

(2003) 07 OHC CK 0042
In the Orissa High Court
Case No : Misc. Appeal No. 114 of 1999

Divisional Manager, New India Assurance Co. Ltd.	APPELLANT
Vs	
Ratan Thakur and Others	RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2004) 3 ACC 114 : (2005) ACJ 1876 : (2003) 2 OLR 394

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : G.P. Dutta, for the Appellant; J. Rath, for Respondent Nos. 2 and 3 and R.K. Routray, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This appeal u/s 30 of the Workmen's Compensation Act, 1923 is directed against the judgment passed by the Assistant Labour Commissioner-cum- Commissioner for Workmen's Compensation, Rourkela (in short. W.C. Commissioner") in W.C. Case No. 23 of 1996.

2. The brief facts leading to this appeal are that Sona Sethi and Samadri Sethi, the wife and mother respectively of one Puranram Sethi of Orampada in Uditnagar (Rourkela) filed an application before the W.C. Commissioner, Rourkela. claiming compensation for the death of Puranram Sethi in an accident arising out of and in course of his employment on 16.3.1996, while working in the Mini Truck bearing registration No.OR- 14B/2635. It is stated by Sona Sethi that her husband, namely, Puranram Sethi was employed in the aforesaid truck by respondent No. 1-Ratan Thakur, and on 15.3.1996 Puranram Sethi left home at 7 A.M. for duty and did not return. On 16.3.1996 somebody informed her to go to Kalunga where she could know about her husband. At Kalunga she could know from her father-in-law that her husband went towards Gurundia and was murdered by dacoits near Tenda forest in the night of 15.3.1996. It is stated that her husband was getting a salary of Rs. 2000/- per month and was 27 years old

at the time of death.

3. The owner as well as the insurer filed their respective written statements. The insurer took the plea that the deceased was not employed in the alleged mini truck and did not die in course of employment. The owner of the vehicle in his written statement stated that the deceased was employed as a driver in the mini truck and on 15.3.1996 while he was going towards Tamda side by driving the vehicle, some dacoits attacked him with the intention to loot the goods and money for which he was murdered while he was on duty. According to the owner, the deceased was getting a salary of Rs. 1800/- per month.

4. The W.C. Commissioner framed as many as four issues and while answering those issues, he came to the conclusion that the deceased was engaged as a driver by the owner of the truck in question and as such was a workman under the Act and that the deceased died due to an accident in course of employment. The W.C. Commissioner considering the fact, that the deceased was aged 27 years and his wages was Rs. 1800/- per month, assessed the compensation at Rs. 1,92,213/- and as the vehicle was duly insured with the insurer, i.e., the present appellant, directed the insurer to indemnify the owner of the vehicle and to deposit the compensation amount within a period of one month, from the date of receipt of the order, failing which the same would carry interest at the rate of 12% per annum from the date of accident till its realization.

5. It is needless to say that an appeal u/s 30 of the W.C. Act is maintainable only where substantial point of law is involved in the same. "

6. Learned counsel for the appellant submits that the death of the deceased by no stretch of imagination can be said, to have been due to an accident which arose out of and in course of his employment.

7. According to the learned counsel for the appellant, the aforesaid is a substantial point of law, which needs to be decided by this Court.

8. On perusal of the judgment of the W.C. Commissioner, it is found that the aforesaid question was dealt with and answered by the W.C. Commissioner under issue No. 2 by holding that in the circumstances of the case the murder can be considered as accident.

9. The question now raised has not come up before this Court for the first time. Earlier also similar question was dealt with by this Court in National Insurance Co. Ltd. v. Nalini Dehwari, reported in 2001 (2) TAC 72 Orissa, wherein the death of a workman had occurred when the truck in which he was employed as a driver was way-laid on its way to Burla by some miscreants and the consignment of Arnul Spray was looted and the driver was killed.-

10. This Court relied upon several decisions of the Apex Court as well as other High Courts, and relied upon the principles laid down by the Apex Court in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, wherein it has been held as follows :

" 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 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 casual 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 those factors the workman is brought within the zone 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..." and held that the driver became a victim of the offence during discharge of his duties and casual relationship between the death and employment of the deceased as truck driver prima facie existed."

11. In the case of Smt. Rita Devi v. New India Assurance Co. Ltd. reported in AIR 2000 SC 1930, the workman was an auto rickshaw driver. While he was carrying passengers on hire in the Auto, the passengers committed act of felony of stealing the auto rickshaw and murdered him. The Apex Court held as follows :

"The question, therefore, is : can a murder be an accident in any given cause ? There is no doubt that "murder" as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

xx xx xx xx "In the case of Nisbet v. Rayne and Burn. (1910) 2 KB 689, where a cashier, while traveling in a railway to a colliery with a large sum of money for the payment of his employers" workmen, was robbed and murdered. The Court of Appeal held :

"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risks, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the

Court followed its earlier judgment in the case of Challis {supra}. In the case of Nisbet, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which cause the death, and that: the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."

xx xx xx xx "Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, 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 the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw, -then it cannot be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw."

12. Though the aforesaid decision in the case of Rita Devi {supra} was under the Motor Vehicles Act, the principle so enunciated therein is squarely applicable to the facts and circumstances of the present case. In the present case the deceased was driving the vehicle of the owner and the very nature of his employment made it necessary for him to drive the vehicle, which ultimately resulted in his death by the dacoits. Thus, it can very well be said that there was casual connection between the accident and the employment and it can be said that the accident arise out of the employment of the deceased. Accordingly, the Tribunal has rightly come to the conclusion that the claimants are entitled to compensation.

13. Learned counsel for the appellant submits that W.C. Commissioner is wrong in awarding interest on the compensation amount by directing that if the awarded amount is not deposited within thirty days from the date of receipt of the order, it will carry interest at the rate of 12% per annum. I make it clear that the interest " 12% per annum shall be paid from the date of filing of the application till the realization of the awarded amount. The awarded amount has already been deposited before this Court since 25.7.2000. Let the interest component be deposited within a period of one month hence. The claimants shall be at liberty to withdraw the said amount.

14. It is brought to my notice that by order dated 7.5.2001, 50% of the deposited amount has already been disbursed to the claimants. Out of the

balance amount along with accrued interest thereon as well as the interest component that is to be deposited by the insurer, 60% shall be kept in a fixed deposit in the name of respondent No. 2, i.e. the widow of the deceased and 30% in the name of respondent No. 3 i.e. mother of the deceased. The balance amount shall be released in favour of respondent No. 2 by an Account Payee Cheque.

15. The appeal is accordingly dismissed.