

(2003) 06 JH CK 0101
In the Jharkhand High Court
Case No : M.A. No. 146 of 2002

Brian Sidney Mendies and Another	Vs	APPELLANT
Secretary Bishop West Scott School and Others		RESPONDENT

Date of Decision : 13-06-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 3, 30

Citation : (2005) ACJ 1070 : (2004) 2 ACC 466 : (2004) 1 JCR 245

Hon'ble Judges : Gurusharan Sharma, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : T.K. Das and Maheshwari Singh, for the Appellant; Satish Baxi and M.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

1. Admittedly, one Leslie Brian Mendies was employed as Food/Mess Sergeant in the School Mess of Bishop Westcott situated at Socko, Khunti, within Ranchi district on a consolidated monthly salary of Rs. 1700/- including that food allowance. He was aged about 33 years on 13.9.1996, when he met with an accident. While coming down from the second floor, he fell down from the stairs, sustained serious injuries and died in the hospital on the next day i.e. on 14.9.1996.

2. His parents filed W.C. Case No. 5 of 1998, under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") for compensation.

3. According to the claimants, their deceased son was working as Mess Sergeant in the School. His duty was from 8 a.m. to 12 noon in the day and from 6 p.m. to 10 p.m. in the night. On 13.9.1996 at about 9 p.m. he received personal injury by accident arising out of and in course of his employment, while he was coming down from the top of the second floor of the building for serving food to the members of the staff and others. As there was no railing in the stairs, he fell

down on the pucca ground from the height of at least ,25" and received head and chest injuries. He was taken to Nagarmal Seva Sadan Hospital, Ranchi, where he died on 14.9.11996. His parents were fully dependent on his earning and hence they were entitled to get compensation under the provisions of the Act.

4. The Secretary and Principal of the School filed rejoinder and contested the claim case, inter alia, on the ground that the deceased did not come within the purview of the term "workman" as defined under the Act. He did not fall under any of the classifications listed u/s 11 of the Act and it was not an accident as construed u/s 3 of the Act. It did not arise out of or in course of employment of the deceased. He was absent from duty from 10.9.1996 onwards and at the time of accident he was under the influence of drinks or liquor to which he was addicted. He used to drink almost at all hours. His salary was Rs. 1347/- per month. His duty hours was upto 7.30 p.m. After all the children of the hostel of the school finish their dinner, the Mess Sergeant had no business to be there in the hostel or the mess in connection of his duty at 9 p.m. The building in question was constructed in the year 1992 and right from that time all the stairs had railings. At about 10"O clock in the night there was no question of the deceased coming down from the 2nd floor to serve food to the members of the staff after the dinner was complete earlier. As he was intoxicated and fully drink was not able to control himself and as such fell down from the 2nd floor. Hence, there was absolutely no liability on the school management to pay any amount of compensation to his dependents under the Act.

5. The claimants examined two witnesses, one of them (AW 1) being father of the deceased, claimed to have got information about the accident on 14.9.1996 in the morning hours. He was not aware whether his son was absent from duty from 10.9.1996 till the date of accident. He was no doubt residing on the 2nd floor, but the reason for his coming down at 9 p.m. was not known to him.

6. AW 2 (Lt. Gen. Maya Das) stated that family of the deceased was known to him. He was not aware of the concern, where the deceased was employed. AW 1 had told him that his son was sending money to him, but he was not aware of the exact amount. According to him, father of the deceased was a retired employee of the Air Force. He was not aware whether the claimants were dependent on the deceased.

7. On behalf of the School-Management, Chand Kumar Rajan Lakra, its Accountant was examined as O.P.W. No. 1, who deposed that duty of the deceased was to get the food prepared for the school children through helpers and to maintain accounts of the kitchen.

8. O.P. W. 2 was an office staff of the school. According to him duty of the deceased was to maintain the accounts of kitchen materials, to get the food prepared through cook for the hostel children and staff and also to examine quality of food.

9. O.P.W. 3 was Principal of the School. He stated that duty of the deceased was to supervise the cooking of food.

10. On the basis of the aforesaid evidence, the Presiding Officer, Labour Court, Ranchi came to the conclusion that duty of the deceased was to look after the kitchen work and to supervise the quality of food and to see that food was served to the children of the hostel and staff properly in time. He was also maintaining the accounts, he was over all in-charge of kitchen. However, in the impugned order dated 26.2.2002, it was held that the deceased was not a "workmen" within the meaning of Section 2(i)(n) of the Act, although he died in an accident arising out of and in course of his employment. Accordingly the claim application was held not maintainable and the parents of the deceased not entitled to any amount of compensation under the Act. The claimants have, therefore preferred the present appeal u/s 30 of the Act.

11. Mr. T.K. Das, learned counsel for the appellant submitted that the Labour Court erred in law in holding that the deceased was not a "workman" within Section 2(i)(n) of the Act, which is purely a question of law to be decided in the present appeal.

Under Section 2(i)(n) of the Act, the "workman" is defined as under :--

"Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business),

(i) a railway servant as defined in (Clause (34) of Section of the Railways Act, 1989 (24 of 1989) not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as specified in Schedule II, or

(i-a) (a) a master, seaman or other member of the crew of a ship;

(b) a captain or other member of the crew of an aircraft;

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle;

(d) a person recruited for work abroad by a company;

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or)

(ii) employed in any such capacity as is specified in Schedule II.

Whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing" but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, includes a reference to his dependants or any of

them."

12. Admittedly the deceased was overall in-charge of the school Mess and was called Food/Mess Sergeant. No doubt his supervision work was connected with the work of kitchen, where food was cooked and the Dining Hall, where it was served to the children residing in the school Hostel as well as the staff in the school premises, but it is clear that he himself was neither engaged in cooking or serving the food rather in managing/supervising the Mess work and was keeping account thereof. His nature of work was rather clerical in nature. Item No. 3 of Schedule II of the Act read as under :--

"employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale of any article or part of an article in any premises,

wherein or within the precincts whereof twenty or more persons are so employed.

Explanation.--For the purpose of this clause persons employed outside such premises or precincts but in any work incidental to, or connected with, the work relating to making altering repairing ornamenting finishing or otherwise adapting for use, transport or sale of any article or part of an article shall be deemed to be employed within such premises or precincts; or)

13. The supervision work of the Mess which was assigned to the deceased was also not covered under Item No. iii of Schedule II of the Act and though he was associated with the said work he would not come under the definition of "workman".

14. Mr. Das placed reliance on a decision of the Apex Court in G.L. Hotels Limited and Others Vs. T.C. Sarin and Another, , wherein it was held that for the purpose of Employees States Insurance Act, 1948, since the manufacturing process in the form of cooking and preparing food was carried out in the kitchen and the kitchen was a part of the hotel, the entire hotel fell within the purview of the definition of manufacturing process under the Factories Act, 1948. It was further observed that the 1948 Act was for extending the welfare coverage to as large section of individuals as far as possible and for that purpose of kitchen activity was held to be related to the activities in the other premises of the hotel and the persons working in that process were held to be counted as employees for the purpose of the application of the said Act. In our opinion, ratio of the said decision is not applicable in the present case, especially in view of the fact that the nature of the work assigned to the deceased was clerical in nature.

15. We, therefore, find no reason to interfere with the impugned order. There is no merit in this Appeal. It is dismissed, accordingly.