

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

**FAO No. 5612 of 2017 (O&M)
Date of Decision: 08.11.2017**

National Insurance Company Limited, Gurgaon

..... Appellant

Versus

Smt. Arshida and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Om Pal Sharma, Advocate
for the appellant.

JASWANT SINGH, J. (ORAL)

CM No. 18412-CII of 2017

Present application, moved by the applicant-appellant under Section 5 of the Limitation Act, is for condonation of delay of twenty-nine (29) days in filing the appeal.

For the reasons stated in the application, duly supported by the affidavit, the same is allowed and the delay of twenty-nine (29) days in filing the appeal is condoned.

MAIN CASE

National Insurance Company is in appeal assailing the order dated 05.05.2017 passed by the Commissioner, Employee's Compensation Act, Gurgaon, whereby compensation to the tune of ₹ 6,50,730/- as principal amount **plus** ₹ 5,000/- towards funeral expenses **plus** ₹ 78,088/- towards interest have been granted to the claimants (contesting respondent Nos. 1 to 3 herein) and the appellant-Insurance Company has been held

vicariously liable.

The claimant i.e. Smt. Arshida (respondent No. 1) is the widow, Smt. Akhtari and Sh. Harun (respondent Nos 2 & 3, respectively) are the parents of the deceased-employee (Shahid). The case of the claimants is that Shahid was employed as Cleaner on the truck bearing Registration No. HR-55/J-2118 owned by Smt. Kamal Jeet Kaur @ Kawal Jeet Kaur (*pro forma* respondent No. 4 herein) and insured by the appellant-National Insurance Company. The truck was being driven by Sh. Samsudeen (PW-1), accompanied by Shahid (Cleaner) on their trip to Madhya Pradesh, when it met with an accident at District Sivani (MP) on 04.08.2015, resulting into death of Shahid, in the course of employment. The deceased-Shahid was 25 years of age and was stated to be getting a salary of Rs. 9,000/- per month and expenses @ Rs. 200/- per day. The owner of the truck was proceeded *ex parte*, while appellant-Insurance Company filed its written statement, denying the relationship of employer and employee between the owner of the truck and the deceased-Shahid, allegedly employed as Cleaner. On evaluation of the evidence adduced by both the parties, learned Commissioner, Employee's Compensation Act, Circle-3, Gurgaon, held that there did exist a relationship of employer and employee and accident had occurred during the course of employment of the deceased-Shahid, hence the Insurance Company was liable to pay the compensation.

Learned counsel for the appellant has vehemently stressed on the fact that there was no documentary proof led to show that the deceased-Shahid was employed as a Cleaner on the truck and, therefore,

finding of employer and employee relationship is perverse and liable to be set aside.

After hearing learned counsel for the appellant, this Court is not persuaded to agree with the arguments raised on behalf of the appellant-Insurance Company.

Apart from Smt. Arshida, the widow of deceased-Shahid, while appearing as PW-2, asserting that her husband was employed as a Cleaner on the truck, the driver/eye-witness-Samsudeen has appeared as PW-1 and specifically stated that the deceased-Shahid was employed as Cleaner since last 7-8 months and was accompanying the truck as a Cleaner when it met with the accident. The oral evidence was duly substantiated by the documentary evidence and the Insurance Company merely on the basis of the report of the Investigator that the deceased-Shahid obtained from the owner of the truck to the effect that he was not employed as Cleaner, could not disprove the fact that there existed an employer and employee relationship. The learned Commissioner, Gurgaon, while deciding the said issue has held as under:-

“ The respondent No. 2 could not rebut statement of PW-1 who witnessed the accident and lodged the FIR with the police, could not rebut the statement of applicant as PW-2 and could not rebut the documentary evidence such as FIR as Ex. A-1, Final report Ex. A-2, report u/s 174 crpc as Ex. A-3, PMR as Ex. A-4, letter for postmortem as Ex. A-5, x-ray report Ex. A-6, crime detail form Ex. A-7, seizure memo Ex. A-8 to A-9, mechanical inspection report Ex. A-10, Panchayatnama Ex. A-11, site plan Ex. A-12, other documents including statements Ex. A-13 to Ex. A-22, RC of vehicle as Mark A', fitness Mark B' pollution Mark C' insurance Mark D' permit Mark E

and Mark F, from which it is duly proved that the deceased Shahid was employed as cleaner on vehicle bearing No. HR-55/J-2118 owned by respondent no. 1 and he met with an accident on 4-8-15 while after standing their truck on the side of road and while they were checking their truck, the truck got hit from another truck and moved due to which Shahid got pressed under the tyres and died on the spot during and out of the course of his employment with respondent No. 1.

Now the onus was shifted upon the respondent no. 2 to prove that the deceased has not met with the accident during their course of employment with respondent no. 1 but met with the accident otherwise. The respondent no. 1 neither come forward nor could lead any evidence to deny the employment of deceased as cleaner on his truck. The respondent No. 2 could not deny the fact of owning of vehicle No. HR-55-J-2118 by respondent no. 1 and could not deny the fact of driver of the vehicle namely Samsudeen who was present at the time of accident. The respondent no. 2 could not explain why their investigator witness RW-2 during his investigation, has not examined the driver namely Samsudeen who was driver on the said vehicle No. HR-55-J-2118 and who witnessed the accident and who lodged the FIR with the police. They could not explain why their investigator has not visited the site of accident and has not conducted enquiry from the concerned police station. The respondent no. 2 could not explain why the deceased was present at the site of accident if he was not employed on the said truck. The respondent no. 2 could not explain why the applicants have figured the respondent no. 1 as employer of the deceased. The respondent No. 2 could not explain how the applicants came to know about ownership of the alleged vehicle by respondent no. 1. The

respondent No. 2 could not prove any malice or enmity on the part of applicants. Non-explanation of these all facts doubts the stand of respondent No. 2. The respondent no. 2 has failed to discharge their onus. As such the investigation report cannot be relied upon. Therefore, it can be inferred that the investigation report has been prepared by the respondent no. 2 only to avoid their liability. I hold accordingly. ”

In view of aforesaid reasoning, no ground for interference is made out in the present appeal and, therefore, the same is dismissed.

November 08, 2017
'dk kamra'

(JASWANT SINGH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>