matter, as it appears to me, has been dealt with administratively rather than quasi-judicially. Thus, I am of the considered view that to this limited extent the writ petition deserves acceptance in as-much as the order of the Commissioner need be and is hereby quashed and a direction is issued to him to decide the appeal on merits on the material already existing on the record. It is so ordered.

(13) The end result is that this petition succeeds to the limited extent afore-indicated. The parties through their learned counsel are directed to put in appearance before the Joint Director of Panchayats, Punjab, exercising the powers of the Commissioner, under the Act on April 28, 1987. No costs.

S.C.K.

Before D. V. Sehgal, J.

MANGAL PATI and others,—*Appellants.*

versus

HARI SINGH and others,—*Respondents.*

Second Appeal from Order No. 57 *of* 1964.

April 17, 1987.

Code of Civil Procedure (V of 1908)—Sections 96(3), 104, 115, *Order* 23, *Rule* 3, *Order* 43 *Rule* 1-*A—Parties entering into compromise—Trial Court passing decree in accordance therewith—Appeal against such decree—Such appeal—Whether competent under Section* 96(3)—*Appeal allowed by first appellate Court—Whether second appeal competent.*

Held, that under Section 96(3) of the Code of Civil Procedure no appeal lies from a decree passed by the Court with the consent of the parties. It is, therefore, clear that the appeal which was preferred from the order of the trial Court recording the compromise and passing the decree and which has been disposed of by the learned Additional District Judge, was not an appeal falling within the ambit of Section 96 of the Code. Rule 1-A of Order 43 provides that in an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not have been recorded. It is

not disputed that Order 43 provides for appeals from orders in pursuance of Clause (i) of sub-section (1) of Section 104 of the Code. Thus, there cannot be any doubt that the appeal disposed of by the learned Additional District Judge by his order dated 6th August, 1984, is an appeal within the meaning of Section 104 of the Code. Sub-section (2) of Section 104 lays down that no appeal shall lie from an order passed in appeal under the said Section. As such the present second appeal is clearly barred by Section 104(2) of the Code. (Para 3).

Second Appeal from Order of the Court of Shri A. S. Chalia, Additional District Judge, Sonepat, dated 6th August, 1984 reversing that of Shri B. R. Vohra, H.C.S., Senior Sub-Judge, Sonepat, dated 27th September, 1982 and remanding the case to the trial Court for proceeding further. Parties were directed through their learned counsel to appear in the Court of learned Senior Sub-Judge, Sonepat, on 16th August, 1984.

H. N. Mehtani, Advocate, *for the Appellants.*

Nemo, *for the Respondent.*

JUDGMENT

D. V. Sehgal, J.

(1) This second appeal is directed against the order dated 6th August, 1984 passed by the learned Additional District Judge, Sonepat, holding that the compromise recorded by the trial Court was not lawful nor was it in conformity with the provisions of Order 23 Rule 3 the Code of Civil Procedure (for short the 'Code'). As a result the appeal was allowed by the learned Additional District Judge, the decree dated 27th September, 1982 passed by the Senior Subordinate Judge, Sonepat, was set aside and the suit was remanded for its trial on merits.

(2) It is not necessary to detail the facts giving rise to the litigation because in my view the present appeal is not maintainable. All that needs to be noted is that during the pendency of a suit filed by plaintiff-appellants Nos. 1 and 2 an application was made by them on 13th June, 1980 for disposing of the suit on the basis of a compromise dated 13th December, 1979. On this application the learned trial Court framed the following issue:—

"Whether the suit has been compromised between the parties as alleged ?"

After recording the evidence for and against the alleged compromise, the learned trial Court ordered the same to be recorded and passed, a decree in accordance therewith. Defendant-respondents Nos 1 and 2 filed an appeal against the aforesaid order and decree of the trial Court which has been allowed by the learned Additional District Judge, through the judgment under appeal. It has been held therein that the aforesaid compromise was not in conformity with Order 23 Rule 3 *ibid* and as such the trial Court fell in error in recording the same and passing a decree on its basis.

(3) Today when this appeal came up for hearing before me, I expressed my doubt about its maintainability. I, therefore, heard the learned counsel for the appellants on this point. It is to be noted that under Section 96(3) of the Code no appeal lies from a decree passed by the Court with the consent of the parties. It is, therefore, clear that the appeal which was preferred from the order of the trial Court recording the compromise and passing the decree and which has been disposed of by the learned Additional District Judge, was not an appeal falling within the ambit of Section 96 *ibid.* Before coming into force of the Civil Procedure Code (Amendment) 1976 with effect from 1st February, 1977 Clause (m) of Rule (1) of Order 43 of the Code provided that an appeal lay from an order under Rule 3 of Order 23 recording or refusing to record an agreement, compromise or satisfaction. Clause (m) *ibid* was, however, deleted by the Amendment Act and instead Rule 1-A was inserted in Order 43, which, *inter alia,* provides that in an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not have been recorded. It is not disputed that Order 43 provides for appeals from orders in pursuance of clause (i) of sub-section (1) of Section 104 of the Code. Thus, there cannot be any doubt that the appeal disposed of by the learned Additional District Judge by his order dated 6th August, 1984 is an appeal within the meaning of Section 104 of the Code. Sub-section (2) of Section 104 *ibid* lays down that no appeal shall lie from an order passed in appeal under the said Section. As such the present second appeal is clearly barred by Section 104(2) of the Code.'

(4) Learned counsel for the appellants then urged that this appeal may be treated as a revision petition under Section 115 of the Code and disposed of accordingly but he could not satisfy me that the order passed by the learned Additional District Judge, suffers

from any error in the exercise of his jurisdiction. I, therefore, find no substance in the submission so made. Consequently, this appeal is dismissed. Since the respondents are not represented before me, there shall be no order as to costs.

S.C.K.

Before D. V. Sehgal, J.

HARJINDER KAUR and others,—*Appellants.*

versus

EMPLOYEES' STATE INSURANCE CORPORATION, AMRITSAR,—*Respondent.*

F.A.O. No. 362 *of* 1982.

May 1, 1987.

Employees' State Insurance Act (XXXIV of 1948)—*Sections* 2(*a*), 51-*A*, 85-*B*, *Regulation* 31-*A*—*Employment injury*—*Meaning of*—*Death of bus driver due to heart failure while sleeping in the bus*—*Such injury*—*Whether employment injury*—*Payment of benefits withheld by Corporation*—*Liability to pay interest on such amount.*

Held, that the moment it is proved that the accident arose in the course of an insured person's employment, it is to be presumed, in the absence of evidence to the contrary, that the accident has arisen out of that employment. The learned trial Judge was, therefore, wrong in requiring proof from the appellants that, in spite of the fact that the death of the injured took place in the course of his employment, it had arisen out of that employment. No doubt, this presumption is rebuttable but there is no evidence worth the name on the record which may be styled as evidence to the contrary. There is no evidence that he was suffering from any heart ailment prior to the date of his death. It is clear that had he been at his residence or in the City of Amritsar and his wife and other attendants had been around him, the moment he suffered the heart attack medical aid would have been provided to him and it is quite possible that he would have survived this attack. The very fact that no medical aid could be afforded because he was sleeping in the bus all alone while on duty makes it clear that the death arose out of his employment. (Para 6).