

(1992) 04 MP CK 0005
Madhya Pradesh High Court
Case No: None

M.P. State Road Transport
Corporation

APPELLANT

Vs

Dashrath Singh

RESPONDENT

Date of Decision: April 27, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10, 11, 20, 21
- Constitution of India, 1950 - Article 12
- Employees Compensation Act, 1923 - Section 10, 21, 22, 3, 30

Citation: (1992) 2 ACC 406

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

Bench: Single Bench

Judgement

S.K. Dubey, J.

The appellant/M.P. State Road Transport Corporation, Bhopal, through its Divisional Manager, Indore, and Depot Manager, Dewas (for short, the "Corporation"), has preferred this appeal u/s 30 of the Workmen's Compensation Act, 1923 (for short, the "Act"), against an order dated 11th June, 1982, passed in Case No. 1/1980 N.F., by the Commissioner for Workmen's Compensation, Labour Court, Ujjain, awarding respondent/claimant compensation of Rs. 17,640/- and interest at the rate of 6 per cent per annum from the date of the order till deposit for the personal injuries caused to him by an accident arising out of and in the course of his employment.

2. This Court admitted the appeal on 12.10.1982 for final hearing on the following substantial questions of law:

1. Whether the decision dated 19.1.1990 of the Commissioner for Workmen's Compensation, Indore with respect to the same incident operated as res-judicata?

2. Whether the application was barred by limitation and the delay was wrongly condoned by the Commissioner?

3. To deal with the question some essential facts are necessary which are thus: The respondent/claimant, hereinafter referred to as the "workman," was employed as a conductor at Dewas Depot of the Corporation; on 28.6.1977 he was on duty on passenger Bus No. MPO 9556 going from Dewas to Shajapur, which met with an accident with a truck at a place between Maksi and Golva in which the workman received personal injuries in the jaw and in the left eye-lid; he was admitted in Dewas Hospital and then shifted to M.Y. Hospital, Indore, where he remained under treatment for four months and 18 days. Thereafter, the workman on 16.1.1978 filed an application u/s 22 of the Act before the Commissioner for Workmen's Compensation, Indore (for short, the "Commissioner Indore") who issued notice to the Corporation. The Corporation denied liability without taking any objection to territorial jurisdiction to entertain the application. The Commissioner, Indore, after trial, finding that the accident occurred within the area over which he had no jurisdiction, dismissed the application on 19.1.1980, holding, at the same time, that there was no loss of earning capacity. Upon it, the workman applied for return of the application, which was returned on 25.1.1980.

4. 26th and 27th January, 1980 being holidays, the workman presented the application before the Workmen's Compensation Commissioner, Ujjain (for short, the "Commissioner" on 28.1.1980 with an application u/s 10, supported by an affidavit, for condonation of delay. The claim was resisted on merits and on grounds of limitation and res-judicata.

The Commissioner vide order dated 17.9.1980 decided as preliminary issue No. 4, 5 & 6 holding that the Commissioner Indore, was not competent to entertain the application; the application is not barred by the principles of res-judicata" and, therefore, the findings recorded by the Commissioner, Indore, on merits are to be ignored. As the workman under a bona fide Mistake presented the application in a Court which was having no jurisdiction to entertain the same, he was prevented from preferring the claim within the period prescribed u/s 10(1) of the Act. As no negligence or M/s conduct was attributed to the workman, the delay was condoned. On merits, the Commissioner finding the injuries of the description falling u/s No.5 of Schedule, awarded the compensation.

5. During the course of hearing, on 24.2.1992, the counsel for the Corporation moved an application for leave to amend the memo of appeal by deleting certain portions from ground No. (iii) and para 7(b) thereof, to the effect that before the Commissioner, Indore, no objection about territorial jurisdiction was raised by the Corporation, to contend that as both parties went to trial and the matter was finally heard and decided, the Commissioner, Indore, was left with no jurisdiction to return the original application after passing the order dismissing the claim, as the Commissioner, Indore, became functus officio.

6. In the background of above facts, Shri M.L. Dhuper, learned Counsel for the Corporation contended that in view of Section 21. CPC, when there was a waiver of objection in respect of territorial jurisdiction of the Commissioner, Indore, the Commissioner acted illegally and without jurisdiction in entertaining the application of the workman; there was no failure of justice and as against the order of Commissioner Indore, no appeal was preferred, the Commissioner erred in not dismissing the application and condoning the delay. Counsel placed reliance on [State Bank of Bikaner Vs. Balai Chander Sen](#), ; [Seth Hiralal Patni Vs. Sri Kali Nath](#), ; [The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another](#), ; [Janardan Reddy and Others Vs. The State of Hyderabad and Others](#), ; [Indermal Takaji Mahajan Vs. Ramprasad Gopilal and Another](#), and a Single Bench decision of Delhi High Court in *Ramat Mashev v. Arvind Construction Co.(P) Ltd.* 1989 ACJ 724 .

7. The Act is the first important piece of social legislation, enacted in the colonial period, with a purpose to provide social security to the workman, who becomes disabled, or, in case of his death, to his dependents. It is a self-contained Code dealing with the subject, creating right or liability, giving special remedy for enforcing it.

8. A cursory look to the Act shows that for the personal injury caused to a workman by accident arising out of and in the course of employment, the employer has been made liable to pay compensation u/s 3 of the Act. In case the employer fails to make the payment of compensation or does not accept the liability to pay compensation, for claiming compensation a notice in the manner provided in Section 10 has to be served as soon as practicable to prefer a claim before the Commissioner within two years of the occurrence of the accident or in case of death, within two years from the date of death. The last proviso to Section 10(1) provides 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 sub-section(I), if he is satisfied that the failure so to give the notice or (prefer) the claim, as the case may be, was due to sufficient cause.

9. Section 21 speaks of venue of proceedings and transfer, which is quoted in extenso.

21. Venue of proceedings and transfer. -(1) where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made there-under, be done by or before a Commissioner for the area in which the accident took place which resulted in the injury.

Provided that, where the workman is the master of a ship or a seaman, any such matter may be done by or before a Commissioner for the area in which the owner or agent of the ship resides or carries on business.

(2) If a Commissioner is satisfied that any matter arising out of any proceedings Pending before him can be more conveniently dealt with by any other

Commissioner, whether in the same State or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal, and if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependents of a lump sum without giving such party an opportunity of being heard:

Provided further that no matter other than a matter relating to the actual payment to a workman or the distribution among dependents of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same State save with the previous sanction of the State Government or to a Commissioner in another State save with the previous sanction of the State Government of the State, unless all the parties to the proceedings agree to the transfer.

3. The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire there into and, if the matter was transferred for report, return his report thereon or, if the matter as transferred for disposal, continue the proceedings as if they had originally commenced before him.

4. On receipt of a report from a Commissioner to whom any matter has been transferred for report under Sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

5. The State Government may transfer any matter from any Commissioner appointed by it to any other Commissioner appointed by it.

10. Section 32 gives power to the State Government to make rules to carry out the purposes of the Act on the matters enumerated in sub- Section (2) of Section 32. The State Government has framed rules known as "The Workmen's Compensation (Madhya Pradesh) Rules, 1962" for short, the "Rules" which have been published in the Official Gazettee u/s 34(l) of the Act. The rules contained in Part V regulates the procedure in the disposal of the cases under the Act or the Rules, which has to be followed by the Commissioners and the parties.

11. For the present purposes Rule 22 of the Rules is relevant which is quoted:

22. Application presented to wrong Commissioner: --

(1) If it appears to the Commissioner on receiving the application that it should be presented to another Commissioner, he shall return it to the applicant after endorsing upon it the date of the presentation and return, the reason for returning it and the designation of the Commissioner to whom it should be presented.

(2) If it appears to the Commissioner at any subsequent stage that an application should have been presented to another Commissioner, he shall send the application to the Commissioner empowered to deal with it and shall inform the applicant (and the opposite party) if he has received a copy of the application under Rule 26, accordingly.

(3) The Commissioner to whom an application is transferred under Sub-rule (2) may continue the proceedings as if the previous proceedings or any part of them, had been taken before him, if he is satisfied that the interest of the parties will not thereby be prejudiced.

12. A look to the various provisions contained in the Act and the Rules makes it can did clear that the Civil Procedure Code, 1908, has not been made applicable in respect of procedure, trial and disposal of the cases before the Commissioner, except certain provisions of the First Schedule thereof as enumerated in Rule 41. Therefore, at the outset, it may be said that the cases relied in support of the question of waiver of jurisdiction are not applicable and are of no assistance to the Corporation.

13. Hence in view of the clear provision of non-applicability of the CPC in respect of procedure, the question of territorial jurisdiction of the Commissioner to deal with the claim preferred before him has to be considered in accordance with the provisions contained in the Act and the Rules.

14. Section 21 deals with the venue of proceedings and transfer, which is a self-contained provision dealing with territorial jurisdiction as to the place of suing and entertaining the applications for compensation which is in derogation with the general provisions contained in it Sections 20 and 21 of the Civil Procedure Code. In view of sub- Section (1) of Section 21 it cannot be disputed that the Commissioner, Indore, was having no competence to entertain the proceedings as the accident giving rise to the proceedings arose outside the area over which the Commissioner, Indore, had no jurisdiction ."The Commissioner, Indore, could have dealt with the proceedings only on transfer to him in accordance with and in the manner provided in sub- Section (2) of Section 21. See a decision of this Court in Ranjit Kaur v. Santokhsingh and Anr.. 1976 ACJ 339.

15. In the circumstances, the Commissioner, Indore, on receiving the application ought to have returned the same after endorsing upon it the date of presentation and return with the reason for the return, for presenting it to the Commissioner to whom it should be presented. Even that could have been done at the subsequent stage, as provided in Rule 22.

(2) The Commissioners Indore instead of adopting the procedure prescribed, proceeded with the enquiry, in which he came to the conclusion that he had no jurisdiction; at that stage also, the Commissioner was bound to send the application to the Commissioner empowered to deal with it, and to inform the parties

accordingly. But the Commissioner, Indore, instead of acting in accordance with the mandatory provisions as contained in Rule 22, exercised the jurisdiction which he did not possess, and dismissed the application on merits.

16. Such a finding on merits of the dispute in the eye of law is totally ineffective and cannot in any sense be regarded as a proper adjudication of the dispute, as the law is settled that a Court which lacks and/or declines jurisdiction cannot bind the parties by expressing opinion on the merits of the dispute, as such findings are certainly not decisions by a Court of competent jurisdiction. See AIR 1940 222 (Privy Council) *Chalchitra Kar-machari Sangh v. Regional Talkies, Gwalior* 1963 JIJ 728 (DB), and *Smt. Sudamabai v. Pratap Singh* 1988 (IIMPWN 33.)

17. To attract Section 11 CPC or the principles of res-judicata it is not only essential that the subject-matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, litigating under the same title, but the former Court should also be competent to try such subject-matter in issue. If the Court deciding the former suit lacks inherent jurisdiction or assumes jurisdiction, which it does not possess under the statute, its decision never operates as res-judicata between the parties, nor it can be sustained on the doctrine of estoppel, because if such decision is considered conclusive, it will assume the status of a special rule relating to the jurisdiction of the Court in derogation of the rule made by the legislature. See [Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy](#), and [Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others](#),

18. In fact, it is a case where the workman has suffered for the M/s take of Commissioner, Indore who did not act in accordance with Rule 22, which clearly lays down a procedure to deal with such applications, in the manner prescribed, instead of dismissing the application for want of jurisdiction. Therefore, for the act or Mistake of the Commissioner, Indore, the workman should not be made to suffer, as there is no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a Mistake or fault of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim; Actus curiae ineminem gravabit. "See [Jang Singh Vs. Brijlal and Others](#), and [Atma Ram Mittal Vs. Ishwar Singh Punia](#),

19. The next contention that the application before the Commissioner was barred by time, has not merit, as Shri. B.L. Pavecha, learned Counsel for the workman, rightly submitted that in a Mistaken and bonafied belief the workman presented the application before the Commissioner, Indore, as he was employed at Dewas Depot of the Corporation. All particulars of the accident including the place were given in the application, but the Commissioner, Indore, did not act in accordance with Rule 22. The Corporation did not bring to the notice of the Commissioner about entertainability of the application and allowed the trial to proceed. Even when, after trial, the

Commissioner, Indore came to the conclusion that he had no jurisdictional competency, it was his bounden duty to transmit the case to the Commissioner who had the jurisdiction to try. The workman, in the circumstances, took steps diligently, applied for the return, and the Commissioner, Indore, returned the application on 25.1.1982 which was filed immediately on the next working day. Therefore the Commissioner rightly condoned the delay under the proviso to Section 10(1) of the Act, finding a sufficient cause having been made out. Moreover, on facts, no gross M/s conduct or negligence was attributed to the workman. It was also submitted that the Corporation is a body corporate and an authority under Article 12 of the constitution of India; therefore, it was not right on the part of the Corporation to take the technical plea of limitation to defeat the legitimate claim of the workman, as it was not a case where the claim of the workman was not well founded. Reliance was placed on a decision of the Apex Court in case of [Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri \(Dead\) by L.R.s](#), and two decisions of this Court in State of M.P. v. Ramarao Krishnarao 1990 J.L.J. 315 (DB) and Badriprasad v. State of M.P. S.A. 146/1987 (G) decided on 24.10.1990.

20. While considering the question of condonation of delay, as said by the Apex Court in case of [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), the Court has to adopt a liberal approach in order to enable the Court to do substantial justice to parties while disposing of matters on merits, as between substantial justice and technical considerations, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Therefore, in the facts of the case which are clear, no culpable negligence or M/s conduct can be attributed to the workman, but the workman rather suffered for the M/s take of the Court, the delay was rightly condoned.

21. In the result, the appeal is dismissed with costs. Counsel's fee Rs.500/-if pre-certified. The stay order passed by this Court on 12.10.1982 is vacated. The workman shall be at liberty to withdraw the amount already deposited by the Corporation before the Commissioner, if not already withdrawn.