

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**C.M.A. No.992 of 2011**

Between:

Chennaboina Nagendram.

**.... Appellant**

**And**

1. V.V.Ramana Reddy and another.

**....Respondents.**

Date of Order pronounced on : 21.03.2023

**HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

1. Whether Reporters of Local newspapers : Yes/No  
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No  
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy: Yes/No  
of the Judgment?

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**\*HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**+ C.M.A No.992 of 2011.**

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# Chennaboina Nagendram.

**And**

**.... Appellant**

1. V.V.Ramana Reddy and another.

**....Respondents.**

! Counsel for the Petitioner : Sri. N.SUBBA RAO

Counsel for the Respondents: ---

<Gist :

>Head Note:

? Cases referred:

- 1) (2005) (3) JKJ 27,
- 2) Miscellaneous First Appeal No.568/2003, dated 16.10.2006, Kerala High Court,
- 3) (2006) ACJ 528,
- 4) (2003) ACJ 203.

**THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA****CIVIL MISCELLANEOUS APPEAL No.992 OF 2011****JUDGMENT:**

**1.** This Civil Miscellaneous Appeal is filed under Section 30 of Workmen's Compensation Act, 1923 (in short "The Act") against the impugned order in W.C/M.P.No.01 of 2009, dated 30.07.2010 on the file of the Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, Ongole (in short "The Commissioner").

**2.** The appellant herein was the petitioner. The respondent No.1 herein was the owner. Respondent No.2 herein was the Insurance Company before the Learned Commissioner. For the sake of convenience the parties hereinafter will be referred to as arrayed before the Learned Commissioner.

**3. Case of the Petitioner:-**

**3.1.** Petitioner worked as driver for the lorry of the 1<sup>st</sup> respondent. On intervening night of 28/29.06.2005 at about 4:00AM while carrying a load of granite stone for Hosur the tyres of the lorry burst near Pidugurala

Narasaraopet Road. As a result, he lost control over the lorry and hit against a tree on the road margin.

**3.2.** Cleaner of the lorry admitted Petitioner into Narasaraopet Government Hospital. A crime has been registered by the police based on his statement. For better treatment he was shifted to Amaravathi Institute of Medical Sciences, Guntur and he underwent a surgery and his left leg and right leg toes were amputated.

**3.3.** Petitioner lost his livelihood and unable to work as lorry driver. He filed a petition before the Motor Accident Claims Tribunal for compensation. When the matter reached the stage of Arguments, he has not pressed the petition since it is not maintainable. Subsequently, he filed the application seeking to condone the delay of (352) days in filing the application before the Learned Commissioner.

#### **4. Version of the Respondents: -**

**4.1.** The 1<sup>st</sup> respondent/owner though represented through an Advocate did not choose to file any counter.

**4.2.** The 2<sup>nd</sup> respondent/Insurance Company filed counter denying the material averments made in the application including age, wage, employment, accident and disablement to the applicant. Further

contended that there is no sufficient reason to condone the delay in filing the application as the Petitioner has exhausted the remedy by filing the petition before Motor Accident Claims Tribunal and has prayed for dismissal of the petition.

**5. Enquiry and finding: -**

**5.1.** During the course of enquiry Ex.A1 to Ex.A7 were the documents marked.

**5.2.** After hearing both counsel, the Learned Commissioner dismissed the application after coming into a conclusion that the petitioner except saying that he filed a petition before Motor Accident Claims Tribunal and having realized that it is not the proper forum, withdrew the case and filed the application before him, no sufficient reason is assigned for condoning the delay.

**6. Grounds of Appeal: -**

Being aggrieved by the order impugned, the petitioner filed the present Appeal on the grounds that: -

- a) The Learned Commissioner ought to have condoned the delay in filing the application since the "The Act" is a beneficial piece of legislation.

- b) He sustained injuries during the course of his employment. There is no inordinate delay but for he approached the Motor Accident Claims Tribunal initially.
- c) He categorically narrated the facts which leads to the delay in approaching the Learned Commissioner. On consideration of the nature and gravity of the injuries, the Learned Commissioner ought to have entertained the petition.

## **7. Substantial Questions of Law:-**

- 7.1.** Whether the order passed by the Commissioner is in conformity with the provisions of "The Act"?
- 7.2.** Whether the provisions of "The Act" are required to be construed in a liberal manner?
- 7.3.** Whether the delay which was caused during the pendency of MVOP can be treated as inordinate delay in approaching the Commissioner for Workmen's Compensation?

## **8. Arguments advanced at the Bar:-**

- 8.1.** Learned counsel for the Appellant would submit that the reason for the delay in filing the petition before the Commissioner is very much visible on the record and in the light of the gravity of the injuries

sustained by the workman who is lorry driver, approaching the Motor Accident Claims Tribunal due to ignorance is sufficient cause to condone the delay and prays to allow the Appeal.

**8.2.** Refuting the arguments referred *supra*, learned counsel for the respondents would submit that there are no sufficient reasons to allow the Appeal. In case, if the Court comes to conclusion to allow the Appeal, Insurance Company cannot be burdened by fastening the liability to pay the interest from the date of the accident.

## **9. Legal Analysis and Finding**

**9.1.** As seen *supra*, this is a case where the workmen moved claim petition before the Motor Accident Claims Tribunal, subsequently not pressed it on 19.01.2009, and approached the Commissioner under the Act on 10.06.2009 that is after a period of nearly (05) months. It is beneficial to extract the relevant provision under the Act which speaks about the limitation to file a petition seeking compensation before the Commissioner. Section 10 of Workmen's Compensation Act reads thus:

### **Section 10. Notice and claim.** -

*(1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before*

*him within [two years] of the occurrence of the accident or, in case of death, within [two years] from the date of death:]*

*Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the [employee] was continuously absent from work in consequence of the disablement caused by the disease:*

*[Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the [employee] to absent himself from work, the period of two years shall be counted from the day the [employee] gives notice of the disablement to his employer:*

*Provided further that if a [employee] who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:]*

*Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim--*

*(a) if the claim is [preferred] in respect of the death of a [employee] resulting from an accident which occurred on the premises of the employer, or at any place where the [employee] at the time of the accident was working under the control of the employer or of any person employed by him, and the [employee] died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or*

*(b) if the employer [or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured [employee] was employed] had knowledge of the accident from any other source at or about the time when it occurred:*

*Provided further, that the Commissioner may [entertain] and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been [preferred], in due time as provided in*



*this sub-section, if he is satisfied that the failure so to give the notice of [prefer] the claim, as the case may be, was due to sufficient cause.*

*(2) Every such notice shall give the name and address of the persons injured and shall state in ordinary language the cause for the injury and the date on which the accident happened, and shall be served on the employer or upon [any one of] several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured [employee] was employed.*

*(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which [employees] are employed a notice-book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured [employee] employed on the premises and to any person acting bona fide on his behalf.*

*(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.]*

**10.** The claimant has to file application under the Act within period of two years from the date of the accident. In the present case, the accident occurred on 29.06.2005. The application under the Act filed on 10.06.2009. Thus, there is a delay of two years. It is to be noted that the petitioner filed a petition seeking compensation before Motor Accident Claims Tribunal. The said petition was not pressed on 19.01.2009. Accordingly, it was dismissed. The claim petition before the Commissioner filed on 10.06.2009 i.e., after a period of (05) months from the date of disposal of the petition under the Motor Vehicles Act.

**11.** Section 10 proviso itself authorizes the Commissioner to entertain and decide any claim petition seeking compensation notwithstanding the fact that the claim has not been preferred in due time as provided under the Law, if he satisfied that such failure is supported by sufficient cause. Hence, it can be said that the Commissioner has ample power to condone the delay, if any, in presenting the claim application under the Act. The reason assigned by the applicant herein for the delay is on account of approaching the Motor Accident Claims Tribunal initially.

**12.** At this juncture, it is apt to refer to certain decisions that reiterate the primary object of the Act. In ***Senior Divisional Manager United India Insurance Company Limited v. Noora***<sup>1</sup> Hon'ble High Court of Jammu and Kashmir observed as follows;

*"...The aim and purpose of Workman's Compensation Act, 1923 is to ameliorate the sufferings of the workman and to provide a remedy to the workman in order to save the victims of accident/from the destitution, vagrancy and, other social evils.*

*7. The legislation was enacted to assuage and remedy the poverty. It is profitable to reproduce the passage from the objections and reasons for the legislation published as early in 1922.*

*"The general principles of Workmen's Compensation command almost universal acceptance, and India is now merely alone amongst civilized countries in being without legislation*

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<sup>1</sup> 2005 (3) JKJ 27

*embodying those principles. For a number of years the more generous employers have been in the habit of giving compensation voluntarily, but this practice is by no means general. The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to Workmen, alongwith the comparative poverty of the Workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.” ...”*

**13.** In ***Oriental Insurance Company limited v. Davis***<sup>2</sup>, the Hon'ble High Court of Kerala at para 10 held as follows:-

*"Section 147 (1) of the M.V.Act including its provisos, as also the provisions of Section 3 of the WC Act are the beneficial legislations of social object and are, therefore, expected to be interpreted in favour of those for whose benefit the said legislation are made, even if two views are possible. I have therefore no hesitation to lean in favour of the one enunciated above."*

**14.** As observed, the Act is a piece of beneficial social legislation enacted with a prime object of safeguarding the rights as well as protecting the welfare of the workmen. It is a settled principle of Law that the Court has to interpret the provisions of the beneficial legislation in order to achieve the object for which it was enacted. When two views are possible basing on the facts placed before the Court and proved, the Court has to lean towards the view which is beneficial for the workmen.

**15.** It is profitable to refer Section 167 of the Motor Vehicles Act and Section 3(5) of the Workmen's Compensation Act.

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<sup>2</sup> Miscellenous First Appeal No.568/2003, Dated 16.10.2006, Kerala High Court

**“Section 167. Option regarding claims for compensation in certain cases.—**

*Notwithstanding anything contained in the Workmen’s Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen’s Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both (emphasis added)”*

**“Section 3(5)-** *Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—*

*(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or*

*(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act”.*

**16. In *National Insurance Company v. Mastan & Another*,**<sup>3</sup> wherein the claimants filed an application under the Motor Vehicles Act and not the Workmen’s Compensation Act and having received a voluntary deposit from the employer, the Hon’ble Apex Court observed as follows;

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<sup>3</sup> 2006 ACJ 528.

*“Section 167 of the 1988 Act statutorily provides for an option to the claimant stating that where the death of or bodily injury to any person gives rise to a claim for compensation under the 1988 Act as also the 1923 Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. Section 167 contains a non-obstante clause providing for such an option notwithstanding anything contained in the 1923 Act.”*

17. In ***United Insurance Company Ltd. V. Kore Lakshmi***,<sup>4</sup>

coordinate bench of this Court, juxtaposing the remedies under Motor Vehicle Act and the Workmen Compensation Act, held as follows:

*“28. The provisions contained in Chapters X, XI and XII of the MV Act and the provisions of the WC Act, are pieces of social welfare legislations. Upon perusal of the provisions of the MV Act and the WC Act, it is clear that under the MV Act, the compensation payable is on the basis of negligence and the liability is on the basis of tort, with an exception to Section 140 of the MV Act, and whereas under the WC Act, the compensation payable is on the basis of strict liability, which is imposed by the statute itself.....*

*30. In the facts and circumstances of the present case, I am of the opinion that the claimants have mistakenly moved the Claims Tribunal under the MV Act. It does not mean that the claimants have elected a forum. In the facts and circumstances of the case, even though the claimants/ respondents filed claim petition before the Claims Tribunal under the MV Act, it does not bar them from making a claim before the Commissioner under the WC Act. The claimants are at*

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<sup>4</sup> 2003 ACJ 203.

*liberty to file claim petition before the Commissioner for Workmen's Compensation once again to seek redressal of their claim".*

**18.** In a similar set of factual circumstances, the Hon'ble Bombay High Court in ***New India Assurance Company Limited Vs Bharati Adhik Patil and others***<sup>5</sup>, held thus;

*"It is true that Motor Accident Claims Tribunal is a forum of proper jurisdiction for relief of compensation in accident claims and, therefore, as argued by Mr.Joshi, the learned Counsel, the benefit of section 14 of Limitation Act cannot be given to the applicants in the case. However, the section is applicable to the cases where the proceedings are pursued before the Court without jurisdiction. In order to invoke the proviso of Section 10 of the Workmen's Compensation Act it is not necessary for the claimants to make a separate application for condonation of delay if the applicants have mentioned the cause of delay, then, and if it is found true, then, in the absence of application, the delay can be condoned. I support of these observations, I rely on the finding given by the learned Single Judge of this Court in the case of Department of Telecommunication, Nanded vs. Deelip s/o. Hari Mogle thus:*

*5. This proviso appended to sub-clause (1) of section 10 gives discretionary power to the Commissioner in an appropriate case to consider the application irrespective of delay. The provision enumerated under section 10 does not require any separate application to be filed for condonation of the delay. In the present case, the Commissioner has duly considered the reasons and has exercised his discretion in the matter of entertaining the application beyond of 2 years. "*

**19.** In the light of the aforesaid discussion, the appellant herein need not file a separate application to condone the delay. The petition

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<sup>5</sup> 2016 SCC Online Bom 2597

which is filed before the Commissioner need to be considered as a main petition and the Learned Commissioner ought to have decided the issue to condone the delay while answering the main petition. In the present case out of ignorance, the applicant wrongly filed a separate petition to condone the delay which was dismissed.

**20.** At this juncture, a perusal of Section 30 of the Workmen's Compensation Act would makes it clear that the scope of Section 30 for entertaining the appeal against the order passed by the Commissioner is very limited and is restricted to those that are provided in the clauses (a) to (e). The language employed in Section 30 of the Act is vivid to construe that certain type of orders which are mentioned therein are categorized as appealable orders under the Act. It is pertinent to say that it is an exhaustive provision leaving no scope to include any other order beyond.

**21.** Coming to the facts on hand, the order impugned herein is an order passed against the petition filed to condone the delay in filing the application under Section 22 of The Act. There is no whisper of such order in Section 30(1) (a) to (e). Ergo, the order impugned is not appealable before this Court. In the backdrop of the legal position

discussed *supra*, the Appeal is liable to be dismissed since not maintainable.

**22.** In result, the Appeal is dismissed. In the circumstances of the case, parties shall bear their own costs. However, it is observed that the appellant is at liberty to pursue his remedy before the Commissioner by filing a claim petition afresh along with the reason for the delay, then the Commissioner can dispose of the matter according to Law.

As a sequel, miscellaneous applications pending, if any, in this Civil Miscellaneous Appeal shall stand closed.

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**JUSTICE VENKATA JYOTHIRMAI PRATAPA**

Date: 21.03.2023

**Note:** L.R. Copy to be marked  
B.O./PNS