not been proved before the Commissioner. In our opinion, the same being the basic requirement to be fulfilled for claiming compensation under the 1923 Act, the appellants may not be entitled to receive any compensation.

15. Even on the ground of delay in filing the application before the Commissioner i.e. 02.08.2004 also, the same deserves to be dismissed. Case set up by the appellants themselves was that they had not claimed any compensation against the owner of the vehicle, who is alleged to be the employer, while filing application before the Tribunal. It was for the reason that they wished to claim compensation under the 1923 Act. Once that was so, this fact being in their knowledge from the very beginning, delay of 9 years in filing application under the 1923 Act, is certainly fatal for consideration of the claim by the appellants for award of compensation. In fact, the application before the Commissioner was filed only after the proceedings in the Motor Accident Claims Tribunal were concluded on 07.02.2003 and the appellants were not able to get any compensation in execution. The application before the Commissioner was filed on 02.08.2004. Therefore, in our opinion, no sufficient cause is established for condonation of delay in filing the application.

16. For the reasons mentioned above, we do not find any infirmity in the impugned order. The appeal is accordingly dismissed. There shall be no order as to costs.
