

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

**Reserved on 27th of November, 2025
Pronounced on 23rd of December, 2025
Uploaded on 23rd of December, 2025**

Whether only operative part of the judgment is pronounced? **No**
Whether full judgment is pronounced? **Yes**

FAO No.937 of 1998 (O&M)

Baljinder KaurAppellant
Versus
ESI Corporation and anotherRespondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. A.P. Bhandari, Advocate for the appellant.

Mr. H.S. Bhatia, Advocate for the respondents.

PANKAJ JAIN, J.

Present appeal is directed against the order dated 07.03.1998 passed by ESI Court whereby appeal preferred by the claimant under Section 75(2) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the 1948 Act') has been dismissed rejecting the claim of the appellant.

2. The issue involved in the present appeal is :

"Whether deceased Gurcharan Singh, who was employed as Kitchen Runner and Dish Washer with M/s Floating Restaurant, died in an accident arising out of and during the course of employment or not?

3. Gurcharan Singh used to commute from his residence to his place of employment by cycle covering 7 Kilometes daily. As per the claimant, on 18.10.1993 at about 2:30 PM while Gurcharan Singh was returning home after finishing his job riding his cycle along with Amrik Singh, he suddenly fell down and became unconscious. He was taken to Civil Hospital, Fatehgarh Sahib where he died at around 7:55 PM. As per the doctors, he died of 'myocardial vessel'. It is admitted that the deceased was an employee insured with ESI Corporation. His case was reported to the Corporation and claim was raised on the ground that deceased died in an accident arising out of and during the course of employment.

4. The claim was rejected by the Corporation vide communication dated 03.02.1994.

5. Statutory appeal was preferred.

6. The same also stands rejected.

7. The appellant challenged the order passed by Director General, ESIC, dated 23.12.1994 preferring present petition under Section 75(2) of the 1948 Act.

8. The ESIC Court framed the following issues:

- “1. Whether the deceased Gurcharan Singh died as a result of injuries suffered during the course of employment with M/s Floating Restaurant, GT Road, Sirhind? OPP.
- 2. Whether the applicant is a dependent of the deceased and is entitled to all the dependent's benefits? OPP.

3. Relief.”

9. While deciding Issues against the appellant/claimant, the Court observed as under:

“In this case, there is no evidence on the file which may show that the death of Gurcharan Singh has got a casual connection with his employment and that the death took place in the course of employment.

11. In view of the judgment of the Apex Court, I hold that the death of Gurcharan Singh did not take place in the Course of employment and therefore, he is not entitled to any benefit. The respondents have rightly passed the order copy Ex. P.5/1 rejecting the claim of the petitioner and hence issue no.1 and 2 are decided against the petitioner.

10. The ESI Court relied upon observations made by Supreme Court in the case of **The Regional Director, E.S.I. Corporation and another vs. Francis De Costa & Anr. JT 1996(8) S.C. 118.**

11. Counsel for the appellant has assailed the findings recorded by the ESI Court, to submit that the claim of the appellant has been wrongly rejected. He submits that evidence has come on record that the health of the deceased deteriorated while he was performing his duties at the place of employment. The deceased sought short leave which was declined by the manager. There is no past history that the deceased was suffering from any heart ailment. In the aforesaid facts and circumstances, the claim made by the appellant should have been allowed. He places reliance upon Section 51A of 1948 Act and submits that there is a statutory presumption in favour

of the claimant. Once it is proved that the accident arose in the course of employment, it has to be presumed that the same has arisen out of that employment. He relies upon ratio of law laid down by this Court in the case of **Smt. Harjinder Kaur and others vs. Employee's State Insurance Corporation, Amritsar, 1987(2) PLR 140**. Further reliance is being placed upon **Bhagyashree Bharguram Mahadik vs. The Employees State Insurance Corporation, through its Director, 2014 (3) SCT 566, Post Master General, P & T, Srinagar and others vs. Kaushalya Devi, 2003(2) SCT 940** and **Employees' State Insurance Corporation vs. Purushothaman, 2001(2) LLJ, 998**.

12. Per contra, Mr. Bhatia appearing for the Corporation submits that the deceased admittedly suffered heart attack while he was going back to his house after attending to his duties. The vehicle on which he was commuting was his own bicycle. There is no report/evidence that he had any stress or strain during duty hours. The deceased died of a natural death on account of cardiac arrest. Thus, there being no causal relationship between the incident which led to death of the deceased and his employment, appellant cannot claim that the deceased died of out of or in the course of employment.

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

14. Before advertng to the merits of the case, bare provisions as contained under Section 2(8) and Section 51A of the 1948 Act, need to be perused:

Section 2[(8)] "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India;]

Section 51A. Presumption as to accident arising in course of employment For the purposes of this Act, an accident arising in the course of an insured person's employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment.

15. The provisions came up for consideration before Supreme Court in the case of **Francis De Costa**'s case (supra). Initially the matter came up for consideration before Two Judges Bench of the Supreme Court. In the judgment reported as **The Regional Director, E.S.I. Corporation and another vs. Francis De Costa & Anr., 1993 Supl. (4) SCC 100** each of the members of the Bench gave his own opinion. Justice K. Ramaswamy dismissed the appeal filed by ESI Corporation holding that the employee is entitled to compensation as the accident occurred during the course of his employment, Justice B.P. Jeevan Reddy opined to the contrary holding that the employee cannot claim any disablement benefit for the injuries suffered as the accident had no causal relationship with his employment.

16. The matter was placed before Three Judges Bench. Final verdict was reported as **1996(6) SCC 1**. Justice Suhas C. Sen speaking for the Larger Bench observed as under:

"9.In the case of Regina v. National Insurance Commissioner, Ex parte Michael, 1977(1) Weekly Law Reports 109, the Court of Appeal in England had to construe a phrase "caused by accident arising out of and in the course of his employment" in Section 5(1) of the National Insurance (Industrial Injuries) Act, 1965. Lord Denning M.R. started his judgment with the observation :-

"So we come back, once again, to those all too familiar words 'arising out of and in the course of his employment'. They have been worth - to lawyers - a King's ransom. The reason is because, although so simple, they have to be applied to facts which vary infinitely. Quite often the primary facts are not in dispute : for they are proved beyond question. But the inference from them is matter of law. And matters of law can be taken higher. In the old days they went up to the House of Lords. Nowadays they have to be determined, not by the courts, but by the hierarchy of tribunals set up under the National Insurance Acts."

10. xxxx

11. Construing the meaning of the phrase "in the course of his employment", it was noted by Lord Denning that the meaning of the phrase had gradually been widened over the last 30 years to include doing something which was reasonably incidental to the employee's employment. The test of "reasonably incidental" was applied in a large number of English decisions. But, Lord Denning pointed out that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. Lord Denning, however,

cautioned that the words "reasonably incidental" should be read in that context and should be limited to the cases of that kind. Lord Denning observed :

"Take a case where a man is going to or from his place of work on his own bicycle, or in his own car. He might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not "arise out of and in the course of his employment". Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely "reasonably incidental" to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special "deeming" provision in a statute to make it "deemed" to arise out of and in the course of his employment."

29. Although the facts of this case are quite dissimilar, the principles laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a causal connection with the employment, and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment."

17. In view of the aforesaid parameters laid down by the Supreme Court an insured employee in order to claim compensation owing to disability / death caused by accident, needs to prove the three ingredients as laid down by Supreme Court.

18. There is no dispute w.r.t. the first ingredient. The dispute is w.r.t. the other two parameters. As per the medical opinion on record deceased died on account of heart failure. Statement of AW4 Doctor Balwinder Singh, Senior Medical Officer, who attended ailing deceased/ employee and issued death certificate, reads as under:

“AW-4 on SA.

Dr. Balwinder Singh, Medical Specialist, Civil Hospital, Fatehgarh Sahib. (Sr. Medical Officer).

Ex.P2 is issued by me and is in my hand and bears my signatures. Patient Gurcharan Singh was got admitted in the hospital vide CR No.1641 dated 18.10.93. He died on 18.10.93 at about 7.55 p.m. while under treatment in the hospital. He died due to heart failure (Cardiorespiratory-failure). The nature of disease shows that his death was caused sudden, due to viral disease which was sudden in onset resulting into mortality of the patient.

XXXXXn

I do not know what were the duty hours of the deceased. I also do not know from where deceased was coming when he fell ill. It is correct that deceased suffered from viral Myocarditis. Voltd. Patient died due to sequelae due to this disease.

RO&AC

ESI/24.7.96”

19. AW1 the wife of deceased, Baljinder Kaur deposed before the ESI Court that the deceased had no prior ailment and he was hale and hearty.

20. Cross-examination of AW3 Anokh Singh, who was working as Senior Clerk in the restaurant assumes significance. His statement reads as under:

“AW-3 on SA.

Anokh Singh s/o Kala Singh, Senior Clerk, Floating Restaurant Sarhali.

I was working as a Senior Clerk with M/s Floating Restaurant Sirhind and was also looking after the work of ESI in October, 1993. The accident report Ex.P4 is filled up in my hand and submitted to Local office Manager, ESIC, Mandi Gobindgarh duly filled up and signed by the Manager of the Restaurant. I have brought the original accident book wherein I made the entry of the death case of insured person. Photocopy of the accident register is Ex.P6. The insured person worked in the restaurant on the date of death i.e. 18.10.1993 from 6 a.m. to 2 p.m. The condition of the deceased was some what deteriorated as he was not feeling well while on his duty. He came to me and requested for short leave due to his ill-health but the Manager of the Restaurant did not allow him short-leave because of rush of work on the said date. When he was going back to his home after duty hour he fell down on the ground unconscious and thereafter he died in the Civil Hospital, Fatehgarh Sahib at 7.55 p.m.

XXXXXn

I was not accompanying the deceased when he left the hotel-restaurant. I have no personal knowledge that the deceased had reached the place of residence or not before the incident of his falling unconscious. However, I gave the accident report as per information received from Sh. Amrik Singh. It is incorrect that the deceased died in the course of employment or that accident arose in the course of employment. It is also wrong to suggest that the petitioner is not entitled to any benefit under ESI Act.

21. From the testimony of AW3, it is evident that the health of deceased started deteriorating while he was performing his duties. He requested for short leave on account of ill health. The manager of the restaurant owing to rush of work in the restaurant rejected his prayer for short leave and asked him to perform his physical work of dish washer.

22. In view of aforesaid testimony of AW3 Anokh Singh, which has gone unrebutted, it can be safely presumed that had the deceased been allowed short leave by the manager and had he been given medical care at the relevant time, probably the deceased would not have lost his life. The fact that the deceased fell unconscious while on his way back to home which was just 7 kilometers away from the place of work in fact shows that his heart started sinking at the place of employment only which forced him to ask for short leave and not at the time when he finally collapsed.

23. In these circumstances, this Court finds that the findings recorded by the Courts below to hold that the accident had no causal relationship with the employment of the deceased and the accident was not suffered in the course of employment, cannot be sustained.

24. In view of above, the present appeal is allowed. Respondent-Corporation is directed to release the benefits to the appellant as per law within a period of **one month** from the date of this order.

25. Needless to say, the claimant shall be entitled for all benefits along with interest @ 7% per annum from the date of death of the deceased i.e., 18.10.1993 till the date of actual realization.

26. Pending application, if any, shall also stands disposed off.

December 23, 2025

Dpr

**(Pankaj Jain)
Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes