

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**FAO (WC) No. 41/2022
CM Nos. 6126-6127/2022**

UT of J&K & Ors.

.... Petitioner/Appellant(s)

Through: - Mr.Ravinder Gupta, AAG with
Ms. Mehar Bali, Advocate

V/s

Balwinder Singh

.... Respondent(s)

Through: - Mr. Tarun Sharma, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

**ORDER
01.07.2026**

(ORAL)

1. This is an appeal under Section 30 of the Employees' Compensation Act, 1923 (for short, "the Act"), directed against the award dated 27.10.2021 passed by the Commissioner under the Employees' Compensation Act, 1923 (Assistant Labour Commissioner), Jammu (for short, "the Authority under the Act"). By the said award, the Authority allowed the claim preferred by the respondent, Balwinder Singh, who claimed to have been working as a driver/machine operator with the appellants on a monthly salary of ₹6,750/- and to have suffered injuries during the course of his employment. Consequently, the Authority directed the appellants to pay compensation amounting to ₹16,34,124/-. Aggrieved thereof, the appellants have preferred the present appeal.

2. Since the appeal has been filed beyond the prescribed period of limitation, the question of limitation is required to be considered at the outset. Admittedly, there is a delay of 269 days in preferring the present appeal.
3. Learned Additional Advocate General, Mr. Ravinder Gupta, appearing for the appellants, submitted that the delay in filing the appeal is neither deliberate nor mala fide, but has occurred solely on account of unavoidable administrative procedures, as is evident from the intra-departmental correspondence placed on record. According to him, the appellants have furnished a day-to-day explanation of the procedural steps undertaken for obtaining approval from the higher authorities as well as sanction for filing the appeal. He contended that the delay has, therefore, been sufficiently explained. It was further argued that since the appeal under Section 30 of the Act requires a mandatory statutory deposit, prior sanction from the competent authority was necessary and it was only after the requisite amount was sanctioned that the appellants were in a position to institute the appeal. Learned counsel further submitted that the award itself suffers from non-application of mind, inasmuch as the appellants had specifically pleaded before the Authority that the respondent was engaged only on a need basis and did not possess the status of a regular employee so as to maintain a claim under the Act. According to him, the Authority erroneously treated the respondent as an employee of the appellants, rendering the impugned award without jurisdiction and legally unsustainable.

4. Learned Additional Advocate General further submitted that the delay also deserves to be condoned in view of the orders passed by the Hon'ble Supreme Court extending the period of limitation during the COVID-19 pandemic. According to him, the appellants are entitled to the benefit of the said extension and have thus succeeded in establishing sufficient cause for condonation of delay. In support of his submissions, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *State of Nagaland versus Lipok AO & others* (Criminal Appeal No. 484 of 2005 arising out of SLP (Crl.) No. 4612 of 2003).
5. Per contra, learned counsel appearing for the respondent vehemently opposed the application for condonation of delay and submitted that the appeal is hopelessly barred by limitation, having been filed after a delay of more than 269 days. He argued that even if the explanation furnished by the appellants is accepted at its face value, namely that the delay occurred on account of official correspondence and that sanction to file the appeal was ultimately granted by the competent authority on 07.06.2022, the appellants have still failed to explain the further delay of more than three months thereafter in filing the appeal. According to him, such unexplained inaction is fatal, particularly when the appellants were fully aware of the statutory remedy available under the Act, which is a beneficial legislation and cannot be equated with remedies under ordinary civil law. Learned counsel further submitted that the memorandum of appeal does not even contain a whisper that the COVID-19 pandemic had prevented the appellants from pursuing the matter or communicating with the higher

authorities, except for a bare reference in paragraph 12 to the suo motu orders of the Hon'ble Supreme Court extending the period of limitation from 15.03.2020 to 28.02.2022. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in *State of Madhya Pradesh & others versus Bherulal* (Special Leave Petition (C) Diary No. 9217 of 2020) and the judgment dated 16.08.2021 passed by the Coordinate Bench of this Court in *Executive Engineer, PWD, Doda versus Ghulam Mohd. Ahtoo and another* (CON No. 26/2016 and IA No. 1/2016). Learned counsel lastly contended that since the Employees' Compensation Act is a welfare and beneficial legislation, the provisions relating to limitation must receive strict rather than liberal construction.

6. Heard learned counsel for the parties and perused the record.
7. Learned counsel for the appellant placed reliance upon the judgment of the Hon'ble Supreme Court rendered on 01.04.2005 in *State of Nagaland v. Lipok AO & Others* to contend that the expression "sufficient cause" ought to receive a liberal construction and be interpreted with a pragmatic, justice-oriented approach rather than by adopting a hyper-technical scrutiny requiring an explanation for every day's delay. In the said case, the appeal against acquittal had been filed with a delay of 57 days, which the High Court declined to condone. Setting aside the order of the High Court, the Hon'ble Supreme Court observed that insistence upon a strict standard in matters of limitation may, in appropriate cases, defeat the cause of public justice and encourage the skilful management of delay to

frustrate legal proceedings. The Court accordingly held that the refusal to condone the delay was not in accordance with law.

8. Per contra, learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court dated 15.10.2020 in *The State of Madhya Pradesh & Others v. Bherulal*, wherein the Court declined to condone an extraordinary delay of about eight years. It was held that the Department had failed to furnish any proper, acceptable or cogent explanation for the delay, except merely narrating the movement of files and mentioning various dates. The Hon'ble Supreme Court further observed that Government departments, being fully aware of the prescribed period of limitation and having the assistance of officers conversant with legal proceedings, cannot claim a different standard of limitation merely because the matter pertains to a Government Department.

9. Learned counsel further relied upon the judgment dated 05.06.2024 passed by a Coordinate Bench of this Court in *United India Insurance Company Limited v. Altaf Hussain Bhat & Others*, arising out of an award dated 29.02.2024 passed under the provisions of the Motor Vehicles Act, 1988. In that case, while considering an application seeking condonation of a delay of 70 days in filing the appeal, the Court held that the Insurance Company had failed to specifically disclose when the matter had been referred to its Regional Office at Chandigarh and when sanction for filing the appeal had been granted. Upon a closer scrutiny, the Court found the application to be cryptic in nature and devoid of any plausible or sufficient explanation warranting condonation of delay.

10. Reliance was also placed upon another decision of a Coordinate Bench of this Court dated 16.08.2021 in *Executive Engineer, PWD, Doda v. Ghulam Mohd. Ahtoo & Another*. In the said case, arising out of an award passed by the Assistant Labour Commissioner, Doda, the Court, following the principles laid down in *The State of Madhya Pradesh v. Bherulal* (supra), declined to condone the delay. The Department had sought condonation on the ground of administrative exigencies and the time consumed in obtaining the opinion of the Law Department, while asserting that the injured workman had been engaged through a contractor and had suffered 40% disability. The Coordinate Bench held that the explanation offered was casual, cryptic and wholly insufficient to constitute "sufficient cause" for condoning the delay, observing that Government departments cannot presume that the expression "sufficient cause" would invariably receive a liberal interpretation in their favour.
11. In the present case, the award was passed on 27.10.2021, and it is not the appellants' case that the award was rendered behind their back. The delay in filing the appeal has been sought to be condoned on the ground that the decision to challenge the award had to be taken by the higher authorities, due to which the file moved through various administrative levels, resulting in delay. Admittedly, there is a delay of 269 days in filing the appeal. Such an explanation cannot be accepted on its face value unless it is substantiated by cogent and convincing material.
12. In the application seeking condonation of delay, it has been averred that, initially, the appellants intended to comply with the award and

sought the release of funds for its satisfaction. For this purpose, the Office of the Executive Engineer, Mechanical Engineering Division, Doda, forwarded a copy of the award along with the brief case history to the Office of the Superintending Engineer, Mechanical Circle, Jammu, vide communication dated 09.11.2021, requesting administrative approval for the release of an amount of ₹16,34,124/- and seeking further necessary action.

13. The record reveals that the appellants had initially made sincere efforts to secure the requisite funds for satisfying the award. It was only in the year 2022 that the Senior Law Officer of the Public Works Department pointed out certain legal issues, whereupon the Executive Engineer, MED Doda, addressed a communication dated 02.05.2022 to the Chief Engineer, Jammu, recommending that the award be challenged. Thereafter, the Law Department accorded sanction vide Letter No. LAW-LIT7/391/2022-10 dated 07.06.2022. However, notwithstanding such sanction, the appellants have failed to explain why the appeal was not instituted until September 2022. Learned counsel for the appellants vehemently argued that the appeal could not be filed earlier as it was contingent upon the mandatory statutory deposit, for which prior financial sanction was required. According to the appellants, only after the requisite funds for the statutory deposit were sanctioned could the appeal be instituted.

14. Learned counsel for the appellants further submitted that the functioning of the Courts had been severely affected by the COVID-19 pandemic, thereby justifying the delay. Attractive though the submission may appear, a plain reading of the application for

condonation of delay shows that, from paragraphs 1 to 11, there is not even a whisper that the appeal could not be filed because the concerned officials were engaged in COVID-related duties or that the pandemic had prevented the processing of the matter. It is only in paragraph 12 that reliance has been placed upon the order passed by the Hon'ble Supreme Court in the suo motu proceedings extending the period of limitation from 15.03.2020 to 28.02.2022. The appellants appear to have merely invoked the benefit of the extension granted during the pandemic without specifically pleading that the circumstances arising from COVID-19 prevented them from filing the appeal. Nor is it their case that the officers involved in obtaining administrative approval or financial sanction were unable to process the matter because of the pandemic. Even assuming that a case for condonation of delay is made out, the appeal, on merits, does not disclose any sustainable ground warranting interference.

15. On merits, the appellants themselves admit that the respondent had been working with them as a driver for over ten years and was entrusted with the operation of heavy machinery. Yet, they seek to avoid liability by contending that his engagement was purely seasonal and did not confer any permanent status. This contention has been effectively rebutted by learned counsel for the respondent, who submitted that the respondent had been continuously working with the department and was being paid monthly wages of ₹6,750/- calculated at the rate of ₹225/- per day. The Authority under the Act, after appreciating the evidence, found that the respondent met with an accident while operating an excavator which overturned due to

imbalance, resulting in the amputation of his left leg below the knee and causing permanent disability of a severe nature. The Authority rightly assessed the disability with reference to the respondent's functional incapacity and concluded that, being a driver and machine operator by profession, he had suffered a 100% loss of earning capacity.

16. Learned counsel for the respondent further invited the attention of this Court to the provisions of the Act, which clearly extend the benefit of compensation even to employees engaged on a casual basis. It was further submitted that the respondent had continuously served the appellants for more than ten years and had even sought regularization of his services. Consequently, the plea raised by the appellants that the respondent was not entitled to compensation is wholly devoid of legal merit.
17. I have carefully examined the record of the Authority under the Act and find that the claimant was 42 years of age at the time of the accident. There is no dispute that he was employed as a driver.
18. Section 2(1)(l) of the Act defines "total disablement" to mean such temporary or permanent disablement as incapacitates an employee from performing all work which he was capable of performing at the time of the accident.
19. In the present case, the respondent suffered amputation of his left leg below the knee, an injury which effectively disqualifies him from operating heavy machinery. As a professional driver, the loss of his limb has rendered him completely unfit to pursue his vocation. Consequently, he has suffered total functional disability resulting in

complete loss of earning capacity. The Authority under the Act was, therefore, fully justified in assessing the loss of earning capacity at 100%. The respondent's income was correctly assessed on the basis of the wages actually being drawn by him, and compensation was computed accordingly. The Authority awarded compensation of ₹7,22,885/- and, keeping in view the mandate of Section 4-A (3) of the Act and the settled legal position, also awarded statutory interest besides directing payment of ₹6.50 lakhs towards medical expenses.

20. During the course of arguments, learned counsel for the appellants was unable to demonstrate that any finding recorded by the Authority under the Act was either perverse or suffered from any legal infirmity. The only contention advanced was that the respondent was merely a daily-rated worker. This Court has consistently held in several pronouncements that the description of an employee as seasonal, casual, or a daily wager is often a mere nomenclature adopted by the authorities and cannot be used to defeat the beneficial object of the legislation. Liability cannot be avoided at the cost of a workman who has suffered a disabling injury while performing duties under the control and supervision of the employer.
21. Having regard to the beneficial nature of the legislation, the appellants ought to have accepted and satisfied the award instead of challenging it on technical grounds, particularly when the challenge lacks any legal substance.
22. In view of the foregoing discussion, the delay in filing the appeal is condoned and the appeal is admitted for consideration on merits.

23. Having examined the matter on merits, this Court finds that the appellants have failed to raise any substantial question of law or point out any legal infirmity in the award passed by the Authority under the Act. The award is fully consistent with the provisions of law and warrants no interference. Accordingly, the appeal, being devoid of merit, is dismissed.
24. The Registry's report dated 27.02.2023 reflects that an amount of ₹16,95,000/- has been transmitted online by the Assistant Labour Commissioner, Jammu. Further, in terms of the order dated 04.11.2023 passed by this Court, 50% of the awarded amount has already been released in favour of the respondent. The balance amount, out of the total sum deposited at the time of filing the present time-barred appeal, shall now be released in favour of the respondent after due verification by the Registry.

(SANJAY PARIHAR)

JUDGE

JAMMU

01.07.2026

Sunita/Secretary

Whether the order is speaking.
Whether the order is reportable.

Yes
Yes