

FAO No.3995 of 2024 (O&M)

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

**CM-14706-CII-2024 in/and
FAO No.3995 of 2024 (O&M)
Date of decision : 30.08.2024**

SBI General Insurance Co. Ltd.

.....Appellant

Versus

Saravjeet Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajneesh Malhotra, Advocate
for the applicant/appellant.

PANKAJ JAIN, J. (ORAL)

CM-14706-CII-2024

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 140 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 140 days in filing the instant appeal is hereby condoned.



FAO No.3995 of 2024 (O&M)

Challenge is to the award passed by the Commissioner, dated 10th of January, 2024 under the Employees' Compensation Act, 1923 (hereinafter referred to as 'the 1923 Act')

2. Insurer is in appeal. Claimants filed application seeking compensation on account of death of deceased Dilar Singh. Pleaded case of the claimant is that Dilar Singh was engaged by respondent No.1 as helper on combine vehicle at a monthly salary of Rs.8,000/- per month along with Travelling Allowance and Dearness Allowance. On 9th of April, 2015 respondent No.1 the employer along with Dilar Singh and other helpers went to village Kumharia Rai, Police Station Sarsai, District Datia (M.P.) for harvesting the wheat crop. While in the course of employment under respondent No.1 Dilar Singh suffered electric shock from 11 KV electricity line passing through the fields wherein the harvest combine was working. Dilar Singh fell down from the combine and received injuries. He was taken to Medical College, Jhansi (UP) where he succumbed to his injuries.

3. The employer claimed that Dilar Singh was working as a casual labourer and was being paid salary of Rs.16,000/- per month and the vehicle was insured.

4. Respondent No.2 submitted written statement claiming that the deceased was neither employed nor falls within the definition of 'employee'

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as enumerated under the 1923 act. It was further claimed that no notice under Section 10 of the 1923 Act was served upon the respondents.

5. On the basis of the pleadings of the parties, following issues were framed:

- “1. Whether the applicants are entitled for any compensation as claimed?
2. Whether accident took place during the course of employment or not? If so to what effect?
3. Whether the petition is bad for mis-joinder & non-joinder of necessary parties?
4. Whether this court has no jurisdiction to entertain the present petition.
5. Relief.”

6. The Commissioner answered issues No.1 to 5 in favour of the claimants and held them entitled for compensation of Rs.18,80,420/- which includes Rs.9,09,960/- on account of compensation and Rs.9,55,460/- as interest thereupon and Rs.15,000/- as funeral expenses.

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

8. So far as employment of the deceased is concerned, the same is not in dispute. Death of the deceased being in course of employment is also not disputed. The only issue raised by counsel for the appellant is w.r.t. non-compliance of Section 10 of the 1923 Act.

9. Section 10 of the 1923 Act reads as under:

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10. Notice and claim.- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of 8 the days during which the *[employee] was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the *[employee] to absent himself from work, the period of two years shall be counted from the day the *[employee] gives notice of the disablement to his employer:

Provided further that if a *[employee] who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—

(a) if the claim is preferred in respect of the death of a *[employee] resulting from an accident which occurred on the premises of the employer, or at any place where the *[employee] at the time of the accident was working under the control of the employer or of any person employed by

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him, and the *[employee] died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured *[employee] was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured *[employee] was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which *[employees] are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured *[employee] employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

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10. The 5th proviso appended to Section 10 (1) provides that the Commissioner is well within its power to condone the defect or irregularity in a notice. Apart therefrom, as per the mandate of Section 10, notice is required to be served upon the employer to maintain the present petition. In the present case, employer admitted the fact of ‘employer and employee’ relationship as well as death of deceased during the course of employment. The claim was resisted by the insurer and at no point of time any effort was made by the appellant/insurer to prove that no notice under Section 10 was given. Thus, the said plea w.r.t. non-compliance of Section 10 raised by the appellant also sans merit. Keeping in view the provision of Section 30 of the Act of 1923 involvement of substantial question of law in the appeal is *sine qua non* to maintain the appeal. There being no question of law involved much less a substantial question of law, this Court does not find any reason to interfere in the well reasoned order passed by the Commissioner.

11. In view of above, finding no reason to interfere in the instant appeal, the same is ordered to be dismissed.

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

August 30, 2024
Dpr

(Pankaj Jain)
Judge

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