

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

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FAO No.1880 of 2012 (O&M)
Date of Decision: May 26, 2016

Misri Kumar and others

...Appellants

Versus

M/s High Tech. Drillers Pvt. Ltd., Ambala City and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Suri, Advocate
for the applicants-appellants.

Mr. Eklavya Darshi, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.7856-CII of 2012

Prayer in this application is for condonation of delay of 47 days in filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit of applicant-appellant No.1, the present application is allowed.

Delay of 47 days in filing the appeal stands condoned.

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Counsel for the appellants states that he has not yet received the address of respondent No.1, however, he asserted that the case may be heard on merits and decided in the light of the fact that the Insurance Company would also be jointly and severally liable along with employer-respondent No.1.

2. As per the request made by the counsel for the appellants which is not opposed by the counsel for respondent No.2, the appeal is taken up for consideration.

3. Counsel for the appellants contends that while passing the impugned order dated 31.05.2011, the Commissioner under the Workmen's Compensation Act, 1923, Ambala, has not taken into

consideration the fact that deceased-Raju Ram, who was employed with respondent No.1, had died during the course of his employment and, therefore, the claim was covered under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as W.C. Act). He, thus, contends that merely because the appellants have received compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as M.V. Act), they would not be disentitled to the claim under the W.C. Act, which is a different and distinct claim.

4. I have considered the submissions made by learned counsel for the appellants and with the assistance of the counsel for the parties, have gone through the impugned order but do not find any illegality in the same as the claim as put forth, could either have been made under the M.V. Act or the W.C. Act.

5. The appellants having availed of the remedy under the M.V. Act and having received the compensation as awarded by the Motor Accidents Claims Tribunal, Patiala, are not entitled to the claim as made under the W.C. Act. The Supreme Court in case *National Insurance Company Limited Versus Hari Singh and others* 2010 ACJ 2107 has held that the compensation can be claimed by the claimants either under the M.V Act or under the W.C. Act. Having exercised the choice by the appellants under the M.V. Act, they are not entitled to the benefit under the W.C. Act. The impugned order, being in accordance with law, therefore, is upheld.

6. The appeal stands dismissed.

May 26, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE