

FAO-5227-2024 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5227-2024 (O&M)
Date of decision : 07.11.2024

National Insurance CO., Ltd.

..... Appellant

Versus

Poonam & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Harsh Aggarwal, Advocate for the appellant.

PANKAJ JAIN, J. (ORAL)

CM-19728-CII-2024

This is an application seeking condonation of delay of 16 days in filing the present appeal.

2 For the reasons recorded, the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.

3 Application is allowed. Delay in filing the appeal is condoned.

Main case

1 Insurance company is in appeal.

2 Challenge is to the order passed by Commissioner, Circle IV, Gurugram (Haryana) under the Employee's Compensation Act, 1923 (for short 'the Act'). Claim petition was filed by the claimants seeking compensation on account of death of Narender aged 38 years claiming that he was employed as Driver on Car bearing No.HR-26/BN-1834 owned by

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respondent No.1. He was engaged by respondent No.2 on a monthly salary of Rs.18,000/- per month.

3 Respondent No.1 was proceeded ex-parte. Respondent No.2 appeared and filed his written statement admitting the employment, accident, and the wages of Rs.1,000/- per day. He also admitted the factum of death of the deceased during the course of employment. Insurance company denied all the facts. On the basis of the pleadings following issues were framed :-

- 1. Whether the claim application is maintainable or not?*
- 2. Whether the accident occurred out of and in the course of employment?*
- 3. Whether the claimants being dependents of the deceased are entitled to the amount of compensation as claimed, If so, as to what amount and from whom?*
- 4. Relief, if any?*

4 Commissioner answered all the issues in favour of the claimants holding the claimants entitled for a compensation of Rs.1421700/- apart from the costs and the funeral expenses.

5 Learned counsel for the appellant while assailing the impugned order passed by the Commissioner submits that the employment of the deceased has not been proved. It has been eloquently argued by him that as per the contents of the FIR the only allegation was that the deceased was hit by the offending vehicle while he was roaming on the road. He submits that there was no assertion in the FIR with respect to the deceased having been employed on the car or to have accompanied the car to the spot which is the case projected in the application. He thus submits that the relationship of

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employer-employee being seriously in doubt, the Commissioner ought not have entertained the application under the Act. The second submission raised by learned counsel for the appellant is that while in para 16 of the order Commissioner holds the employer liable to pay interest @12% per annum from the date of accident till the date of order. However, while granting relief it is the insurance company which has been saddled with the liability to pay the same.

6 I have heard learned counsel for the appellant and have carefully gone through records of the case.

7 Learned counsel for the appellant is not in a position to deny the fact that the best person to deny the relationship of employer-employee was respondent No.1 or respondent No.2. Respondent No.1 was proceeded ex-parte. Respondent No.2 filed written statement admitting the claim of the claimants. No effort was made by the appellant-Insurance Company to summon either of them to disprove the relationship of employer-employee. So far as the plea with respect to missing of the fact with respect to employment in the FIR is concerned, trite it is that the FIR is not the encyclopaedia. Obviously the narration in the FIR was with respect to the accident and there was no requirement to narrate that the deceased was on duty while he was hit by offending vehicle. The claimants filed affidavit discharging the initial onus to prove the employer-employee relationship. The said evidence has gone un rebutted. In view thereof, no fault can be found with the findings recorded by the Commissioner with the

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employer-employee relationship between the deceased and respondents No.1 & 2 stood proved.

8 So far as the issue with respect to payment of interest is concerned, the precise contract of insurance is to indemnify the insurer. The insurance contract is not disputed. Thus the Commissioner after holding the liability of the insured to pay interest @12% per annum in terms of the statutory provision has rightly held the insurer to indemnify and to pay the claimants in terms of the contract.

9 In view thereof, finding no merits in the present appeal, the same is dismissed.

07.11.2024
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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