

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

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CM No.6753-6755-CII of 2016
FAO No.1788 of 2016 (O&M)

Date of Decision: November 18, 2016

M/s Kundanmal Mukammal Traders Private Limited, Jaipur

...Appellant

Versus

Smt. Jaibuna and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kawaljyot Singh, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in CM No.6754-CII of 2016 is for condonation of delay
of 96 days in filing the appeal.

The reason primarily which has been projected in the application for condonation of delay is that the order has been passed *ex parte* but a perusal of the said application would show that as a matter of fact, the counsel was engaged and she appeared on behalf of the applicant-appellant initially and thereafter absented herself. Because of non-appearance on the part of the counsel for the applicant-appellant, the *ex parte* order was passed. The plea, therefore, as is being sought to be taken for the delay in filing the appeal, cannot be accepted as there has apparently been total negligent and lethargic approach on the part of the applicant-appellant in pursuing the case in protecting its right before the competent authority.

However, the case has also been considered on merits on the insistence of the counsel for the applicant-appellant and what has been challenged in the present appeal is the order dated 09.10.2015 by which

penalty has been imposed by the Commissioner under The Workmen's Compensation Act, 1923, Circle-III, Gurgaon, holding the applicant-appellant liable for penalty to the extent of 50% of the compensation amount of ₹8,96,000/- which comes to ₹4,48,000/-. The applicant-appellant has also been held liable to pay interest at the rate of 10% per annum from the date of the order till the date of actual payment.

It is the contention of learned counsel for the applicant-appellant that in the award dated 23.01.2015 (Annexure P-1) passed by the Commissioner under the Employee's Compensation Act, 1923, Circle-III, Gurgaon, the factum of deceased-Arif being an employee of the applicant-appellant was denied. He contends that there has not been any documentary evidence produced by the claimants on the basis of which it could be said that he was an employee of the applicant-appellant. He, thus, contends that since there was a dispute with regard to the deceased being an employee of the applicant-appellant, penalty as imposed, could not have been so ordered by the Commissioner.

This contention of learned counsel for the applicant-appellant cannot be accepted as the best evidence available with the applicant-appellant with regard to the employment of deceased-Arif would have been the payroll and the employment register which was not produced before the Commissioner. The nail in the coffin is the statement of AW-1 Saddam Hussain, who was the driver of the truck, on which deceased-Arif was cleaner, where he had categorically stated that Arif was cleaner on truck No.RJ-14/GB-9864. The evidence which has been led and especially the statement of AW-1 Saddam Hussain, driver of the vehicle,

has gone un rebutted. He being the co-worker of deceased-Arif clearly established that deceased-Arif was an employee of the applicant-appellant.

In the light of the above, the assertion of the counsel for the applicant-appellant that there was a dispute with regard to the relationship of the employer-employee, cannot be said to be *bona fide* and in fact, it is a *mala fide* action on the part of the applicant-appellant in taking such a stand, especially when it has not produced the documentary evidence which was in their possession which could have established that Arif was not the employee of the applicant-appellant. The present appeal also, therefore, lacks *bona fides* and it appears to be an effort on the part of the applicant-appellant to overreach the Court. It is a fit case where costs should be imposed, however, taking a lenient view, the Court refrains from passing such an order.

The appeal, therefore, both on the question of delay and merit, is dismissed.

In the light of the dismissal of the appeal, pending applications stand disposed of as infructuous.

November 18, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No