

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

118

**FAO-1329-2019 (O&M)
Date of decision : 23.04.2026**

Oriental Insurance Company Limited**..... Appellant**

versus

Sadhu Singh and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. R.C. Gupta, Advocate
for the appellant.

Mr. Kamal Narula, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)**CM-4059-CII-2019**

This is an application for condonation of delay of 17 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 17 days in re-filing the appeal stands condoned.

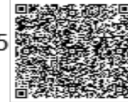
CM-4060-CII-2019

This is an application for condonation of delay of 112 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed. Delay of 112 days in filing the appeal stands condoned.

Main case

1. Insurance company is in appeal aggrieved of the order dated 29.06.2018 passed by Commissioner under Employees' Compensation Act, 1923.



2. Mr. Gupta appearing for the insurance company relies upon Section 3(1)(b)(ii) to submit that the employer shall not be liable in the cases where employee suffers accident on account of unauthorized act. He submits that even as per the case pleaded by the claimants, deceased-Kulwant Singh who was driving insured vehicle gave lift to an unknown person which resulted in murder of Kulwant Singh. He submits that the deceased employee-Kulwant Singh acted without any authorisation by the employer in giving lift to a gratuitous passenger and thus the case would fall within the exceptions as carved out under Section 3(1)(b)(ii).

3. Having heard counsel for the parties, this Court finds that the argument raised by Mr. Gupta *sans* merit and cannot be accepted. Section 3 of the Act reads as under:-

“3. Employer’s liability for compensation.—

(1) If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable

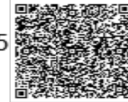
(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the



purpose of securing the safety of employee.

(2) If an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

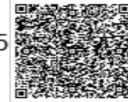
Provided that if it is proved,

(a) that an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment,

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that an employee who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease



peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If an employee employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

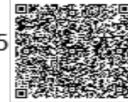
(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect of any injury

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the



employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

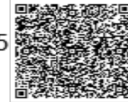
4. A bare perusal of the provision would reveal that Section 3(1)(b) is not applicable in the case of death of the employee. The same is applicable only in the cases wherein injury suffered in the accident does not result in death or permanent total disability.

5. The issue involved in the present case is no more *res integra* and has been answered by Supreme Court in the case of ***Rita Devi vs. New India Assurance Company 2000(5) SCC 113***, wherein the Supreme Court observed as under:-

“10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that 'murder'. as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a 'murder' which is not an accident and a 'murder' which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

11. In ***Challis v. London and South Western Railway Company, 1905(2) King's Bench 154***, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

"The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver, in other words it arose out of his



employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously."

12. In the case of *Nisbet v. Rayne and Burn, 1910(1) KB 689*, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held :

"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of *Challis (supra)*. In the case of *Nisbet*, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of *Nisbet*, and that it makes no difference whether the pistol shot was deliberately fired at *Nisbet* or whether it was intended for somebody else and not for *Nisbet*."

13. The Judgment of the Court of Appeal in *Nisbet's* case was followed by the majority judgment by the House of Lords in the case of *Board of Management of Trim Joint District School v. Kelly, 1914 AC 667*.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their



destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.”

6. From the facts of the present case, it is evident that Kulwant Singh was employed on the insured vehicle. While on duty, he came from Gujarat in truck loaded with oil. On the way, the accident occurred. The primary objective of the incident appears to be to robe him of Rs.62,000/- and 350 packs of refined oil.

7. In view thereof, this Court finds that the issue is squarely answered in favour of the claimants in terms of ratio of law laid down in case of *Rita Devi (supra)*.

8. Finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

23.04.2026

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No