

FAO No. 4127 of 2015 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 4127 of 2015 (O&M)

Date of Decision: November 16, 2015

M/s S.R.M. Facility Management Private Ltd.

...Appellant

Versus

Shri Jile Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Sachin Mittal, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.13275-CII of 2015

Copies of acknowledgments with regard to deposit of the
awarded amount from the office of Commissioner, is taken on record.

Application stands allowed.

CM No.13276-CII of 2015

Prayer in this application is for condonation of the delay of
19 days in filing the appeal.

For the reasons mentioned in the application, which is
duly supported by the affidavit of Sh. V.P. Singh, HR Manager, M/s
S.R.M. Facility Management Pvt. Ltd., the same is allowed. Delay of
19 days in filing the appeal stands condoned.

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Challenge in this appeal is to the order passed by the Commissioner under the Workmen's Compensation Act, 1923, Circle-III, Gurgaon, dated 26.02.2015 allowing the application of the respondent-workman granting him compensation amounting to ₹54,792/- alongwith interest at the rate of 12% per annum from the date of accident i.e. 13.10.2010 upto the actual date of payment.

It is the contention of the learned counsel for the appellant that on the date of accident i.e. 13.10.2010, he was not performing his duty as a Field Officer as the time of the accident is around 7 AM, whereas, the duty time would start from the moment he enters the office and the normal office hours are 9.30 AM. The accident which has taken place, thus, cannot be stated to be during the service or performance of his official duty and thus, application itself was not maintainable. He also contends that as the respondent was covered under the ESI Act, 1948, the application under Section 22 of the Workmen's Compensation Act, 1923, is barred under Section 53 of the ESI Act, 1948. He, accordingly, contends that the impugned order passed by the Commissioner dated 26.02.2015 cannot sustain and deserves to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the impugned order but cannot accept what has been asserted by

him. As is apparent from the pleadings and the impugned award and not disputed by the counsel for the appellant, the respondent-workman was employed as a Field Officer. Field Officer, therefore, admittedly is to perform the duties in the field and for which, extensive travelling is involved. If that is so, it is not disputed that on the day when the accident took place, he would in normal course have attended to his duties. Having required to perform his duties in the field, the statement of the employee has to be accepted especially when there is no evidence to the contrary and the Commissioner has rightly proceeded to hold that the accident has taken place during performance of his duties.

As regards the submission of the learned counsel for the appellant that the respondent was covered under the ESI Act, 1948 and therefore, the application was barred under the said Act, suffice it to say that there is no evidence on record indicating that the respondent-workman was covered under the ESI Act, rather, to the contrary, the official who had appeared for the ESI has specifically stated on a query put by the Commissioner that the respondent was not covered under the ESI Act at the time of the accident and not entitled to any compensation for the said accident. There is nothing on record to indicate that this statement of the ESI Official is incorrect.

As regards the contention of the learned counsel for the

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appellant that the respondent-workman is not entitled to the compensation as he has claimed, the same also cannot be accepted as the Court has properly appreciated the evidence which has been brought on record and on considering the same, has passed the order which is in accordance with law and do no call for any interference of this Court.

The appeal, therefore, stands dismissed.

CM No.13277-CII of 2015

In view of the order passed in the main appeal, the present application for staying the disbursement of the awarded amount till the disposal of the appeal, has become infructuous.

Disposed of as such.

November 16, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**