

(2009) 10 DEL CK 0115

In the Delhi High Court

Case No : FAO No. 47 of 2007 and CM No. 1798 of 2007

D.S. Constructions Ltd.

APPELLANT

Vs

Smt. Raj Kali Devi Kohaar and Azad Hind Mazdoor Union

RESPONDENT

Date of Decision : 23-10-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 15B, 3, 3(1)

Citation : (2011) ACJ 38 : (2009) 163 DLT 634 : (2010) 124 FLR 485 : (2010) 157 PLR 18

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : V.K. Rao and Saket Sikri, for the Appellant; None, for the Respondent

Judgement

V.B. Gupta, J.—By way of this appeal, appellant is challenging order dated 29th December, 2006, passed by Commissioner, Workmen's Compensation (for short as "Commissioner"). Vide impugned order, claim for compensation filed by respondent was allowed.

2. Following substantial question of law has been formulated in this case;

Whether the order passed by the learned Commissioner is without jurisdiction in view of the fact that respondent is governed by the contract and was working in Libya and Indian laws are not applicable in the case of deceased/Emigrants or in view of Article 12(6) of the Emigration Act, 1983 or in terms of Clause 12 of the Contract?

3. Before dealing with the question of law, it would be fruitful to narrate brief facts which are; that respondent's husband was working with appellant on the post of Mason and drawing salary of Rs. 5,000/- per month. On 05/08/2000, during and in the course of employment at the site in Libya, her husband met with an accident and died. Appellant assured her to grant compensation, on receiving the amount of compensation from Libyan Authority from the Social Scheme, which was as per rule of Libyan Government. But appellant failed to

comply his assurances.

4. Deceased was 32 years at the time of accident. Accordingly, respondent claimed Rs. 2,03,850/- as compensation amount along with 50% penalty and 13% interest on the above mentioned amount. Besides this, she also demanded Rs. 50,000/- as travelling expenses etc.

5. Appellant in the written statement took preliminary objections regarding jurisdiction of the Court; claim being time barred u/s 10 of the Workmen Compensation Act and also that workman worked for M/s. D.S. Constructions Company, Libya therefore, M/s. D.S. Constructions Company (India), is not liable to pay any amount. On merits, it is stated that death of deceased Jai Nath Kuhar was a natural death. Therefore, respondent is not entitled to get any compensation.

6. This matter remained continuously on board since 2nd September, 2009. Nobody on behalf of respondent appeared. On 11th September, 2009, learned Counsel for appellant stated that he has already informed Counsel for respondent vide letter dated 3rd September, 2009 sent by courier. True copy of the same has been placed on record. Since nobody was appearing on behalf of respondent for last many dates, hence, respondent was proceeded ex parte on 11th September, 2009. Thus the Court had no option but to hear the arguments on behalf of appellant.

7. It is contended by learned Counsel for appellant that provisions of Workmen's Compensation Act (for short as "Act") are not applicable, as the employment of deceased was to be governed by Libyan Laws and in terms of the Emigration Act, 1983, appellant was never the employer of the deceased. As such appellant is not liable to pay any compensation to the deceased, as the salary of deceased was payable in Libya on the basis of contract entered into between M/s. D.S. Construction Private Ltd. Tripoli, Libya and the deceased.

8. Another contention is that death of the deceased was caused due to Heart Attack and same was a natural death, not attributable to the employment. Provisions of the Act are attracted only in case of accidents and not where death has taken place naturally, not attributable to the employment.

9. In support of its contentions, learned Counsel for appellant has referred to decisions of this Court;

(i) W.P.(C) No. 16212/2004, D.S. Constructions (P) Ltd. v. Shri. Jyoti Prakash Paul and Anr.; and

(ii) Bhandari Builders Pvt. Ltd. v. M.K. Seth and Anr. 1988 II LLJ 5.

10. Section 3(1) of the Act which is relevant for the purpose of this case 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 this Chapter:

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or.

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or.

(iii) The willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

11. u/s 3(1) it has to be established that there was some casual connection between the death of workman and his employment.

12. In *Jyothi Ademma Vs. Plant Engineer, Nellore and Another*, it was observed that;

If the workman dies as natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear, of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

13. In *Tata Engineering and Locomotive Co. Ltd. Vs. Smt. Reba Rani Mazumdar*, it was held;

It is well settled that mere death in ordinary course by some bodily ailment or event in course of employment cannot attract liability of the employer u/s 3 of the Act. There should be a causal connection between the employment and the death in an unexpected way in order to bring the accident within Section 3 of the Act. Though it is not necessary to establish the workman died as a result of an exceptional strain or some exceptional work that he did on the day in question.

14. Also, in *Sakinabibi and Anr. v. Gujarat State Road Transport Corporation*, Ahmedabad 1995-III LLJ (Suppl) 508; it was noted;

In order to earn an award for compensation u/s 3 of the Act, it is necessary to prove that the personal injury or the resultant death (as the case may be) is caused to a workman by accident arising out of and in the course of his

employment with the employer. The words "out of employment" emphasis a causal connection between the employment and the accidental injury. Though the word "accident: occurred in Section 3 of the Act, is not defined in the Act, the said expression has been subjected to number of judicial decisions, as a result of which, it has come to acquire a settled meaning. It is a well-settled position of law that u/s 3 of the Act, it must be shown that there was a proximate cause and nexus between the personal injury or the accident and the work or employment. Therefore, it is incumbent upon the applicants to prove that there was a casual relationship between the injuries and the work in question. Section 3 of the Act clearly prescribes that the personal injury or the accident must be proved to have arisen out of and in the course of employment. If it is successfully proved or shown that the injury sustained by the workman had arisen out of and in the course of his employment, then the workman or the dependent of the deceased workman would be qualified and eligible for compensation u/s 3 of the Act.

15. Thus, it is well settled that mere death in ordinary course by some bodily ailment or event in "course of employment", cannot attract liability of the employer, u/s 3 of the Act. There should be a casual connection between "employment and the death in an unexpected way" in order to bring the accident within Section 3 of the Act.

16. In the present case, respondent-claimant stated in her statement that her husband died due to fall from crane in Libya, in the course of employment of the appellant. However, as per death certificate Ex. R-3, the cause of death has been mentioned as "Cardiac Respiratory Failure ".

17. There is no evidence to prove that death of deceased was caused due to fall from crane. The death certificate, contradicts this version of the respondent-claimant. Since, as per death certificate, cause of death is shown as "Cardiac Respiratory Failure", there is no rationale or nexus between the death of deceased due to "Cardiac Respiratory Failure" and his nature of employment. As deceased died as a result of heart attack, no liability can be fixed upon the employer i.e. appellant.

18. Second limb of argument advanced by learned Counsel for appellant is that provisions of the Act are not applicable, as employment of deceased was to be governed by Libyan laws and in terms of Emigration Act 1983, appellant was never the employer of the deceased. So, appellant is not liable to pay any compensation to the deceased. Moreover, deceased was in Libya on the basis of contract entered between M/s D.S. Construction Pvt. Ltd, Tripoli, Libya and the deceased.

19. Exhibit MW1/R1 is the copy of contract executed between appellant and deceased. Relevant Articles of this contract are as follows:

Article 1:

That the employee hereby is employed by the employer for a period of 24

months from the date of joining, the duties by the employee at the place of business of the employer in Libya.

Article 2:

That the employer hereby agrees to engage the employee to serve the employer as Mason LD-80 in connection with the employer's business in Libya for a period of 24 months as aforesaid. It is further agreed between the parties that the employer shall be under no obligation to retain the employee beyond a period of 24 months unless the contract is extended further in Libya.

Article 10:

That compensation will be paid in case of disability from injury (including occupational disease or death) arising out of and sustained in the course of the employment in accordance with the law prevailing in the country of employment i.e. Libya.

Article 11:

That the employee will be covered under Social insurance to the tune of approx. over Rs. One Lac during course of his contractual employment with the employer in Libya.

Article 12:

That the employee shall abide by all local labour and other laws of the country of employment i.e. Libya.

20. Agreement Ex. MW1/R1 was written on the letter pad of M/s. D.S. Construction Private Ltd. E-9 & E-12, D. S. House, N.D.S.E. Part- II, New Delhi. It was signed on behalf of employer i.e. appellant, in Delhi and it also bears the seal impression of M/s. D.S. Construction Private Ltd, New Delhi.

21. Mr. S.S. Sharma, who is General Manager (Legal) of the appellant's company, in cross-examination stated that deceased was employed at Delhi, to take job in Libya with M/s. D.S. Construction Private Ltd. Tripoli, Libya. As per statement of this witness, it is manifestly clear, that deceased was employed at Delhi, for taking job in Libya. Under these circumstances, as deceased was employed at Delhi, he was recruited by appellant's company registered in India and working as such abroad. Therefore, provisions of the Act are fully applicable in the case of deceased.

22. There is no substance in the arguments of learned Counsel for appellant, that deceased was to be governed by the laws of Libya. Various judgments relied upon by learned Counsel for appellant, in support of his contentions are not applicable to the facts of the present case.

23. Even assuming for arguments sake that contract Ex. MW 1/R1 is applicable to the deceased also, but in view of specific provisions of Section 15B of the Act, and the fact that deceased was recruited by appellant's company registered in

India and working as such abroad, the compensation claim would be certainly maintainable. This Section reads as under:

15B. Special provision relating to workmen abroad of companies and motor vehicles.-

This Act shall apply:

(i) In the case of workmen who are persons recruited by companies registered in India and working as such abroad, and.

(ii) persons sent for work abroad along with motor vehicles registered under the Motor Vehicles Act, 1988 (59 of 1988) as drivers, helpers, mechanics, cleaners or other workmen, subject to the following modifications, namely:

(1) The notice of the accident and the claim for compensation may be served on the local agent of the company, or the local agent of the owner of the motor vehicle, in the country of accident, as the case may be.

(2) In the case of death of the workman in respect of whom the provisions of this Section shall apply, the claim for compensation shall be made within one year after the news of the death has been received by the claimant:

Provided that the Commissioner may entertain any claim for compensation in any case notwithstanding that the claim had not been preferred in due time as provided in this sub-section, if he is satisfied that the failure so to prefer the claim was due to sufficient cause.

(3) Where an injured workman is discharged or left behind in any part of India or in any other country any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Central Government or any State Government shall, in any proceedings for enforcing the claims, be admissible in evidence-

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

(b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness;

(c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused,

and it shall be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

24. However, as there is no evidence to show that deceased died due to fall from a crane, and as cause of death has been shown as "Cardiac Respiratory Failure", so there is no nexus between the "cause of death" and "nature of employment of deceased".

Under these circumstances, provisions of Section 3 of the Act are not applicable to the present case. The impugned order thus, cannot be sustained and the same is set aside.

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25. On 5th February, 2007, when this appeal came up for hearing, learned Counsel for appellant stated that he has deposited compensation amount with Commissioner. It was directed that except 25 per cent of the said amount against security be not paid to the respondent.

26. Considering the peculiar circumstances of the case, that as per agreement Ex. MW1/1R, deceased was entitled to social insurance as well as compensation in case of disability from injury (including occupational disease or death) arising out of and sustained in the course of the employment in accordance with the law prevailing in the country of employment i.e Libya, but no such amount as per contract, has been paid to legal heirs of deceased. Hence, it is directed that there shall be no recovery of the amount paid, if any, to the respondent. Balance amount, lying deposited in terms of order dated 5th February, 2007 with Commissioner, shall be paid to appellant only, after expiry of period of appeal.

27. Appeal stands disposed of accordingly.

28. No order as to costs.

29. Record of Commissioner be sent back.