

(1998) 03 AHC CK 0105
In the Allahabad High Court
Case No : F.A.F.O. No. 382 of 1994

Bharat Heavy Electricals Ltd., Haridwar	APPELLANT
Vs	
Smt. Godawari Devi alias Godambari Devi	RESPONDENT

Date of Decision : 26-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Employees State Insurance Act, 1948 — Section 2(8)
Workmens Compensation Act, 1923 — Section 3, 3(1), 30, 4, 4A

Citation : (1998) 3 AWC 2000 : (1999) 1 LLJ 1350

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Rakesh Tewari and J.N. Tewari, for the Appellant; Tejpal, for the Respondent

Final Decision : Dismissed

Judgement

O. P. Garg, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") has been preferred against the order dated 17th February, 1994, passed by the Commissioner stationed at Saharanpur under the Act in W.C.A. No. 6 of 1991 whereby a sum of Rs. 30,000 with interest at the rate of 15% per annum as compensation u/s 4 and a sum of Rs. 15,000 as penalty u/s 4A(3) of the Act with Rs. 500 as cost have been awarded to Smt. Godawari Devi alias Godambri Devi widow of late Sarveshwar Dull an unskilled labour employed by the appellant, and who is alleged to have met with accidental death.

2. Counter and rejoinder-affidavits have been exchanged. Heard Sri J. N. Tewari, learned counsel for the appellant and Sri Tejpal learned counsel for the respondent, at considerable length.

3. The appellant Bharat Heavy Electricals Ltd. is engaged in the manufacture of electrical and founder equipment. One of its projects was situated at Wadi Zizan in Saudi Arabia. Late Sarveshwar Dutt was in the employment of the appellant in

the Central Foundry Forge Plant unit as an unskilled workman. He was deputed to Saudi Arabia site on 21.3.1983 where he Joined the camp site. It is alleged that after the project was over In Saudi Arabia, the employees were brought to India in batches as all of them could not be flown together. Late Sarveshwar Dutt expressed his desire to leave Saudi Arabia in the last batch. While being at Saudi Arabia late Sarveshwar Dutt, it is alleged, disappeared from the camp site and was found missing since the afternoon of 9th September, 1983. The site authorities made all out efforts to search him and simultaneously took up the matter with the police of Saudi Arabia. Passport authorities and Labour Department. The nearby hospitals were also informed. The fact of disappearance of Sarveshwar Dutt was also notified in the newspapers. The police of Saudi Arabia could not locate Sarveshwar Dutt in spite of their best efforts. After about 21/2 months of the disappearance of Sarveshwar Dutt, one Hasan Abu. a Saudi national Informed the local police that when he was passing through the north of Khaswia village, he saw a man hanging on a tree. This person was later identified and recognised as late" Sarveshwar Dutt. Necessary formalities relating to inquest on the dead body of the deceased were performed. The dead body was shifted to hospital and in the medical test report Issued on 29.2.1404. the date according to the calendar of Saudi Arabia, the following facts were reported :

"The dead person had worn Indian dress and initial medical report shows that bad smell was coming out of his body and parasites and worms have eaten his body. There was no external injury on the dead body and blue nylon rope was tide around his neck. His eyes were open and tongue was out. These symptoms are of suffocational death."

From the relevant documents submitted by the Directprate of Police. Zlzan Region Crime Branch. It was established that late Sarveshwar Dutt committed suicide. Since as per local laws, non-Muslim could not be buried in Saudi Arabia, the body of Sarveshwar Dutt was brought to India and handed over to his family members at Haridwar where it was cremated on 24.12.1983.

4. Smt. Godawarl Devi alias Godambri Devi respondent is admittedly the widow of late Sarveshwar Dutt. She has been paid about Rs. 30,000 towards the provident fund, gratuity, etc., and with a view to tide over the financial crisis, which had occasioned on account of sudden death of husband, she has been given employment In Masala Centre Ladies Club, BHEL, Ranipur. Hardwar and is serving there.

5. A time-barred claim petition was filed by the respondent Smt. Godawari Devi alias Godambri Devi in the year 1991, i.e.. after about 7 years of the death of her husband under the provisions of Section 3 4 of the Act. The delay was condoned by the Commissioner, appointed under the Act for the purpose and an order of compensation, with interest, penalty and cost, as aforesaid, was passed on 17.2.1994. It is this order which has been challenged in the present appeal by the employer-appellant.

6. Sri Tejpal appearing on behalf of the respondent--Smt. Godawari Devi raised a preliminary objection about the maintainability of the appeal. He made a reference to the proviso to Section 30, of the Act wherein a provision has been made that no appeal shall lie against any order unless a substantial question of law is involved in the appeal". It was pointed out that the said provision is akin to the provisions of Section 100, Code of Civil Procedure, which provides for entertaining a second appeal if a substantial question of law is made out and that it was necessary for the appellate court at the time of admitting the appeal to formulate a question of law for determination by the appellate court and if it has not been done, Sri Tejpal argued, the appeal would be incompetent and has to be dismissed. This submission was repelled by Sri J. N. Tewari learned counsel for the appellant.

7. I have given thoughtful consideration to the matter and find that there is no such requirement as regards the formulation of the substantial question of law by the appellate court exercising powers u/s 30 of the Act. It is true that an appeal u/s 30 lies to this Court against an order provided a substantial question of law is involved. On the point as to what is substantial question of law, there is an authoritative pronouncement of the Constitution Bench of the Supreme Court in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, . It was held that the proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by Supreme Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well-settled and there is a mere question of applying those principles, or that the plea raised is palpably absurd, the question would not be a substantial question of law. In that case, it was held that the construction of the Managing Agency agreement was not only one of law but also it was neither simple nor free from doubt.

8. In the instant case, the substantial question of law, which has been canvassed on behalf of the appellant is whether the legal heirs of the deceased workmen are entitled to claim compensation from the employer if the accidental death has not taken place in the course of his employment. It was urged that no personal injury was caused to late Sarveshwar Dutt on account of the accident arising out of and in the course of his employment and that the Commissioner who has decided the case, has wrongly held that the employer is liable to pay compensation as the death of the workman had occurred during the course of his employment. Learned counsel for the respondent took the stand that the death of late Sarveshwar Dutt had occurred in Saudi Arabia where he was sent for employment and till he was brought back to India, he shall be deemed to be under the employment of the appellant and his death, which has taken place at Saudi Arabia has to be taken to have occurred in the course of his employment.

The moot point for consideration and determination in the present appeal is whether the death of late Sarveshwar Dutt, who had committed suicide in Saudi Arabia after his disappearance from the camp site, shall be treated to be the death arising out of and in the course of his employment or not.

9. The above is the substantial question of law, which has to be determined in the present appeal and there is no escape from the finding that the present appeal u/s 30 of the Act is maintainable.

10. Now I come to the merits of the case. As said above, there is no dispute about the fact that late Sarveshwar Dutt, who was admittedly an employee of the appellant, was sent to Saudi Arabia. He worked in the Project/unit of the appellant as an unskilled labour. There is evidence on record to indicate that after the project was over, late Sarveshwar Dutt was not willing to return to India in the first batch as he wanted to stay on to seek some employment. He was labouring under mental stress and wanted to leave for India in the last batch. All these facts have been stated by Yogendra Pathak, who was Manager (Personnel Administration] and Director Services in Saudi Arabia in the project of the appellant. He was the best person to state about the various facts. Smt. Godawari Devi alias Godambri Devi respondent, widow of the deceased-workman was staying back in India and had no personal knowledge of the various facts which obtained in Saudi Arabia and, therefore, her counter-affidavit is hardly of any consequence. It has come in evidence that late Sarveshwar Dutt disappeared from the camp site on 9.9.1983 when he was last seen alive. His dead body was found after about 2 1/2 months hanging on a tree away from the factory site. The medical report indicates that he had committed suicide. Taking the above facts to be correct, it is well-established that late Sarveshwar Dutt who had gone to Saudi Arabia in the employment of the appellant, had firstly disappeared from the camp site of the project and committed suicide after about 21/2 months of his disappearance.

11. In view of the above finding. It has to be determined whether the employer is liable for compensation u/s 34 of the Act, Section 3 of the Act reads as follows :

"3 Employer's liability for compensation.--(1) If personal injury is caused to a workman 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 the Chapter :

....."

The above provision postulates at least three specific requirements before an employer can be made liable to pay compensation, viz., (I) that It is the workman who has suffered personal injury: (ii) that the personal injury should be on account of an accident, and (III) that the accident should arise out of and in the course of employment of the workman. Learned counsel for the appellant frankly conceded that since late Sarveshwar Dutt had gone on deputation as an

employee of the appellant in temporary project at Saudi Arabia, he was undoubtedly a workman at the relevant time. He however, contended that late Sarveshwar Dutt did not die as a result of accident as he had. as per medical examination report, committed suicide and in any case, even if it be taken to be an accidental death, it was not a case where the accident arose out of and in the course of his employment. The expression "in the course of his employment" appearing in Section 3(1) of the Act was examined by the Supreme Court in *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, . In that case, the appellant, a salt manufacturing company employed workmen both temporary and permanent. The salt works was situated near a creek opposite to the town of Porbandar. The salt works could be reached by atleast two ways from the town, one an over-land route nearly 6 to 7 miles long and the other via a creek which had to be crossed by a boat. In the evening of 12.6.1952, a boat carrying some of the workmen, capsized due to bad weather and overloading. As a result of this one of the workmen were drowned. One of the questions that came up for consideration was whether the accident had taken place in the course of the employment of the workers. Hon'ble S. Jafar Imam, J., speaking for the Court held "As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded." At page 883, it was further observed :

"It is well-settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D. the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable."

12. There is another case in *General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes*, . In that case, one bus driver of the appellant-Corporation after finishing the day's work left for home in a bus belonging to employer's

Undertaking which met with an accident as a result of which he died. His widow claimed compensation under the Workmen's Compensation Act and the question was whether the accident had arisen out of and in course of employment. It was held by Subha Rao and Mudholkar. JJ, (Raghubar Dayal, J., dissenting) that the bus driver was given facility by the management to travel in any bus belonging to the Undertaking. It was given because efficiency of the service demanded it. Therefore, the right of the bus driver to travel in the bus was to discharge his duty punctually and efficiently. This was a condition of service and there was an obligation to travel in the said buses as a part of his duty. It was held that in the case of a factory. the premises of an employer was a limited one but in the case of a City Transport Service, the entire fleet of buses forming the service would be "premises". This decision does not apply to the facts of the present case on all fours as in that case, employee of the Transport Undertaking was travelling in a vehicle provided by the employer and having regard to the purpose for which he was travelling and also having regard to the obligation on the part of the employee to travel in the said buses as a part of his duty, the Supreme Court came to the conclusion that this journey was in the course of his employment.

13. The words "in the course of employment" have also been used in Section 2(8) of the Employees' State Insurance Act, 1948 (hereinafter referred to as "Insurance Act"). This provision is virtually part material to the provisions of Section 3 of the Act. In a recent case in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, . the above expression used in Section 2(8) of the Insurance Act came to be considered and interpreted. In that case, the respondent--Francis De Costa met with an accident while he was on his way to his place of employment, a factory at Koratty. The accident occurred at a place which was about one kilometer away to the north of the factory. The time of occurrence was 4.15 p.m. It has been stated that the duty shift of the respondent would have commenced at 4.30 p.m. The respondent was going to his place of work on bicycle. He was hit by a lorry belonging to his employers, In the light of the above, facts, it was held that the injury suffered by Francis De Costa--respondent in the said case, could not be said to have been caused by an accident arising out of and in the course of employment. It was observed that the definition given to "employment injury" in sub-section (8) of Section 2 envisages a personal injury to an employee caused by an accident arising out of and in the course of his employment. Therefore, the employee, in order to succeed, will have to prove that the injury that he had suffered arose out of and was in the course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act. The claim the respondent--Francis De Costa, which was earlier allowed, was negatived by the Supreme Court.

14. In the backdrop of above legal position, now let us consider the present case. It is not in dispute that late Sarveshwar Dutt who was a workman employed by the appellant, had died in Saudi Arabia. In order to maintain the claim for compensation under the provisions of Section 3 of the Act. it was required to be

proved that the death had occurred in an accident which arose out of and in the course of employment of the workman, meaning thereby, it should be proved that it was a case of "employment death". At the relevant point of time, late Sarveshwar Dutt was not working in the Project or Unit of the appellant in Saudi Arabia. He had fled away from the site and remained untraceable for a period of about 21/2 months. During this period, obviously he did not Join the camp site. His dead body was found hanging on a tree and the symptoms which had appeared on the dead body, indicated on autopsy that it was a case of suicide, i.e., the late workman brought to an end to his own life for the reason which is hidden in the penumbral zone far away from judicial scrutiny. It would be a travesty of justice if a workman who commits suicide after having left his engagement/employment for the last 21/2 months at a place away from the camp" site of the project is held to have received personal injury on account of accident arising out of and in the course of employment. If the interpretation as put on behalf of the respondent that late Sarveshwar Dutt died in the course of employment is accepted, it would lead to absurd results and the very purpose of the phrase "arising out of and in the course of employment" used in Section 3(1) of the Act would be frustrated.

15. The Authority acting under Sections 3 and 4 of the Act has not taken correct view of the matter and a reading of his decision gives an impression that he was swayed away by some considerations which were not germane to the enquiry in hand. He obviously drew inferences which are wholly untenable in the eyes of law.

16. The learned counsel for the respondent, i.e., widow of late employee made a fervent appeal that in the case like the present one, the employer should have been generous, considerate and sympathetic towards the widow and if an amount of compensation of about Rs. 45,000 and odd has been awarded, it should not have resisted the same by filing the present appeal. The submission, laudable as it appears to be, cannot be sustained for one simple reason that the amount of compensation under the Act can be granted to the legal heirs of an employee/workman only on certain specific conditions. If these conditions have not been established, the employer cannot be saddled with the liability to pay compensation on the ground of charity or generosity. Even otherwise, the employer, in the present case, has not been unreasonable. The appellant-employer has made payment of all the dues which the widow of workman was entitled to receive consequent upon death of her husband with all promptitude and not only this, she has also been given a suitable employment so as to make her both ends meet.

17. In the result, I find that the impugned order passed by the Commissioner under the Act awarding amount of compensation with interest, amount by way of penalty as well as cost is manifestly illegal and against the provisions of Section 3 of the Act. I have no hesitation in recording a finding that the death of late Sarveshwar Dutt had not occurred as result of accident "arising out of and in the

course of employment¹ in Saudi Arabia. The claim petition under Sections 3 and 4 of the Act was not maintainable.

18. The appeal is allowed. Impugned order dated 17.2.1994 passed in W.C.A. Case No. 6 of 1991, by the Commissioner appointed under Workmen's Compensation Act, Saharanpur is quashed. The result would be that the claim petition filed by the respondent u/s 3 4 of the Act stands dismissed. The amount deposited by the appellant under the order appealed against before filing of the appeal and in respect of which a certificate has been filed with the Memorandum of Appeal, shall be refunded to the appellant. Costs easy.