



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-8787-CII-2024 in/and
FAO No.2343 of 2024 (O&M)
Date of decision : 09.12.2024

United India Insurance Company LimitedAppellant

Versus

Santosh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Maninder Arora, Advocate
for the applicant/appellant.

PANKAJ JAIN, J. (ORAL)

CM-8787-CII-2024

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 380 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 380 days in filing the instant appeal is hereby condoned.

FAO No.2343 of 2024

Insurer is in appeal aggrieved of the order dated 28.04.2023 passed by the Commissioner under the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act of 1923) allowing the claim petition filed



by the claimants who died during the course of employment.

2. Claim petition was filed by the claimants, pleading that Narender was working under employment of respondent No.1 as driver on a monthly salary of Rs.15,000/-. It was claimed that respondent No.1 used to take long and excessive duty, due to which deceased could not take proper rest and sleep. After performing long distance journey from 05.01.2018 to 07.01.2018, deceased slept in cabin of the truck and in the morning of 08.01.2018 he was found dead. Claimant claimed that deceased died due to heart attack on account of stress and strain of work during employment.

3. The relationship is not disputed.

4. The only argument raised is that since deceased died of heart attack, it is a case of natural death and the same would not be covered in an accident arising out of and during the course of employment.

5. I have heard counsel for the appellant and have gone through records of the case.

6. The precise issue arose before this Court in FAO No.4014 of 2024 decided vide judgment dated 30th of August, 2024 relying upon ratio of law laid down by Supreme Court in the case of **Smt. Dariyao Kanwar & others vs. M/s. United India Insurance Co. Ltd and another, 2023 AIR Supreme Court 4161**. This Court held as under :

6. ...The extent of liability of employer is governed by provision as contained under Section 3 of the Employees Compensation Act, 1923 which reads as under:-

“3. Employer's liability for compensation.- (1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment,



his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable --

- (a) in respect of any injury which does not result in the total or partial disablement of the *[employee] for a period exceeding three days;
- (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—
 - (i) the *[employee] having been at the time thereof under the influence of drink or drugs, or (ii) the wilful disobedience of the *[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of *[employees], or (iii) the wilful removal or disregard by the *[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of *[employee],
- (c) Omitted by Act 5 of 1929.

(2) If an *[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

- (a) that an *[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and
- (b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a *[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any



disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a *[employee] employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A)] and (3) no compensation shall be payable to a *[employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a *[employee] in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a *[employee] in any Court of law in respect of any injury--

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the *[employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

7. Perusal of the provision would reveal that wherever an employee suffers a personal injury by accident arisen out of and in due course of employment, the employer shall be liable to pay compensation. ‘Accident’ cannot be interpreted narrowly as it being suggested by counsel, the same has to be given a broader meaning. 1923 Act is a beneficiary legislation. The case projected by the claimant is that the deceased suffered heart attack which ultimately proved to be fatal as he



was being harassed by the employer on the fateful day.

8. Counsel for the appellant fairly admits that there is no evidence with respect to the deceased suffering from any ailment prior to the date of death. Thus, the incident is in untoward mishap. The same would definitely be within the expression of accident and the same has been so held by the Supreme Court in the case of ***Smt. Dariyao Kanwar & ors. vs. M/s. United India Insurance Co. Ltd. & Anr. 2023 AIR Supreme Court 4161*** observing as under:-

“8. The Commissioner accepted the application filed by the appellants. It was noticed in the order passed by the Commissioner that, the employer admitted that the deceased was employed as a driver and he was on duty from Delhi to Baroda on 15.09.2003. The wages being paid to him were also admitted. With these facts on records, the Commissioner accepted the application and assessed the compensation at Rs. 3,26,140/- (Rupees three lakh twenty-six thousand one hundred and forty). Aggrieved against the aforesaid order of the Commissioner, the Insurance Company preferred an appeal before the High Court. The arguments raised by the Insurance Company was that there is no material on record to suggest that the death of Sumer Singh occurred due to strain and stress during employment. In case, the deceased employee was already suffering from any existing disease and died on account of that, it cannot be said to be a case of death during the course of employment. The view of the High Court was that there is no relationship between the death and the work being done by the deceased. Hence, the order of the Commissioner was found to be unsustainable.

9. The judgment of this Court in Param Pal Singh's case (supra) relied upon by the counsel for the appellants, comes to their rescue. In that case, the deceased was a truck driver. While on duty, he suddenly suffered health set back and parked his vehicle on roadside hotel. After parking the vehicle, he fainted and was taken to the hospital. He was declared brought dead. An application was filed by the dependents of the deceased for claiming compensation under the 1923 Act. The Commissioner accepted the claim whereas the order passed by the Commissioner was set aside by the High Court. The dependents filed an appeal before this Court. It is noticed in the



aforesaid judgment that additional premium was paid for coverage of compensation payable under the 1923 Act.

10. This Court accepted the appeal filed by the dependents of the deceased and found that even if the death had not occurred on account of any accident but the driver was consistently driving the vehicle, there is every reason to assume that long spells of driving was a material contributory factor, if not the sole cause that accelerated his unexpected death at a young age. Such an untoward mishap can reasonably be described as an accident, only attributable to the nature of employment. In the aforesaid judgment, the employee was 45 years of age. It squarely covers the case of the appellants. The relevant paras of the decision are extracted below:

"29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45- year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long-distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

30.In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the



course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside."

(emphasis supplied)

11. Similar view was expressed by this Court in Northeast Karnataka Road Transport Corpn's case. (supra).”

9. In view of above, this Court does not find any infirmity in the order passed by Commissioner under the Employees Compensation Act. Resultantly, the present appeal is dismissed.”

7. In view of aforesaid ratio, this Court does not find any reason to interfere in the pure finding of facts recorded by the Commissioner exercising powers under the Act of 1923. There is no question of law much less substantial question of law raised in the appeal which is essential to maintain appeal under Section 30 of the Act of 1923.

8. Finding no merit in the instant appeal, the same is ordered to be dismissed.

9. Pending application(s), if any, shall also stand disposed off.

December 09, 2024
Dpr

(Pankaj Jain)
Judge

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