

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

DATE OF DECISION: AUGUST 20, 2015

L & T General Insurance Company Limited, Mumbai

.....Appellant

VERSUS

Banto Devi and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. Sanjeev Goyal, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.14917 CII of 2015

Prayer in this application is for condonation of delay of 51 days
in refiling the appeal.

It is the contention of the applicant-appellant that the appeal was filed on 16.02.2015 and the same was returned by the Registry with certain objections on 18.02.2015. The Clerk of the counsel mixed the case file with the decided cases and on enquiry it was located on 11.06.2015 and refiled on the very next date i.e. 12.06.2015, which resulted in 51 days' delay in refiling the appeal. The said application is supported by an affidavit of the counsel.

In view of the above, the present application is allowed.

Delay of 51 days in refiling the appeal is condoned.

C.M. No.14918 CII of 2015

Prayer in this application is for condonation of delay of 30 days in filing the appeal. It has been asserted in the application that the order/award was passed by the Commissioner, Employee's Compensation Act, Circle Ambala on 17.11.2014. Counsel applied for the certified copy of the judgement on 08.12.2014, which was prepared on the same day and thereafter the opinion was received and sometime was spent in processing of file for filing the appeal, which resulted in a delay of 30 days. The application is supported by an affidavit of the authorised signatory of the Insurance Company.

For the reasons mentioned in the application, delay of 30 days in filing the appeal stands condoned.

The application stands allowed.

F.A.O. No.4845 of 2015

In this appeal, challenge is to the award/order dated 17.11.2014 passed by the Commissioner under the Employee's Compensation Act, Circle Ambala, vide which the application preferred by respondent Nos.1 to 4/applicants had been allowed and a compensation of ₹4,70,401/- (₹3,55,467/- as compensation and ₹1,14,934/- as interest) was awarded. It has further been ordered that the appellant-Insurance Company would be liable to pay further simple interest at the rate of 12% per annum on the amount of compensation from the date of order, if the same is not deposited within a period of 30 days.

It is the contention of counsel for the appellant that as per the claim application, Naib Singh, husband of applicant-respondent No.1 and

father of applicant-respondent Nos.2 to 4, was engaged/employed as an agricultural labour/helper/cleaner on Tractor No.HR-01-AC-4427 by Gurnam Singh, respondent No.5 herein. On 05.11.2011, Naib Singh alongwith Driver of the tractor had gone to New Anaj Mandi, Mullana to unload the crop for selling the same and while they were returning after unloading towards the residence of Gurnam Singh at about 9.30 p.m., because of jerk of the tractor, Naib Singh fell from the tractor and suffered multiple serious injuries. He was taken to M.M.Institute of Medical Science & Research, Mullana but as his health deteriorated, their family decided to shift him to a private hospital (Gaba Hospital). In the process of such shifting, he breathed his last. Because of he having died, he was taken back to his house and the cremation was done at his native village, for which an amount of ₹20,000/- was spent.

Counsel for the appellant contends that as a matter of fact no accident has taken place and it is only a concocted story as no D.D.R or any medical record has been produced. He, thus, contends that the basic facts being without any evidence on record, the same could not have been made the ground for granting the benefit. That apart, he submits that nothing has been produced on record, which would indicate that he was actually employed as a agricultural labour/helper/cleaner on the tractor with Gurnam Singh, respondent No.5. He submits that it is in connivance with Gurnam Singh that an application was filed before the Commissioner under the Employee's Compensation Act, Circle Ambala, in order to get compensation and a share out of it. He, on this basis, submits that the appeal deserves to be allowed by setting-aside the impugned order/award passed by the Commissioner under the Employee's Compensation Act.

Having considered the submissions made by counsel for the appellant and on going through the impugned order/award, this Court is of the opinion that the assertions of counsel for the appellant cannot be accepted.

There is no requirement under the Employee's Compensation Act with regard to there being any documentary proof with reference to employment and especially in the case where a person has been appointed as an agricultural labour/helper/cleaner on a tractor. In such a situation, reliance has to be placed on the oral evidence and the best person who could have given evidence in this regard could be his wife and children of the deceased as also the employer. Satpal, who appeared as AW2, has supported the claim application, who had informed Smt.Banto Devi, wife of the deceased, about the sad demise of her husband. Gurnam Singh, respondent No.5, has appeared as RW1 and has admitted that deceased Naib Singh was engaged/employed by him. In the cross-examination, he had stated that on the day of accident, he was driving the tractor and he was having a driving licence to drive the same. He further stated that deceased Naib Singh and Sat Pal were also on the tractor. Gurnam Singh, being the Driver of the tractor and Satpal, being also sitting on the tractor, were the eye witnesses to the occurrence. Their evidence has to be taken into consideration, especially when nothing has come out in the cross-examination, which would impinge upon their credibility. The death of the deceased Naib Singh having been proved during employment, the respondent-Insurance Company (appellant herein) cannot wash its hands from its liability, especially when it is not disputed that tractor was duly insured with it.

In view of the above, there is no merit in the present appeal and
the same stands dismissed.

**August 20, 2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**