
(2024) 11 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : FAO No. 4193 Of 2013

Chet Ram

APPELLANT

Vs

State of Himachal Pradesh & others

RESPONDENT

Date of Decision : 13-11-2024

Acts Referred:

Employees Compensation Act, 1923 — Section 30
Workmen's Compensation Act, 1923 — Section 3(1)

Citation : (2024) 11 SHI CK 0021

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Romesh Verma, Digvijay Singh Bisht, Raj Negi

Final Decision : Dismissed

Judgement

Sushil Kukreja, J

1. The instant appeal is maintained by the appellant/petitioner-claimant (hereinafter referred to as "the petitioner"), under Section 30 of the Employees Compensation Act, 1923, against judgment dated 25.03.2013, passed by learned Commissioner Exercising Powers under Employees Compensation Act, Court No. II, Shimla, District Shimla, H.P., in Case No. 1-2 of 2011/05, with a prayer to quash and set-aside the aforesaid judgment.

2. Succinctly, the facts giving rise to the present appeal are that the petitioner (appellant herein) maintained a petition under the Employees (Workmen) Compensation Act, 1923, Workmen's Compensation Act, 1923 (for short "the Act"), before the learned Commissioner, Exercising Power under Employees Compensation Act, Court No. II, Shimla, District Shimla, H.P. (hereinafter referred to as "the Commissioner below"), whereby he sought compensation from the respondents for the injury allegedly suffered by him during the course of the employment. As per the petitioner, he was working as daily waged Beldar and deployed in HPPWD Section Badmain, Sub Division Sunni. The petitioner

alleged that on 29.12.2004, when he was going home, after discharging his duty, around 05:45 p.m. he met with an accident, due to which he remained unconscious for some time and when he regained consciousness he found himself lying on the road. His left eye and teeth/mouth were injured badly and blood was oozing out from his mouth. The petitioner was admitted in IGMC, Shimla on 29.12.2004 in the emergency, where he remained under observation, subsequently he was shifted to Dental Hospital, where his dislocated jaw was operated. As per the petitioner he remained admitted in the hospital w.e.f. 29.12.2004 to 22.01.2005 and his children spent Rs.70,000/- on his treatment by raising loan from their near, dear and friends.

3. The petitioner further averred in his petition before the learned Commissioner below that on 12.01.2005, through a registered letter, he made a request to Assistant Engineer, HPPWD, Sunni to provide compensation to him under the Act/ Insurance, Janta Accidental Scheme for his expenses for medicine, but neither any compensation was paid to him nor he heard anything from the office of Assistant Engineer. He further averred that after the accident for one and half months, he was unable to open his mouth. He also averred that he had five unmarried children, who were dependent on him, and it was difficult for him to meet out daily requirements as well as the expenses on medicine for recuperation.

4. He further averred that due to lack of knowledge and illiteracy, he could not serve the notice of accident upon the respondents, but the respondents were aware of the accident. Lastly, the petitioner sought compensation from the respondents.

5. The respondent, by filing reply to the claim petition, denied the claim of the petitioner. However, it has been admitted that the petitioner was the worker of HPPWD, but knowledge of the alleged accident was denied. As per the respondents, after the receipt of letter dated 12.01.2005 from the petitioner, the fact qua the alleged accident came in their knowledge. The respondent further contended that in the aforesaid letter, the date of accident was mentioned as 29.11.2004, at about 05:40 p.m., whereas in the claim petition the date of the accident was mentioned as 29.12.2004, at about 05:45 p.m.. Moreover, as per the report of the concerned Junior Engineer, the alleged accident did not take place during the working hours, i.e., 09:00 a.m. to 05:00 p.m. and it was alleged that on 29.12.2004 the petitioner was not on duty. The respondent further contended that as the petitioner had not met with an accident during the working hours and no information qua the accident was received in the department, therefore, the question of paying any compensation did not arise. As per the respondent, when information qua the accident was given by the petitioner, codal formality of lodging the FIR was completed. Lastly, the respondents prayed for dismissal of the claim petition.

6. In the interregnum, the petitioner moved an application seeking impleadment of the State of HP, through Secretary (PWD) and Executive

Engineer, HPPWD, Kumarsain, Division at Kumarsain, District Shimla, H.P., as party respondents.

7. The petitioner, in his rejoinder, alleged that the concerned Junior Engineer and the Assistant Engineer, i.e., SDO, HPPWD, Sunni, Sub Division, Sunni were aware about the accident. The petitioner further contended that he had wrongly mentioned the date of accident as 29.12.2004, instead of 29.11.2004, in his letter, which was a typographical mistake.

8. The respondents also filed sur-rejoinder, wherein they vehemently denied that on 29.11.2004 the petitioner met with an accident during the course of his employment. As per the respondents, the petitioner never met with an accident during the duty time, thus he was not entitled for any compensation.

9. On 09.09.2005, on the basis of the pleadings of the parties, the Commissioner below framed the following issues:

"1. Whether the injured person is a workman with the employer i.e. HPPWD? OPP

2. Whether the workman sustained injury during the course of employment and arising out of employment? OPP

3. Whether the employee's department is liable to pay the compensation to the workman and to what extent? OPP

4. Relief."

After deciding issue No. 1 in affirmative and issues No. 2 and 3 in negative, the claim petition of the petitioner was dismissed by the Commissioner below.

10. Feeling dissatisfied, the appellant (petitioner/claimant) preferred the instant appeal under Section 30 of the Act against the impugned judgment of the Commissioner below.

11. It is pertinent to mention here that during the pendency of the instant appeal, on 09.05.2021, the petitioner-claimant expired and his legal heirs were brought on record.

12. The learned Senior Counsel for the petitioner contended that the injured-Chet Ram (since deceased) was employed as Beldar and at that relevant time he was deployed in HPPWD Section Badmain under Sub Division Sunni. He further contended that since the injured had sustained injuries in an accident while he was returning after discharging his duties, he is entitled to compensation and the impugned judgment passed by the learned Commissioner below deserves to be quashed and set-aside.

13. Conversely, the learned Deputy Advocate General for the respondents contended that the Commissioner below has passed a well reasoned judgment, which was the result of proper appreciation of facts and law. He has further contended that no interference in the judgment of the learned Commissioner

below is required, as the petitioner (since deceased) had failed to prove a connection between the injury sustained by him with his employment. Lastly, it was submitted that the instant appeal be dismissed.

14. The appeal has been admitted on following substantial questions of law:

"1. Whether petitioner Chet Ram suffered injuries during the course of his employment working as a Labourer and therefore, he is entitled to recover amount of compensation from the respondents.

2. Whether the findings recorded by learned Commissioner under the Workmen Compensation Act Court No. 2 Shimla, are contrary to law as laid down by the Hon'ble Apex Court in case titled as Shakuntla Bai Pandey versus national Thermal Power Limited dated 3.2.1995 as reported in 1995, Supplement (3) Supreme Court Cases Page-680.

3. Whether the findings recorded by learned Commissioner below are vitiated on account of misreading and mis-appreciation of the pleadings as well as evidence on record."

15. I have heard the learned Senior counsel for petitioner and learned Deputy Advocate General for the respondents/State and carefully examined the entire record.

16. It is an admitted fact that the petitioner (since deceased) was employed as a daily waged Beldar with the respondents and was deployed in HPPWD Section Badmain under Sub Division Sunni during the relevant period.

17. It is a settled law that the injuries sustained by an employee in ordinary course or even in course of employment, cannot attract liability of the employer, unless there is a casual connection, between the injuries sustained and the employment. To come within the Act, the injury must arise out of and in the course of employment. The words "in the course of employment" means, in the course of work for which the workman is employed to do and which is incidental to it. The words "arising out of duty or employment" are understood to mean that "during the course of the employment or service". In short, there must be a casual relationship between the injury and employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression, undoubtedly, applies to employment such as to its nature, its conditions, its obligations and its incidents.

18. As per the petitioner, he sustained injuries on his left eye and teeth/mouth, while he was going home after discharging his duty on 29.11.2004, at around 05:45 p.m. Now the question that would arise for consideration is, whether the injury sustained by the petitioner can be termed as personal injury suffered by him on account of accident arising out of and in the course of his employment? Before proceeding to consider the said question, it would be useful to refer to Section 3(1) of the Workmen's Compensation's Act which reads as hereunder:

"Section 3(1): If the 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 this Chapter."

19. From the reading of Section 3(1) of the Act, what would emerge is that an employer is liable to pay compensation, in accordance with the provisions of the Act, to a workman, if such workman suffers personal injury by an accident arising out of and in the course of his employment. The word "and" used between the expression "arising out of" and "in the course of employment" is conjunctive and, therefore, it is incumbent upon the workman to prove by leading cogent evidence that the injury sustained by him in the accident has arisen both, 'out of' and 'in the course of employment'. The expression "in the course of employment" would mean during the period of work which the workman is employed to do or which is incidental to it. The words "arising out of employment" would mean that injury has resulted from some risk associated or incidental to the duties of service. In other words, there must be causal connection between accident and employment. In such cases, the burden of proof rests upon the workman to prove that accident arose out of employment as well as in the course of employment.

20. Thus, the three pre-requisite conditions for laying a claim under Section 3(1) of the Act are (i) personal injury; (ii) injury must be as a result of an accident and (iii) the injury has arisen out of and in the course of employment

21. In the case of *Mackinnon Mackenzie & Co. (P) Ltd vs. Ibrahim Mohd Issak* (1969) 2 SCC 607 the Hon'ble Supreme Court has dealt with the issue by holding that to come within the Act, the injury by accident must arise both out of and in the course of employment. The relevant portion of the aforesaid judgment reads as under:

"5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course. of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors the workman is brought within the scene of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. In *Lancashire and Yorkshire Railway Co. v. Highley*(1)

Lord Sumner laid down the following test for determining whether an accident "arose out of the employment":

"There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of the was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was. acting or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove: it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but' the evidence must be such as would induce a reasonable man to draw it. Lord Birkenhead L.C. in *Lancaster v. Blackwell Colliery Co. Ltd.*, (1) observed:

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

22. In the instant case, in order to prove his case, the petitioner himself stepped into the witness-box as PW-2 and stated that since the year 1994 he was working as Beldar in PWD and on 29.12.2004 he was on duty at Shimla-Mandi road at point called 18/2. He further stated that on that day he fell and sustained injury in his mouth and his jaw was broken and he was shifted by one Pardeep Verma to Shimla for medical treatment. He stated that on that day Durga Nand was also present with him on duty. He also stated that he remained hospitalized

for about 2½ months. As per him, plates were fitted in his jaw and he still cannot eat properly. He stated that he had spent about rupees 50-60 thousands on his treatment. Bills/cash memos of medicines and discharge slips are Ex. PW-1/A1 to PW-1/Z16. He further stated that no compensation was given to him by the department and he suffered injuries while he was on his duty. He further stated that he had given information to Assistant Engineer regarding his accident, vide letter Ex. PW-1/Z17.

23. The petitioner also examined PW-1, Shri Durga Nand, who was stated to be working as Beldar in HPPWD since 1987. This witness stated that on 29.11.2004 he was on duty on Shimla-Mandi Road at place called 18/2. He further stated that on that day Chet Ram (petitioner) was also on duty with him and during duty he (petitioner) sustained injury in his mouth while working near Badmain and he became unconscious. He further stated that the petitioner was rushed to Shimla in the car of Pardeep Verma and due to the said injury Chet Ram remained absent from duty for about 2½ months.

24. PW-3, Dr. Yogesh Bhardwaj, the then Professor and Head of Department of Maxilla Facial Surgery, Government Dental College and Hospital Shimla, deposed that the patient (the petitioner-Chet Ram) was admitted in his unit on 01.12.2004 and he remained admitted there till 22. 01.2005. He further stated that the patient was suffering from multiple facial fractures.

25. The respondents examined DW-1 Shri Naveen Chand Sood, the then Junior Engineer, Badmain Section Sunni, who deposed that the petitioner was working as Beldar in the aforesaid Section. He further stated that on 30.11.2004 the petitioner had not come on duty and in February, 2005 he resumed his duty. The duty hours of the petitioner were 09:00 a.m. to 05:00 p.m. and during the duty hours he had not met with an accident. He also stated that on 12.01.2005 a letter, Ex. DW-1/A, of the petitioner, was marked to him by SDO, HPPWD, and in his comments, he had mentioned that the petitioner had not met with an accident in his duty hours.

26. Shri Hem Raj (DW-2) deposed that he was working as Beldar in the year 2004 at Madani Section and their attendance was marked in muster roll and they remain on duty from 09:00 a.m. to 05:00 p.m.. He further stated that he was not aware as to how the petitioner had met with an accident and till 29.11.2004 the petitioner had worked with them, but after that he joined duty in February, 2005.

27. DW-3 Shri Roshan Thakur deposed that the petitioner was daily waged Beldar at Madani Section and in the year 2004 he came on duty on 29.11.2004, but thereafter he resumed duty in February, 2005. He further stated that the duty hours of a Beldar are 09:00 a.m. to 05:00 p.m.. He stated that he was not aware as to how the petitioner met with an accident.

28. The learned counsel for the petitioners contended that since the petitioner had sustained injuries while going back to home after discharging his duties, he

is entitled for compensation from his employer and in this respect he has placed reliance on a judgment of the Hon'ble Supreme Court rendered in *Shakuntala Bai Pandey vs. National Thermal Power Corporation Ltd.*, 1995 Supp (3) SCC 680, wherein it has been held by a Bench of two judges that when a workman become permanently disabled or dies in an accident while proceeding to his place of duty from his home or returning from the place of duty to home, he should be deemed to have died or become disabled while on duty. However, thereafter a Bench of three judges of Hon'ble Supreme Court in *Regional Director, E.S.I. Corporation & another vs. Francis De Costa & another*, (1996) 6 SCC 1, held that the words "accident..... arising out of.....his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment. In the aforesaid case, the collar bone of the workman was fractured as a result of the accident, while he was on his way on his bicycle to his place of employment and the accident occurred at a place which was at about 1 kilometer away to the north of the factory. The Hon'ble Supreme Court has held as under:

"7. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words "accident ...arising out of ... his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

8. The other words of limitation in sub-section (8) of Section 2 are "in the course of his employment". The dictionary meaning of "in the course of" is "during (in the course of time, as time goes by), while doing" (The Concise Oxford Dictionary, New Seventh Edition). The dictionary meaning indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4.30 p.m., any accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4.30 p.m. But this journey was certainly not in the course of employment. If 'employment' begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house, the accident will have to be treated as to have taken place in the course of his employment.

This interpretation leads to absurdity and has to be avoided.

... ..

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 the 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.”

29. In the instant case also, as per the case of the petitioner, he received injuries while going back to his home after discharging his duties. Therefore, in view of the judgment passed by the Hon’ble Apex Court in Regional Director’s case (supra), it cannot be said that the injuries suffered by the petitioner had arisen out of or during the course of his employment.

30. Moreover, the case of the petitioner is that he had sustained injuries on 29.11.2004 and after sustaining injuries, he was immediately shifted to the hospital for medical treatment on the same day at about 08:00 p.m. in the Emergency and thereafter he was shifted to Dental Hospital, where he remained hospitalized from 29.11.2004 to 22.01.2005. However, there is no evidence on record to suggest that the petitioner was treated in Emergency of IGMC, Shimla on 29.11.2004. PW-3, Dr. Yogesh Bhardwaj, who was examined by the petitioner, has categorically deposed that the petitioner remained admitted in his Unit w.e.f. 01.12.2004 till 22.01.2005. As per the admission and discharge slip, Ex.PW-1/A, the petitioner remained admitted in the hospital from 01.12.2004 and discharged on 22.01.2005. Thus, there is no evidence on record to suggest that the petitioner was admitted in IGMC, Shimla on 29.12.2004, at about 08:00 p.m. in the Emergency Ward. Therefore, in the absence of any evidence on record, it cannot be said as to how and in what manner the petitioner had sustained injuries. The petitioner has failed to show any connection between the accident and the employment. As observed earlier, the employer is only liable to pay compensation in case personal injury is caused to an employee in an accident arising out of and in the course of employment. Therefore, in the absence of any evidence on record, the petitioner has failed to prove that the alleged injuries suffered by him were caused during the course of his employment.

31. There is also no evidence on record to suggest that the petitioner had suffered permanent total disablement or partial disablement or temporary disablement. Part-1 of Schedule-1 of Employees Compensation Act, 1923, provides the list of injuries deemed to result in permanent total disablement and Part-II of the said Schedule provides list of injuries deemed to result in permanent partial disablement. The alleged injury of the petitioner nowhere falls in any category of the aforesaid list of injuries. At serial No. 5 of the list of injury in Part-1 of Schedule-I, very severe facial disfigurement is treated as permanent total disablement and in that situation percentage of loss of earning capacity is taken 100%. But in the case in hand, the petitioner has failed to prove that he had suffered severe facial disfigurement. He had even failed to produce any disability certificate on the record. He had joined his duty in February, 2005 after 2½ months and there is nothing on record to suggest that he had lost his earning capacity due to the alleged accident.

32. Thus, the learned Commissioner has rightly arrived at a conclusion that the

petitioner had not sustained any injury arising out of and during the course of his employment and had also not lost any earning capacity due to the injuries as alleged, as such the respondents are not liable to pay any compensation to the petitioner. The substantial questions of law are answered accordingly.

In view of what has been discussed hereinabove, no interference is required in the impugned judgment passed by the learned Commissioner below, as such the appeal, which sans merits, deserves dismissal and is accordingly dismissed. Pending application(s), if any, shall also stand(s) disposed of.