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

**FAO-2307-2017 (O&M)
Date of decision : 24.03.2026**

KRISHAN KUMAR AND ANOTHER

....Appellants

Versus

KAKKAR NURSING HOME AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Mohan Singla, Advocate
for the appellants.

Mr. Manu K. Bhandari, Advocate,
Mr. Rohit Kataria, Advocate and
Mr. Arjun Sawhni, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Claimants are in appeal aggrieved of the order dated 16.12.2016 passed by the Commissioner under the Employee's Compensation Act, 1923 (hereinafter referred to as '1923 Act') whereby the claim petition filed by the appellants/claimants seeking compensation on account of death of their son Anil Kumar in an accident at the building owned by the respondent, has been dismissed.

2. As per the claimants, deceased Anil Kumar, aged 31 years, was working as a labourer. He was hired/employed by the respondent for transporting building material for the construction being raised by the respondent at his hospital site. On the fateful day i.e., 09.09.2015, deceased



went to the hospital site with the material. While the material was being taken onto the ramp, he fell down from 30/35ft. height and lost his life. FIR No.443 dated 10.09.2015 under Section 304A was registered.

2.1. The claimants claim that the deceased Anil Kumar lost his life in an accident arising out of and during the course of employment and thus, the respondent is liable to pay compensation to the claimants.

3. The claim petition was contested by the respondent. Though, it was admitted that the deceased visited the hospital to supply the building material and lost his life in the accident, however, it was claimed that there is no employer-employee relationship between the deceased and the respondent.

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

1. Whether the applicants are entitled to get the compensation under the Act? OPA
2. Whether there was a relationship of employer and employee between the deceased (Anil) and the respondents?
3. Whether application is not maintainable?
4. Relief.

5. While answering Issues No.1 to 3, the Commissioner found that the claimants failed to prove employer-employee relationship between the deceased and the respondent. In the absence of any evidence to prove



engagement of deceased by the respondent, the claim petition cannot be maintained. The same was accordingly, dismissed.

6. Counsel for the appellants has assailed the order passed by the Commissioner. It has been contended that the respondents in their written statement have admitted that the deceased died within the precincts of their site. The admission on their part to the extent that the deceased indeed visited them to supply the building material proves that the deceased was employed by the respondents and thus would fall within the ambit of Section 2(1)(dd)(iii) read with Schedule II appended to the 1923 Act. Counsel submits that the deceased having been employed to transport building material, would fall within the ambit of ‘employee’ as contemplated under Section 2(1)(dd). The Commissioner having passed the order against the statutory mandate, the impugned order cannot be sustained.

7. Per contra, Mr. Bhandari submits that the admission referred to by the counsel for the appellants, in fact does not show that the deceased was hired. The admission does not show as to whether any amount was paid to the deceased and thus he would not fall within the ambit of ‘hire’. He thus submits that the Commissioner has rightly rejected the claim petition in the absence of there being any evidence to prove employer-employee relationship between the deceased and the respondent.

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



9. The precise issue that falls for the consideration of this Court is :

‘Whether deceased Anil Kumar can be held to be ‘employee’ of the respondent or not?’

10. In order to evaluate the rival contentions raised by counsel for the parties, it will be apt to peruse the bare provisions of law, which read as under:

2. Definitions – (1) In this Act, unless there is anything repugnant in the subject or context -

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[(dd) “employee” means a person, who is—

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other member of the crew of a ship,

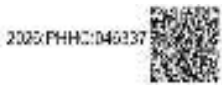
(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces



of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]

SCHEDULE II

XXX XXX XXX

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale any article or part of an article in any premises

Explanation. - For the purposes of this clause, persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or]

11. From the bare perusal of the provisions, it is evident that the contract of employment can be ‘expressed’ or ‘implied’. It can be ‘oral’ or ‘in writing’. Thus, any person employed in any capacity as specified in Schedule II under the contract of employment which is expressed or implied, written or oral, would fall within the ambit of expression ‘employee’ for the purpose of 1923 Act.

12. In the present case, the visit of deceased Anil Kumar to the hospital premises under construction belonging to respondent, is an admitted fact. Reference can be made to Para 2 of the written statement filed by respondents No.1 and 2. Death of Anil Kumar in the factory precincts owing to accident, is also beyond doubt. In these circumstances, the burden to



prove that the deceased visited the premises of the respondent without being engaged, shifted upon the employer. There is no pleading to the effect that the deceased was not hired for reward in the written statement filed by the employer. Neither there is any evidence to prove the same.

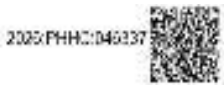
13. In view thereof, this Court finds that the plea raised by Mr. Bhandari, cannot be accepted and the same deserves to be rejected.

14. In view of above, this Court finds that the Commissioner erred in dismissing the application recording a perverse finding on Issues No.1 to 3. The same are hereby reversed. It is held that the deceased Anil Kumar died in an accident arising out of and during the course of employment having been hired by respondent for transportation of building material.

14.1. The claim w.r.t. monthly salary by the appellants could not be proved.

14.2. Accordingly, this Court has to compute the compensation in terms of Section 4 of 1923 Act, relying upon the Notification issued by Central Government under Section 4(1B) of the 1923 Act.

14.3. The date of accident is 09.09.2015. For the relevant period, the wages notified by the Central Government for the purpose of computing compensation under Section 4 of the 1923 were Rs.8,000/- per month. At the time of death, the age of the deceased was 31 years. The relevant factor would be 205.95. Thus the compensation payable shall be $205.95 \times 8,000/- \times 50/100 = \text{Rs.8,23,800/-}$



14.4. The claimants shall also be entitled for interest @ 12% per annum for the period commencing from 30 days after the date of accident i.e., 30 days after 09.09.2015 till the date of actual realization.

14.5. The claimants are also held entitled to penalty which shall be 20% of the compensation computed by this Court herein-above. The penalty amount shall bear interest @ 7% from the date of passing of the award till the date of actual realization.

15. The instant appeal is accordingly, allowed.

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

March 24, 2026

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No