

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

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First Appeal Order No.5574 of 2015 (O&M)
Date of Decision: December 15, 2015

M/s Cholamandalam M.S. General Insurance Company Ltd., Chandigarh

...Appellant

Versus

Harbhajan Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Vandanaa Malhotra, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.17450-CII of 2015

Prayer in this application is for condonation of delay of 60 days
in filing the appeal.

The reason assigned for the delay is that for the decision with
regard to the filing of the appeal, the file had gone through various channels
and in this process, there occurred certain delay. After receiving approval
for filing the appeal, the file was sent to the counsel and the present appeal
has been filed. This complete process has resulted in delay of 60 days in
filing the same.

For the reasons mentioned in the application, which is duly
supported by an affidavit, the present application is allowed.

Delay of 60 days in filing the appeal stands condoned.

FAO No.5574 of 2015

Challenge in this appeal is to the award dated 15.04.2015
passed by the Commissioner under Employees' Compensation Act-cum-
Assistant Labour Commissioner, Ferozepur, whereby the application

preferred by respondents 1 to 4, who are the legal heirs of deceased Shubeg Singh, has been allowed granting compensation amount of ₹7,13,960/- along with simple interest at the rate of 9% per annum from the date of accident till the date of realisation.

2. It is the contention of learned counsel for the appellant that the impugned award cannot be sustained in the light of the fact that the owner of the vehicle Harjit Singh has not been impleaded as a party-respondent. She contends that in the absence of the owner, the special power of attorney, who has been impleaded as a party, is not the correct party and since Harjit Singh has not appeared as a party-respondent and the vehicle which is owned by Harjit Singh was insured with the company, the Insurance Company cannot be held liable for the payment of compensation. She asserts that the interest which has been granted by the impugned award from the date of accident is not sustainable as the same should have been granted from the date of filing of the application for claim. She further contends that the accident which has taken place on 19.01.2011 was not reported to any police authority and the D.D.R. has only been recorded on 20.01.2012 which is one year after the accident and during the pendency of the claim petition which was filed in May, 2011 and, therefore, the accident itself is doubtful. She accordingly prays that the impugned award deserves to be set aside and the claim application of respondents 1 to 4 dismissed.

3. I have considered the submissions made by learned counsel for the appellant and with her able assistance, have gone through the impugned award but cannot accept any of these submissions.

4. The first assertion of the counsel for the appellant is that the owner of the vehicle has not been impleaded as a party-respondent. This

contention of learned counsel for the appellant cannot be accepted as it has specifically been mentioned in the memo of parties that Harjit Singh is the owner of the Trola make Tata No.RJ-142-G-9329 and his address is also mentioned and since there was a special power of attorney, who had been appointed with regard to any action pertainable to the said vehicle, Pawan Kumar has been impleaded as a party. Perusal of the award would further show that the Insurance Company which was also a respondent had not made any objection with regard to this aspect. In the light of the above, the said assertion of the counsel for the appellant cannot be accepted as the power of attorney has duly appeared before the Commissioner and had represented Harjit Singh, who is the owner of the vehicle.

5. As regards the contention of the counsel for the appellant that the interest should have been paid from the date of filing of the application and not from the date of accident, this contention of learned counsel for the appellant cannot be accepted in the light of the judgment of the Supreme Court passed in case titled as ***Saberabibi Yakubbbhai Shaikh and others Versus National Insurance Company Limited and others 2014 (1) RCR Civil 731***, where the Hon'ble Supreme Court has categorically and authoritatively held that the claimants are entitled to interest and compensation from the date of accident and not from the date of application or the award.

6. The contention of learned counsel for the appellant that the accident itself is a doubtful event, also cannot be accepted in the light of the fact that the owner of the vehicle through the power of attorney has admitted the factum of accident. Further the death certificate of deceased Shubeg Singh is dated 05.03.2011 Exhibit A-4, where the date of death is

mentioned as 19.01.2011. Even in the cross-examination, nothing could be extracted with regard to the cause of death of the deceased except for the accident.

7. Another contention has been raised by the counsel for the appellant at this stage that the wages, as has been asserted and assessed to be ₹8,000/- per month is on the higher side as the minimum wages at that relevant time was ₹5,000/- for the highly skilled work to which category the deceased belonged being a driver and thus, ₹5,000/- should have been taken as the monthly wages. This contention of learned counsel for the appellant again cannot be accepted as the minimum wages are the lowest wages which an employer is mandated to pay, there is no bar to any wages which is higher than the minimum wages fixed. The assertion of the claimants has been admitted by the owner of the vehicle through the power of attorney and, therefore, the said wages have been rightly accepted by the Commissioner. It would also not be out of way to mention here that the respondent-Insurance Company (appellant herein) had not produced any evidence to the contrary. The contention, thus, of the counsel for the appellant is rejected. The findings, thus, recorded by the Commissioner cannot be faulted with.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the stay application i.e. CM No.17451-CII of 2015, stands disposed of as infructuous.

December 15, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE