

(2011) 07 KAR CK 0141
In the Karnataka High Court
Case No : MFA No. 520 of 2006 (WC)

Branch Manager, Oriental Insurance Co Ltd.

APPELLANT

Vs

Smt. Fathimabi

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Citation : (2012) 1 KarLJ 346 : (2012) 2 LLJ 770 : (2012) 2 TAC 481

Hon'ble Judges : Mohan Shantanagoudar, J;K Govindarajulu, J

Bench : Division Bench

Advocate : A.N. Krishna Swamy, for the Appellant; M.V. Maheshwarappa, for R1, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—The award made by the Labour Officer and Commissioner for Workmen Compensation, Shimoga in favour of the respondent is called in question in this appeal by the Insurance Company.

2. The records reveal that the respondent No. 1 herein are the legal heirs of deceased Saifulla @ Bablu who was working as autorickshaw driver under 2nd respondent herein in Autorickshaw bearing registration No. KA-14/4579. While on duty, the deceased Saifulla was waiting for passengers in autorickshaw stand on 9.01.2004 at about 7.30 p.m. Three persons took the vehicle on hire and the vehicle went towards Gajanur side. During transit another person boarded the auto rickshaw. When the auto rickshaw went near a water canal, somewhere near Gajanur, the driver of the auto rickshaw namely Saifulla was done to death by use of lethal weapons and his body was thrown near the canal. The auto rickshaw was taken for about 1/2 kmt away from the scene of offence and was left there by the culprits. Thereafter the complaint was lodged by the brother of the deceased as per Ex.P1. The Sessions case was registered.

3. The respondent No. 1 herein filed claim petition before the Labour Officer and Commissioner for Workmen's Compensation. Shimoga, on the ground that the

death was during the course of employment while the workman was on duty. Respondent No. 1 - claimant examined herself in support of her case and she was cross examined by the advocate appearing on behalf of the Insurance Company. The Labour Officer relying upon the judgment of the Apex Court in the case of Rita Devi v. New India Assurance Company Ltd., reported in AIR 2000 SC 1930 allowed the claim petition and granted the compensation in favour of the 1st respondent herein. The same is called in question in this appeal by the Insurance Company.

4. Sri. A.N.Krishna Swamy, learned advocate on behalf of the Insurance Company submits that Saifulla was murdered; but the murder was not for gain. Hence he contends that it is a case of plain murder and consequently, the benefit arising out of the judgment of the Apex Court in the case of Rita Devi may not be available to the respondent No. 1 herein. He points out that neither the auto rickshaw nor any of the valuables of the deceased were lost or were stolen by the assailants and consequently, it cannot be presumed that the accused had the intention of gaining something from the deceased by committing murder.

5. The appeal is opposed by the learned advocate appearing for the claimant by contending that, since the deceased was on employment during the relevant point of time, the Insurance Company is liable vicariously.

6. As could be seen from the complaint lodged by the brother of the deceased Ex.P1, it is clear that three persons boarded the auto rickshaw in auto rickshaw stand. When the auto rickshaw went to certain distance another person boarded the auto rickshaw. Thereafter all the four passengers took the auto rickshaw near a water canal of Gajanur which is away from Shimoga city and committed murder of the driver of the auto rickshaw. The dead body was thrown near a canal. However, the auto rickshaw was found about 1/2 kmt away from the scene of offence. It is no doubt true that the investigation records in criminal case do not disclose that either the auto rickshaw or any of the valuables of the deceased was lost in the incident. That does not mean that the accidental murder has not occurred during the course of employment or has not arisen out of employment.

7. In the matter on hand, from the facts and circumstances, it appears that the murder was originally not intended by the assailants inasmuch as they simply boarded the auto rickshaw without any intention of committing the murder; the deceased seemed to have not known about the assailants at all. If the assailants initially had got the intention of committing murder of the deceased they would have committed the offence at the earliest. The deceased did not know about the antecedents of the assailants. The very fact that the deceased permitted the four passengers (assailants) to board the auto rickshaw, would show that the driver of the auto rickshaw (the deceased) did not suspect the four passengers at all. All the four passengers requested the deceased to take the auto rickshaw to Gajanur and there the victim was done to death near Gajanur. Nobody knows as to what had actually transpired at the time of incident. There are no eye witnesses to prove such fact. This Court cannot presume anything either in

favour of the claimant or in favour of the Insurance Company.

8. There is every possibility that the deceased driver refusing to proceed further from Gajanur. There is also possibility as contended by the learned advocate Sri. Krishna Swamy appearing on behalf of the Insurance Company that the four persons had hired and boarded the auto rickshaw only with the intention to commit the murder of the deceased. Both the possibilities cannot be ruled out.

9. However, the fact remains that the deceased did not anticipate that he would be murdered in future when he permitted the passengers to board auto rickshaw inasmuch as he did not know about the passengers at all. Had he known about the passengers earlier or had he known that those passengers had got intention to murder him, he would not have allowed the passengers to board the autorickshaw. Therefore, the enmity must have been developed during the course of transit. What really happened between the driver and the passengers cannot be presumed at all. Under such circumstances the Commissioner for Workmen's Compensation is justified in holding against insurer relying upon the principles laid down by the Apex Court in the case of *Rita Devi v. New India Assurance Company Ltd.*, mentioned supra.

10. In the matter on hand also, this Court is of the opinion that the act of murder was not originally intended by the passengers. Had they got such intention of committing murder, they would have finished the driver on the spot wherein they boarded the auto rickshaw. As aforementioned even the driver did not suspect the passengers and consequently he allowed the passengers to board the vehicle and he drove the vehicle as per the request of the passengers towards Gajanur side.

11. The driver of the autorickshaw (deceased) who was employed by the owner for driving autorickshaw for carrying passengers on hire, 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 passengers, for any reason had decided to commit the act of felony of either stealing the autorickshaw or making unreasonable demands from the driver, or for any other reasons which might not have come to limelight at all, and the possibility of eliminating the driver of the autorickshaw on that ground cannot be ruled out. Such an illegal act of the passengers would have cropped up at the subsequent point of journey. In this view of the matter, it cannot, but be said that the death so caused to the driver of the autorickshaw was an accidental murder. Since there are no eye witnesses to the incident, as aforementioned, the exact intention of the passengers is not known. So also, there is nothing on record as to what happened on the spur of the moment at the time of commission of murder. But, the facts and circumstances of this case clearly reveal that the murder is caused in the process of either stealing the autorickshaw or for any other reason best known to the passengers themselves. The passengers have taken the autorickshaw for about half a kilometer from the place of incident. The exact reason for the same is unknown. However, the possibility of passengers having

intention to steal the autorickshaw cannot be ruled out. Looking to the totality of the available material on record, we are of the opinion that the murder of the deceased autorickshaw driver was due to such an act of accidental murder arising out of the employment and during the course of the employment. As has been held by the Apex Court in the judgment cited supra, the difference between "murder" which is not an accident and "murder" which is an accident depends upon the proximity of the acts of such murder. In the matter on hand, the dominant intention of the act of felony does not appear to kill the driver of the autorickshaw. The facts and circumstances lead to the conclusion that the act of murder was originally not intended. Thus, the murder in question is an accidental murder. Since the murder of the deceased autorickshaw driver was due to the accident arising out of the employment, the claimants are entitled for compensation under Workmen's Compensation Act.

12. In view of the same, the Commissioner is justified in granting compensation in favour of respondent No. 1 and directing the Insurance Company to pay the same. Hence the same does not call for interference. Appeal filed by the Insurance Company is dismissed.

Amount in deposit shall not be disbursed for a period of eight weeks, as requested by the appellants.