



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

210

**FAO-5515-2014 (O&M)
Date of decision : 10.01.2025**

M/s. Devanshu Industries and another Appellants

versus

Narain Sukla Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Adarsh Jain, Advocate
Ms. Kamaldeep Kaur, Advocate and
Ms. Amandeep Kaur, Advocate
for the appellants.

Mr. D.D. Kaushik, Advocate and
Mr. Devindra Datt Kaushik, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

CM-15361-CII-2014

This is an application for condoning the delay of 238 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 238 days in filing the appeal stands condoned.

Main case

1. Employer is in appeal aggrieved of order dated 20.09.2013 passed by Commissioner under Employee's Compensation Act, 1923, whereby application filed by the claimant seeking compensation under Sections 3 and 4 of the Act stands allowed awarding him compensation of Rs.2,09,884/-.



2. Claimant approached Commissioner claiming that he was employed as Operator on a monthly salary of Rs.5,000/-. On 19.01.2011, while he was on duty, he met with an accident arising out of and during course of employment, wherein he received injuries leading to amputation of 2nd, 3rd and 4th finger. He thus, sought compensation from the employer.

3. Claim petition was contested by the respondents denying the claim of the applicant. Commissioner framed following issues:-

- “1. Whether the applicant was in employment with respondent No.1 & 2? Relationship of employee and employer?
2. Whether the accident occurred during course of the employment with respondent No.1?
3. Whether this court has jurisdiction or not?
4. Whether the applicant is entitled to the compensation, as claimed?
5. Relief.”

4. While answering issue No.1 with respect to relationship of employee-employer between the parties, Commissioner relied upon statement of AW-1 to AW-4, documents Ex.PW-1/1 to PW-1/6, PW-4/A to PW-4/B and discharge slip PW-1/1 that shows that the applicant met with an accident on 19.01.2011 while he was on duty and was operating press machine and answered issue No.1 in favour of the claimant. Keeping in view the age and the salary, Commissioner allowed the claimant a compensation of Rs.2,09,884/- alongwith statutory interest as contemplated under Section 4-A of the Employee's Compensation Act.

5. Counsel for the appellants while assailing the impugned order passed by the Commissioner has raised serious dispute with



respect to employer-employee relationship and submits that there is no evidence with respect to prove the same, as neither salary certificate nor employment contract was produced on record.

6. *Per contra*, counsel for the respondent-claimant submits that from the discharge slip, it is evident that the claimant suffered injuries while operating machine. No evidence was led by the employer to dispute the claim of the claimant with respect to employment. Whole of the evidence being in possession of the employer, Commissioner rightly held that the evidence brought by the claimant has gone un rebutted.

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

8. So far as injury suffered by the claimant while on duty is concerned, the same is evident from the discharge slip PW-1/1. So far as the non-production of salary certificate or contract of employment is concerned, the same is not the requirement of the Act. Section 2(dd) of 1923 Act defines "employee" and the same reads as under:-

“(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 members 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;

(e) “employer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him;

(f) “managing agent” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;”

9. Thus, in terms of the provision, the contract can be expressed or implied, oral or in writing. It is not in dispute that the appellants are running a proprietorship concern by the name of Devanshu Industries. Entire documentary evidence with respect to disbursement of salary was in possession of the employer. Employer opted not to bring on record any evidence like employee's register etc. to rebut the evidence brought on record by the claimant. Thus, the appellant having withheld best piece of evidence, adverse inference needs to be drawn against the appellant.



10. In view thereof, this Court does not find any reason to interfere in a well reasoned order passed by the Commissioner. In view of above, keeping in view the pure finding of fact, this Court finds that there is no question of law involved in the present appeal as is required under Section 30 of the Act.

11. Finding no merit in the present appeal, the same is ordered to be dismissed.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

10.01.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No