

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 11607 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE****Sd/-**

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|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        |     | No |

ADITYA R SACHAN

Versus

SCAPS INDUSTRIES INDIA PVT LTD

Appearance:

MR UT MISHRA(3605) for the Petitioner(s) No. 1

MR PALAK H THAKKAR(3455) for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE****Date : 07/04/2026****ORAL JUDGMENT**

1. By the present writ petition, the petitioner is praying to quash and set aside the impugned order dated 31.07.2017 passed in W.C. Misc. Application No.12 of 2015 and order dated 20.11.2018 passed in W.C. Misc. Application No.24 of 2017 passed by the Workmen's Compensation Commissioner, Kutchchh at Bhuj.

2. It is the case of the petitioner that while working on duty, due to oil spilling on the floor, the petitioner slipped and sustained injuries on his right leg thigh. That thereafter he was

given medication on 14.11.2011. That thereafter since the pain did not subside, the petitioner requested for leave from 14.04.2012 to 15.05.2012, which came to be granted. That thereafter the petitioner again went to the doctor for the pain when he was advised to go to Mumbai for further treatment. It is further the case of the petitioner that he was admitted at Hinduja National Hospital at Mumbai on 05.05.2012 and the Biopsy came to be done on the leg of the petitioner and a tumour came to be detected. That thereafter the petitioner was operated upon on 12.05.2012. The petitioner thereafter was advised bed rest for 7 to 8 months so the petitioner sent a leave report to the respondent company. That as per the medical advise, the petitioner was once again operated on 25.01.2014 for tumour. That thereafter the petitioner's service came to be terminated on 10.08.2015. It is further the case of the petitioner that due to the operations for tumour, he had sustained 40% permanent disability and incurred treatment expenses and therefore, the petitioner preferred a delay condonation application to the Workmen's Compensation Commissioner, Kutchchh at Bhuj for compensation. By the impugned order dated 31.07.2017, the learned Commissioner was pleased to dismiss the delay condonation application of the petitioner as not maintainable

since no application for compensation was filed along with such delay condonation application. That thereafter the petitioner preferred workmen's compensation application. Pending said application, the petitioner once again preferred another Misc. Application for condonation of delay which came to be rejected on the ground that there is no power of review as well as no sufficient cause was made out by the petitioner for gross delay.

3. Mr. U.T.Mishra, learned advocate for the petitioner submits that the petitioner had sustained injuries while on duty and therefore, he was entitled for compensation under the Workmen's Compensation Act, 1923 [*"WC Act" for short*]. He submits that the petitioner being an illiterate, was not aware of the formalities and that he had preferred the delay condonation application earlier and thereafter he has filed the workmen's compensation application separately. He submits that the earlier application came to be dismissed since there was no workmen's compensation application filed by the petitioner. However, the petitioner had thereafter preferred a second delay condonation application in the workmen's compensation application which was preferred subsequently. However, the learned Commissioner has erred in dismissing the same. The learned counsel submits

that the learned Commissioner ought to have looked into the facts of the case before adjudicating the delay condonation application as well as workmen's compensation application. He submits that the petitioner has sustained 40% permanent disability due to injuries sustained while on duty. He submits that due to such injuries, the petitioner was operated twice. He submits that because of medical treatment and the injuries sustained, the earning capacity of the petitioner was NIL and in the facts and circumstances of the case, the workmen's compensation application of the petitioner ought to have been considered sympathetically. He submits that the WC Act is a beneficial legislation and the learned Commissioner ought to have looked at the important aspects in respect of injuries sustained as well as medical treatment undergone by the petitioner. He submits that the present writ petition be allowed and the petitioner be granted appropriate compensation under the WC Act.

4. *Per contra*, Mr. Palak Thakkar, learned advocate for the respondent No.1 company submits that the petitioner had slipped and fell on the floor while on duty and it cannot be said that the injuries were sustained during the course of his duty.

The learned counsel further submits that the petitioner has undergone operations for tumour, which cannot be said to have been sustained due to fall while on duty and in due course of his work. The learned counsel submits that even otherwise, the alleged incident of slipping had occurred on 14.11.2011, whereas the petitioner has preferred the delay condonation application in the year 2015 and thereafter the workmen's compensation application in the year 2017. He submits that the present writ petition is nothing but an attempt to extract some amount from the respondent company to defray his medical expenses. The learned counsel submits that the respondent has fully cooperated with the medical condition of the petitioner as the petitioner was not in a position to do his duty. The services of the petitioner came to be terminated by letter dated 15.04.2016 complying with the provisions of Section 25-ZA of the Industrial Disputes Act, 1947 [*"ID Act" for short*] and the petitioner was also paid an amount of Rs.1,83,737/- towards his legal dues, such as bonus and gratuity. The learned counsel submits that the learned Commissioner has taken appropriate view in the case by not condoning the delay. He submits that the impugned orders are justified and the present writ petition be dismissed.

5. Heard learned counsels for the parties, perused the documents and considered the submissions.

6. In the present case, the petitioner has slipped while on duty on 14.11.2011 and it is alleged that due to such fall, he had sustained injuries in the leg. It is further the case that since the pain in the leg had not subsided, the petitioner thereafter applied for leave and went back to his village. Thereafter the petitioner was advised to go for medical treatment at Mumbai where he was operated for tumour twice. That thereafter the petitioner has sustained 40% permanent disability as alleged. The services of the petitioner came to be terminated on 15.04.2016 complying with the provisions of the ID Act and upon payment of all legal dues. It is the case of the petitioner that he has got the tumour because of the fall while on duty and therefore, he is entitled for compensation under the WC Act.

7. The sequence of events depicts that the petitioner filed the application for condonation of delay in W.C. Misc. Application No.12 of 2015 on 02.11.2015 seeking condonation of delay in filing application seeking compensation under the WC Act. This application was not accompanied by any substantive application

seeking compensation under the WC Act. That thereafter the petitioner filed the main application seeking compensation under the WC Act on 27.12.2016 after almost one year of filing of the application for condonation of delay. The said application for condonation of delay came to be rejected on the ground that the application for condonation of delay was filed without any accompanying application seeking compensation under the WC Act. It was held that the application for condonation of delay independent of any compensation application was not maintainable and accordingly, the same came to be rejected. That thereafter the petitioner filed another application for condonation of delay separately which was also rejected on the ground that a fresh application cannot be entertained since the learned Commissioner did not have the power to review his earlier orders as the new application was in the nature of review. Accordingly, the second application also came to be rejected. Both these orders are impugned herein.

8. In the facts of the present case, the alleged incident is of 14.11.2011 wherein it is alleged that the petitioner had slipped and had sustained injuries on his leg. The facts further reveal that the petitioner was detected with bone tumour and was

treated for the same. From 2012 to 2014, he had to be operated twice for the said tumour. Thereafter the petitioner was not in a position to resume his duties as a Helper and the services of the petitioner came to be terminated by the respondent company after following due procedure. The petitioner has filed the workmen's compensation application in the year 2016 after a period of more than 5 years alleging that the tumour was sustained because of the fall which had occurred during the course of his duty. The said contention is unsustainable. *Prima facie*, the medical treatment undergone by the petitioner cannot be said to be due to alleged incident of slipping and falling while on duty. It cannot be termed as an accident arising out of and in course of the employment as alleged. Though this Court sympathizes with the petitioner for the medical condition and the treatment he had to undergone, in the considered opinion of this Court, the incident of falling while on duty cannot be a reason for the medical condition of the petitioner.

9. Further, it is trite law that the delay and laches are one of the factors which is to be borne in mind while the High Court exercises its discretionary powers under Article 226 of the Constitution of India. However, in the present case, the delay is

not satisfactorily explained and there seems to be an attempt to subsequently invoke the provisions of the WC Act by linking the alleged incident with the medical condition of the petitioner.

10. In overall facts and circumstances of the present case and looking to the averments made in the workmen's compensation application as well as the incident as alleged to have happened on 14.11.2016, the present writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

KAUSHIK D. CHAUHAN

Sd/-  
**(ANIRUDDHA P. MAYEE, J.)**