



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

**FAO No.5722 of 2024 (O&M)
Date of decision : 09.12.2024**

Oriental Insurance Company Limited

....Appellant

Versus

Vikhi Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Varun Sharma, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

CM-21794-CII-2024

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 39 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 39 days in filing the instant appeal is hereby condoned.

FAO No.5722 of 2024

Insurance Company is in appeal aggrieved of the award dated 09.10.2024 passed by the Commissioner exercising powers under the Employee's Compensation Act, 1923 (hereinafter referred to as 'the Act of



1923’)

2. Claim petition was filed seeking compensation on account of death of Gopal Kumar Ray @ Babu Saheb Ray, who was working as conductor under the employment of respondent No.1 on vehicle Tata Canter 407 bearing registration No.DL-1LAB-9632 on a monthly wages of Rs.15,000/- along with diet money of Rs.200/- per day. As per the claimants, on 19th of October, 2019 while deceased was on duty and was on the vehicle, vehicle met with an accident. Deceased Gopal Kumar Ray @ Babu Saheb Ray suffered injuries. Later on, he succumbed to his injuries. FIR No.368 dated 19th of October, 2019 was registered *qua* offence punishable under Section 279, 304-A, 337 IPC at Police Station Kharkhoda.
3. Deceased is stated to be 23 year old at the time of accident and the only bread-earner of the family at the time of his death.
4. Respondent No.1/employer denied employer-employee relationship. Same was the stand taken by the appellant/insurer.
5. On the basis of the pleadings, Commissioner framed the following issues :

“1. Whether the dependents of deceased are entitled for the amount of compensation or not? If so to what extent and from whom?

2. Whether there was existed relationship of master and servant in between deceased and respondent no. 1 or not?

3. Whether the deceased has died during and out of the course of his employment with respondent no.1 or not?



4. Relief.”

6. While returning finding on issue No.2, Commissioner relied upon the statement of the applicant-Virkhi Devi, documentary evidence in form of FIR that was proved on record as Exhibit P-1, Post-Mortem Report, Exhibit P-2 and came to the conclusion that the aforesaid evidence having gone unrebutted as respondent No.1 failed to appear in the witness-box and respondent No.2 did not lead any evidence to rebut the evidence led by the claimants, the relationship between the employer-employee stands proved.

7. Counsel for the appellant submits that there being no documentary evidence to prove the employer-employee relationship, Commissioner erred in awarding compensation and saddling appellant with the liability.

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

9. Counsel for the appellant is not in position to dispute that as per the contents of FIR (Exhibit P-1), the deceased has been recorded as ‘employee’ on vehicle owned by respondent No.1/employer. He also is not in position to dispute that the claimants discharged initial onus after claimant Virkhi Devi appeared before the Commissioner and testified on Oath w.r.t. deceased being employee of respondent No.1. No evidence was led by the appellant to rebut the same. The best person to deny the relationship, employer did not stepped into the witness-box. Thus, the evidence adduced



by the claimants remained unrebutted. In terms of Section 2(dd) of the 1923 Act, the contract of employment can be written or in oral. The same can be express or implied.

10. In view of the overwhelming evidence in form of the version w.r.t accident and the testimony of the appellant/claimant No.1 regarding there being employer-employee relationship, the Commissioner rightly held issue No.2 in favour of the claimants and awarded compensation.

11. Since, the Commissioner has returned pure finding of fact and there is no question of law much less substantial question of law involved in the present appeal, this Court does not find any reason to exercise appellate jurisdiction under Section 30 of the 1923 Act. Consequently, the instant appeal is dismissed.

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

December 09, 2024
Dpr

(Pankaj Jain)
Judge

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