

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

**FAO No.6205 of 2012 (O&M)
Decided on : 06.03.2017**

Union of India

... Appellant

Versus

Suman Kumari and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Nitin Kumar, Advocate
for the appellant.

Mr. R.S. Malhotra, Advocate
for the respondents.

G.S. Sandhawalia, J. (Oral)

CM-29393-CII-2012

The present application has been filed for condoning the delay of 657 days in filing the present appeal.

In view of the averments made in the application, duly supported by the affidavit, the same is allowed. The delay of 657 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The challenge in the present appeal by the Union of India under Section 30 of the Workmen Compensation Act, 1923 is against the order dated 29.10.2010 passed by the Commissioner, Amritsar.

Vide the said order, a sum of ₹3,79,120/- was awarded as compensation, on account of the death of Rakesh Kumar who was stated to be working as a Sweeper (Safai Sewak) and doing duty at Amritsar Railway Station.

On notice being issued by the Commissioner, Smt. Santosh Paul, Head Clerk, DMR Office appeared, but she did not appear on subsequent dates and, accordingly, ex parte proceedings were directed and the impugned order was passed.

An application was filed on 07.04.2011, thereafter, to review the ex parte order and it was rejected by the Commissioner on 17.08.2012 on the ground that it was not competent to review the order.

It is to be noticed that in the application under Order 9 Rule 13 CPC, it has been specifically mentioned that the said official did not give any information regarding the proceedings pending before the Commissioner to the competent authority of the Northern Railway. For that reasons she had been charge-sheeted after acquiring the knowledge of the ex parte proceedings and the ex parte order as such.

The plea taken in the reply to the application by the claimants was that the said lady was the Head Clerk of DRM Office and representative of Railways and she was handling the concerned seat relating to compensation and her appearance cannot be discarded.

It is not disputed that no reply as such was thus filed against the claim application. The case of the appellants is that the said death did not take place during and arising out of the course of the employment and, therefore, the amount is not liable to be paid.

Vide order dated 06.02.2013 of this Court, the amount which was deposited with the Commissioner was ordered to be disbursed to the claimants, subject to furnishing of adequate security.

It has been further averred in the application under Order 9 Rule 13 CPC that death-cum-gratuity as a special compensation amounting to ₹1,20,092/- was also paid to the respondent No.1 on 13.01.2010 and this fact was concealed. Apart from that family pension has also been paid @₹3,940/- per month plus dearness allowance etc. It has been further averred that compassionate appointment to the wife of the deceased was also given as a Safaiwali and, therefore, all these relevant factors were never brought before the Commissioner.

Resultantly, keeping in view the above facts, this Court is of the opinion that the interest of the family of the deceased has been adequately redressed by the employer and no prejudice will be caused if the matter is decided on the merits afresh. The Commissioner will have to keep in view all these above factors and thus come to the conclusion whether any amount is payable under the provisions of the Act. The application for additional evidence which has now been filed to prove all these facts and whether the accident happened during and arising out of the course of the employment would be disputed questions as such and, therefore, it would be appropriate, if they are redressed after taking into account evidence which can be produced before the Commissioner.

Resultantly, the present appeal is allowed. The impugned order passed by the Commissioner dated 29.10.2010 and 17.08.2012 are set aside. The parties shall appear before the Commissioner, Amritsar on 24.04.2017. The Commissioner shall take steps to dispose off the

proceedings by 31.03.2018. However, till the disposal of the proceedings, the amount paid to the claimants, shall not be recovered by the appellant and shall abide by the final decision of the Commissioner.

MARCH 06, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No