

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

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FAO No.422 of 2016 (O&M)
Date of Decision: February 10, 2016

Puneet Goyal (Proprietor) Om Institute, Hisar and another

...Appellants

Versus

Maan Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Bhupinder Singh Bairagi, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.1277-CII of 2016

Prayer in this application is for condonation of delay of 67 days
in filing the appeal.

The reason which has been given is that because of the family
problem, the appellant could not file the present appeal and he was wrongly
advised that the period for filing the appeal is 90 days. Under a *bona fide*
belief that the period of limitation is 90 days, he had proceeded accordingly,
whereas the period of filing an appeal is 30 days which has resulted in delay
of 67 days in filing the appeal. Counsel contends that the delay is neither
deliberate nor intentional or with any *mala fide* intention but because of the
genuine problem which was being faced by the appellant.

For the reasons mentioned in the application which is duly
supported by the affidavit of the applicant-appellant, the present application
is allowed.

Delay of 67 days in filing the appeal stands condoned.

FAO No.422 of 2016

Challenge in this appeal is to the order dated 15.09.2015 passed by the Commissioner under the Employee's Compensation Act, 1923 at Hisar, whereby the compensation to the tune of ₹93,528/- along with interest at the rate of 12% per annum from 30.01.2013 upto the date of actual payment.

2. It is the contention of learned counsel for the appellants that respondent-Maan Singh was not employed by the appellants, rather he was engaged by a contractor, who was given the construction/repair work of the building. It is in the said process of maintenance that the respondent received injuries of which treatment was got done by the contractor Shri Manjit Singh, who was engaged by the appellants, although the payment was made by the appellants of the charges which were incurred in the said treatment. He contends that the contractor has not been impleaded as a party and, therefore, the application for compensation itself would not be maintainable. In any case, he contends that the amount, as has been assessed by the Commissioner, is on the higher side which cannot sustain. He, thus contends that the impugned order be set aside and the application of the respondent-claimant be dismissed. He has placed reliance upon the judgment of the Supreme Court in *Om Parkash Batish Versus Ranjit @ Ranbir Kaur and others 2008(2) S.C.T. 744* to contend that the respondent-claimant would not be covered within the definition of a workman and he does not fulfil the mandate of the said judgment and, therefore, not entitled to the claim as he was not engaged by the appellants, rather it was the contractor, who had appointed him.

3. I have considered the submissions made by learned counsel for

the appellants and with his able assistance, have gone through the impugned order and also the judgment of the Supreme Court on which reliance has been placed but do not find any merit in the assertions of the counsel.

4. Even if the argument on the facts, as has been asserted by the appellants, is accepted, it is an admitted position that no contract has been placed on record with regard to the fact that there was indeed any such agreement/contract between the appellants and the alleged contractor Manjit Singh for construction/maintenance of the building. The facts as admitted by the appellants are that the accident had taken place at the site which was of the appellant and the respondent-claimant was performing the work of construction and maintenance of the building. The liability, therefore, on this basis has rightly been imposed upon the appellants and, thus, even if Manjit Singh, contractor is not impleaded as a party-respondent to the application, the same would not make any difference. It may not be out of way to mention here that as per the assertion of the respondent-applicant-claimant, he was working with the appellants and in fact the inquiry report of the Assistant Director, Industrial Safety and Health, Hisar, Exhibit AW-1 and AW-2 clearly point out the fact with regard to the accident having taken place in the premises of the appellants and that the respondent was engaged for the said purpose of construction/maintenance of the building of the appellants. The compensation, as has been assessed by the Commissioner, is as per the provisions and Schedule provided for under the Employee's Compensation Act, 1923. The same having been done in accordance with the statute and granting the benefit to the respondent accordingly, cannot be faulted with.

5. The judgment on which reliance has been placed by the counsel

for the appellants i.e. *Om Parkash Batish's case (supra)* is distinguishable in the facts of the present case as in that case it was a question with regard to the employee having been appointed through contractor and in the present case, there is no evidence on record which would indicate that indeed contractor has been engaged for performing the construction and maintenance of the building. The said judgment, therefore, would not be applicable to the case in hand.

6. There is no illegality in the order passed by the Commissioner under the Employee's Compensation Act, 1923 at Hisar.

7. The appeal, therefore, stands, dismissed.

8. In the light of the dismissal of the appeal, the application for stay i.e. CM No.1278-CII of 2016, stands disposed of as infructuous.

February 10, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE