



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

**FAO No.624 of 2025 (O&M)
Date of Decision : 03.02.2025**

Mukesh Kumar

.....Appellant

Versus

Harjinder Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Yadwinder Singh, Advocate for the appellant.

PANKAJ JAIN, J.(Oral)

CM No.1988-CII of 2025

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 21 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 21 days in filing the instant appeal is hereby condoned.

FAO No.624 of 2025

Order dated 30.09.2024 passed by Commissioner under the Employee's Compensation Act, 1923 has been assailed by the employer.

2. As per the claimant, he was employed with respondent in his shop. On 08.02.2016, he was directed by the employer to bring a pair of shoes lying in a carton placed in the upper rack of the shop using staircase.



While the applicant was climbing the staircase held steadily by the employer, it suddenly collapsed. The claimant fell and fractured his hip joint. The claimant was hospitalized and confined to bed for nine days. He had to spend an amount of Rs.1,71,700/- on his medical treatment. Claimant claimed that he having received injuries in an accident arising out of and during the course of employment, he is entitled for compensation.

3. The claim petition was contested by the appellant/employer claiming that the applicant was not employed, but was merely learning about the footwear business. On the fateful day, when claimant suffered injury, he was not present in the shop as an employee but only as a trainee.

4. On the basis of the pleadings, Commissioner framed the following issues:

- “1) Whether the applicant is entitled to get the compensation as claimed for? OPA
- 2) Whether the claim application is not maintainable as per the preliminary objections raised by the respondent in the written statement? OPR”

5. The Commissioner allowed the claim petition filed by the claimant holding him entitled to compensation of Rs.4,06,055/-.

6. Having heard counsel for the appellant, this Court finds that the fact of claimant having fallen in an accident related to the business of the appellant, is not denied.

7. The only issue is:



“Whether the claimant was working as employee of the appellant or was there as a trainee who was working with an intent to gain experience to start his own business?”

8. Apart from the bald assertion made in the written statement, appellant has not led any evidence to prove that the claimant was not his employee. The claimant discharged initial onus by entering in the witness box, as AW-1. In the considered opinion of this Court, once the presence of the claimant is not denied by the appellant and it it also admitted that the claimant was working, burden shifted on the employer to prove that the claimant was not working as an employee but as a trainee. The appellant having failed to discharge the said burden, the Commissioner rightly allowed the claim petition filed by the appellant holding him entitled to compensation under the Employee's Compensation Act, 1923.

9. This is an appeal filed under Section 30 of the 1923 Act. Interpreting the same Supreme Court in ‘**North East Karnataka Road Transport Corpn. Vs. Sujatha**’, (2019) 11 SCC 514 observed as under :-

“11. The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner lie only against the specific orders set out in clause (a) to (e) of Section 30 of the Act with a further rider contained in first proviso to the Section that the appeal must involve substantial question of law.

12. In other words, the appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a Regular First Appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is



confined only to examine the substantial questions of law arising in the case.”

10. Keeping in view the provision of Section 30 of the Act of 1923 substantial question of law in the appeal is *sine qua non* to maintain the appeal. Finding no substantial question of law involved in the present, appeal, the same is ordered to be dismissed.
11. Pending application(s), if any, shall also stand disposed off

February 03, 2025		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether Reportable	: Yes/No