

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 72/2022**

Date of Decision: 24.03.2023

IN THE MATTER OF:

ASHOK KUMAR

..... Appellant

Through: Ms. Kamlesh Kr. Mishra, Ms. Renu,
Mr. Akhil Rexwal, Ms. Shivani Verma, Mr.
Kailash kr. Jha and Mr. Aditya, Advocates

Versus

M S PANEX OVERSEAS & ANR.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

CM APPL. 14152/2022 & CM APPL. 19916/2022 (delay)

1. The present applications have been filed under Section 5 of the Limitation Act on behalf of the appellant seeking condonation of delay in filing the present appeal.
2. Learned counsel for the appellant submits the appellant is a poor workman and has been in financial difficulty which caused delay in him approaching the advocate for filing the present appeal. He further submits that vide a reply dated 01.10.2018 to the RTI filed by the appellant, the appellant came to know that the said application was disposed of vide order dated 20.04.2017. He also submits that owing to the old age of the appellant, the present appeal was filed for the first time

on 10.12.2019 but the same had some defects which could not be cured and the appeal could not be filed timely due to COVID-19 pandemic.

3. This Court takes note of the fact that, vide order dated 23.09.2021 passed in Suo Motu Writ Petition (Civil) No. 3 of 2020 titled as In Re: Cognizance for Extension of Limitation, the Supreme Court has directed that for computing the period of limitation in suit, appeal, application or proceedings, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Considering the facts and circumstances of the case, the applications are allowed and the delay is condoned.

4. In view of the aforementioned submissions and circumstances, the applications are disposed of.

FAO 72/2022

1. The appellant has preferred the present appeal under Section 30 of the Employees Compensation Act, 1923 read with Article 227 of the Constitution of India being dissatisfied with the dismissal of his claim application vide order dated 20.04.2017 and 22.09.2016 passed by the learned Commissioner, Employee's Compensation.

2. The facts in nutshell are that the appellant had claimed that he was employed as a workman with the respondents as an embroidery master for about 2 ½ years. It was claimed that on 04.03.2015, while coming to the workplace, he met with an accident on the way as a result of which he suffered injuries. The records reveal that the earlier claim application filed by the appellant was dismissed as withdrawn on 03.03.2016 with liberty to file the same afresh. A subsequent claim application also came to be dismissed on 22.09.2016. The claimant having been covered under the ESIC, 1948 with Insurance No.2014783308 was held to be not entitled to seek compensation under the Workmen Compensation Act.

The appellant filed a third application which also came to be dismissed on 20.04.2017 wherein, while noting the aforesaid facts, the learned Commissioner also noted that the claimant had filed claim application before the Motor Accident Claim Tribunal, Saket Court, New Delhi. Dissatisfied with the above order, the claimant preferred a restoration application which was also dismissed on 20.04.2017.

3. From a reading of the impugned order, it appears that in one of the proceedings noted above, the respondent had filed evidence by way of an affidavit thereby stating that the appellant was covered under ESIC with Insurance No.2014783308 S. No. ESICSDSLDETIGO 1501095. It was further stated that the appellant had also filed a claim before the Motor Accident Claims Tribunal for the same accident. A plain reading of Section 53 of The Employees' State Insurance Act, 1948 would show that the insured person or his dependants are not entitled to seek compensation under the Workmen's Compensation Act, 1923 (now Employees Compensation Act, 1923). The provision reads as under:-

“53. Bar against receiving or recovery of compensation or damages under any other law - An insured person or his dependents shall not be entitled to receive or recover, whether from the employer of the insured person or from any other person, any compensation or damages under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force or otherwise, in respect of an employment injury sustained by the insured person as an employee under this Act.”

4. In this regard, note is also taken of Section 167 of The Motor Vehicles Act, 1988 which reads as under:-

“167. Option regarding claims for compensation in certain cases. - Notwithstanding anything contained in the Workmen's

Compensation Act, 1923 (8 of 1923), where the death of, or bodily injury to, any person gives rise to a claim for compensation under this Act and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both."

5. A plain reading of the above Sections would show that the appellant has option to seek compensation either under the Workmen's Compensation Act or The Motor Vehicles Act. Section 53 of the ESIC Act clearly lays down that in case of an employment injury sustained by the workman under the ESIC Act, he is barred from seeking remedy for compensation or damages either under the Workmen's Compensation Act or any other law for the time being in force or otherwise.

6. Keeping in view the above, this Court finds no ground to entertain the present appeal. The impugned order is upheld and the present appeal is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 24, 2023
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