

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.2787-CII of 2024 in/and
FAO No.772 of 2024 (O&M)
Date of decision : 18.09.2024

New India Assurance Company LimitedAppellant

Versus

Arshad Khan and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rahul Pathania, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

CM No.2787-CII of 2024

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 67 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 67 days in filing the instant appeal is hereby condoned.

FAO No.772 of 2024 (O&M)

Insurance Company is in appeal against award dated 4th of September, 2023 passed by Commissioner under the Employee's

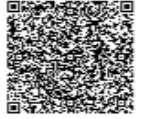


Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923') whereby the claim petition filed by the claimant stands allowed.

2. Claimant filed claim application seeking compensation on account of injuries suffered by him while working as Conductor on the insured vehicle. It was pleaded by the claimant that on 7th of August, 2017 while he was travelling in vehicle bearing No.UP-13-AT-1764 as conductor along with driver Javed son of Jamil, a *Nilgai* came in front of the vehicle. Driver applied sudden breaks which led to the accident. The claimant received injuries. He remained hospitalized and had to spend more than three lacs on his treatment, medicine and special diet etc.

3. Commissioner allowed the claim application holding the claimant entitled for a compensation of Rs.2,25,372/- along with interest @ 12% per annum from the date of accident till order. Commissioner ordered release of compensation within 60 days. It was further held by the Commissioner that since respondent No.2 was holding a valid driving licence and there was no violation of the terms of the insurance policy, insured was entitled to be indemnified by the insurer.

4. Counsel for the appellant while assailing the impugned order submits that the Commissioner wrongly held insured to be an employee in the absence of any documentary evidence to prove employer-employee relationship. The Commissioner after analysing the evidence held that the first version w.r.t. the accident was recorded in DDR Exhibit P-3. It clearly mentioned that the claimant was employed on the said vehicle on the date of



accident. The version was reiterated by the claimant in his statement while appearing as PW-1. The only witness who appeared on behalf of the respondents, RW-1 did not say anything denying the relationship of employer-employee.

5. The evidence led by the claimant having gone un-rebutted, the relationship was proved. Section 2(dd) of the Act of 1923 defines 'employee'. The same reads as under:

“2. [(dd) “employee” means a person, who is—

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other member of the crew of a ship,

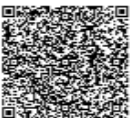
(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]”



6. Evidently, in order to prove employer-employee relationship there is no need of any documentary evidence. Contract of employment can be oral or in writing. The same may be expressed or implied. The fact of the claimant having received injuries in the accident, is evident from the records of the case. The injuries have been proved. The initial version w.r.t. accident stands proved as Exhibit P-3. In the said version, the claimant has been recorded being one employed on the vehicle. The employee discharged initial burden while testifying as PW-1. Thus, after the claimant discharged initial onus, it shifted on the respondents to rebut the same. The insurer as well as the insured having failed to rebut the evidence brought on record by the claimant, there is no reason to interfere in a well reasoned award passed by the Commissioner.

7. In view of above, the present appeal is dismissed.

8. Pending application, if any, shall also stand disposed off.

September 18, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No