

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

Date of decision: 01.05.2019

FAO No.5350 of 2014 (O&M)

Ashok Kumar

... Appellant

Versus

M/s Manu Gas Services and another

... Respondents

FAO No.8630 of 2015 (O&M)

M/s Manu Gas Services and another

... Appellants

Versus

Ashok Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Baldev S. Dhillon, Advocate
for the claimant.

Mr. Vipin Pal Yadav, Advocate
for the respondents in FAO No.5350 of 2014
for the appellants in FAO No.8630 of 2015.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5350 of 2014 and 8630 of 2015 as these have emerged out of the same order dated 14.08.2012 passed by the Commissioner, Kurukshetra, under the Workmen's Compensation Act, 1923.

FAO No.5350 of 2014 has been filed by the injured victim (hereinafter referred to as 'the claimant') whereas the other appeal has been

preferred by the employer of the claimant (hereinafter referred to as 'the appellants').

FAO No.8630 of 2015

Along with the appeal, appellants have filed application (CM No.27227-CII of 2015) under Section 5 read with Section 14 of the Limitation Act and Section 151 CPC for condoning delay of 1113 days in filing the appeal.

Counsel for the applicant-appellants, in line with the averments raised in the application would argue that as the applicants filed Civil Writ Petition bearing No.6254 of 2013 to impugn order dated 14.08.2012 and the same was dismissed being not maintainable vide order dated 23.07.2015, the period during which the applicants were pursuing their remedy in writ proceedings is liable to be excluded for computing period of limitation in filing the appeal. Another submission made by counsel is that delay in filing the appeal is neither intentional nor mala fide, therefore, the appeal may be heard on merits and the applicants should not be made to suffer on technical considerations.

Counsel representing the respondent/claimant has seriously opposed the application for condoning huge delay of approximately 4 years. It is argued that against order of August, 2012, CWP No.6254 of 2013 was filed in July, 2013 after waiting for a period of one year. It is further argued that the applicants intentionally filed writ petition so that they are saved from the rigors of Section 30 of the Employees

Compensation Act, 1923 (in short 'the Act') that obligates the respondents before the Commissioner to deposit the amount of compensation along with interest etc. before maintaining an appeal to challenge the award. It is argued with vehemence that neither the applicants paid compensation to the claimant within the stipulated period of 30 days nor did they deposit the complete amount till filing of the present appeal in the year 2015 and the claimant has been deprived of compensation for a long time in respect of an occurrence that took place way back in January, 2010.

I have heard counsel for the applicants, perused the averments in the application supported by an affidavit of Manoj Kumar, Managing Director, M/s Manu Gas Services, Jind Road, Mata Gate, Rohtak.

Counsel for the applicants has not denied that CWP No.6254 of 2013 was filed after about one year of passing of the impugned order dated 14.08.2012. The applicants availed the services of an Advocate for filing the writ petition before this Court. It is difficult to accept that the applicants or their counsel in the writ petition was not aware that order passed by the Commissioner is amenable to challenge in appeal in compliance with the provisions of the Act and to maintain an appeal under the Act, the applicants would be obligated to deposit the amount of compensation along with interest etc. The applicants preferred the writ petition without depositing any amount but they were directed to deposit 50% of compensation at the time of notice of motion and the same was deposited by them. There is no explanation in the application as to why the

applicants consumed almost one year in filing the writ petition before this Court. They cannot seek exclusion of that time for the purpose of computing limitation in filing the appeal. The writ petition was dismissed as non-maintainable vide order dated 23.07.2015 but the instant appeal was filed in November, 2015 more than 3 months after dismissal of the writ petition. There is no explanation to constitute sufficient cause for delay of about one year prior to filing of the writ petition and of more than three months since the writ petition was dismissed on 23.07.2015. In the circumstances, it can safely be held that the applicants have failed to prove that there are sufficient grounds for condoning inordinate delay of 1113 days in filing the appeal. Accordingly, the application for condonation of delay is dismissed. As a natural corollary, the appeal is dismissed being barred by limitation.

FAO No.5350 of 2014

The sole submission made by counsel for the claimant is that the Commissioner has awarded interest @ 12% per annum, statutorily provided w.e.f. the date of filing of petition i.e. 06.08.2010 in place of w.e.f. the date of occurrence i.e. 01.01.2010. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Oriental Insurance Company Ltd. Vs. Siby George, 2012(4) RCR (Civil) 617**. It is further argued that since the provisions of the Employees Compensation Act, 1923 (in short 'the Act') are benevolent social legislation, the same are required to be construed liberally in favour of the workman in order to compensate the

injured victim or family of the deceased employee.

Counsel for the respondents is not in a position to refute contention of the claimant when examined in the light of judgment in **Siby George's case (supra)**.

Perusal of the impugned order would reveal that the Commissioner has not assigned any reason for denying interest from the date of occurrence. The application for compensation was filed in August, 2010 and the same was decided in August, 2012. There is nothing on record suggestive of the fact that delay in decision of application is attributable to the claimant. As per provisions in the Act, the employer is obligated to pay compensation within 30 days from the date of occurrence which the respondents failed to comply with. In this view of the matter, contention raised by the claimant for payment of interest from the date of occurrence is meritorious and accordingly accepted. The claimant shall be entitle to interest @ 12% per annum on the amount of Rs.4,27,603/- from the date of occurrence till realization, except for the period of delay of 501 days in filing the appeal.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

01.05.2019

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No