

CASE NO.:
Appeal (civil) 7093 of 2001

PETITIONER:
Abhishek Malviya

RESPONDENT:
Addl. Welfare Commissioner & Anr

DATE OF JUDGMENT: 23/01/2008

BENCH:
R V Raveendran & P. Sathasivam

JUDGMENT:
J U D G M E N T

R.V. RAVEENDRAN, J.

This appeal relates to compensation payable to a Bhopal gas tragedy victim. The appellant was in the womb of his mother on the fateful day that is, 2/3.12.1984. He was subsequently born on 14.5.1985. An application was made on his behalf for payment of compensation of Rs.50,000/- under the scheme for payment of compensation to the gas victims alleging that the appellant's pregnant mother was affected by the leaked gas and consequently, the appellant, who was in her womb, was also affected.

2. The Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 was framed by the Central Government in exercise of power under section 9 of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985. Clause 5 thereof provides for categorization and registration of claims. The application on behalf of appellant was considered by the Deputy Commissioner, for Bhopal gas victims. The appellant had been examined and a medical dossier prepared at the time of State-sponsored medical examination including X-ray of chest. The reports of the examination on 25.8.1988 showed that the appellant did not suffer from any disease. Therefore, his condition was recorded as 'normal', and the appellant was placed in category 'A' under general injuries. This was contested by the appellant's father on the ground that ever since the time of birth, the appellant had heart and respiratory problems and he was treated at Chautram Hospital, Indore. After a detailed examination of the medical and other records, the Deputy Commissioner passed an order dated 17.6.1996. He held that the appellant had respiratory problems immediately after birth and for a short time thereafter; and that the treatment given to appellant was for cough and cold, fever and other normal ailments. However as the resistance capacity of the appellant was decreased due to ill effect of gas, he was classified under the category 'temporary partial disability' falling under Para 5(2)(d) of the Scheme and a compensation of Rs.45,000/- was awarded.

3. An appeal was filed by the appellant claiming compensation of Rs.1,00,000/-. The appeal was allowed in part, by the First Additional Welfare Commissioner for Bhopal by order dated 13.3.1997. The appellate authority noted that the appellant's heart disease could not be attributed to MIC gas, as that did not affect the heart directly or indirectly. However as appellant suffered from pneumonia immediately after his birth and later as he was suffering from bronchitis in the year 1988 and treatment continued for respiratory problems, he increased the compensation by Rs.10,000/- that is in all Rs.55,000/-.

4. The appellant filed a special leave petition before this Court seeking leave to appeal against the said order of Additional Welfare Commissioner. One of the grounds of challenge was that the Additional Welfare

Commissioner had referred to the appellant as 'deceased' and that showed non application of mind. (This however apparently was a typographical error as in the subsequent part of the judgment, the Appellate Commissioner had proceeded on the basis that the appellant is alive and discussed the entire history. Be that as it may.) This Court by order dated 4.5.1999 dismissed the special leave petition as withdrawn, recording the submission on behalf of the appellant that he wanted to apply to the Additional Welfare Commissioner for correction of the order.

5. Thereafter, on an application for modification, the matter was again considered by the First Additional Welfare Commissioner. While seeking correction of the order by deletion of the expression 'deceased', the appellant also claimed increased compensation of Rs.10 lakhs in view of his continued medical treatment. The application was disposed of by order dated 6.8.1999, correcting the typographical mistake by deleting the word 'deceased' used in Paras 2 and 3 of the earlier order dated 13.3.1997. But the Additional Welfare Commissioner refused to reconsider the appeal on merits or to increase the compensation, as there was no direction by this Court to reconsider the claim. The appellant again approached this Court in S.L.P. [C] No.19076/1999 challenging the order dated 6.8.1999. That SLP was also dismissed on 6.1.2000 reserving liberty to the appellant to approach the High Court under Article 226 of the Constitution or seek any other remedy available in law.

6. Thereafter, the appellant again filed an appeal before the First Additional Welfare Commissioner who found no reason to disturb the earlier order dated 6.8.1999. He, therefore, dismissed the appeal on 23.2.2000. That order was challenged in W.P. [C] No.2629/2000. The High Court of Madhya Pradesh found that the compensation awarded did not warrant interference and accordingly dismissed the writ petition, by the impugned order dated 5.2.2001. The High Court held that it was evident from the order dated 4.5.1999, that this Court found no ground to interfere with the order of the Additional Welfare Commissioner on merits and the SLP was dismissed and liberty was reserved only for the purpose of seeking correction of the typographical error. The appellant has challenged the order of the High Court in this appeal by special leave.

7. It is the contention of the appellant that while disposing of the SLP by order dated 4.5.1999, this Court did not examine the order dated 13.3.1997 of the Additional Welfare Commissioner on merits and the SLP was dismissed as withdrawn to enable him approach the Additional Welfare Commissioner for rehearing and modification and therefore the Additional Welfare Commissioner was bound to reconsider the matter.

8. We find no merit in appellant's contention. The order dated 4.5.1999 of this Court specifically refers to the error in the order describing the appellant as 'deceased' and dismissed the SLP as withdrawn with the following observation : "He wants to apply to the Additional Welfare Commissioner for correction. We express no opinion in that behalf." No liberty was reserved to file a fresh appeal or seek review of the order dated 13.3.1997 on merits. The order dated 13.3.1997 having attained finality, his efforts to re-agitate the issue again and again is an exercise in futility. We are therefore of the view that appeal is liable to be dismissed.

9. The learned counsel for appellant had also made submissions on merits. But he was unable to demonstrate how the appellant was entitled to be placed in a higher category under the scheme so as to become entitled for higher compensation. The appellant produced some documents to show that he has been undergoing treatment for bronchitis and other problems. His respiratory problem and bronchitis were considered and the compensation was increased from Rs.45000/- to Rs.55000/- by the Addl. Welfare Commissioner. Even on merits, we find no reason to interfere with the categorization of appellant for the purpose of compensation. The appeal is accordingly dismissed.