
(1998) 12 J&K CK 0031
In the Jammu And Kashmir High Court
Case No : CIMA No. 174/94

Kohli Transport Carriers Pvt.Ltd	Vs	APPELLANT
Santosh Kumari W/o.Sham Singh		RESPONDENT

Date of Decision : 29-12-1998

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 2, 30

Citation : (2000) KashLJ 243

Hon'ble Judges : M.Y.Kawoosa, J

Bench : Single Bench

Advocate : S.C.Gupta, R.Singh, Advocates appearing for the Parties

Judgement

This appeal is directed under section 30 of Workmen's Compensation Act, 1923 against the award passed by Deputy Labour Commissioner,

Jammu by virtue of which the appellant was held liable to pay compensation to the tune of Rs. 58,934.00 to respondent.

Respondent admittedly being the widow of Mr. Sham Singh who admittedly was employed as Goods Booking Clerk in the appellantKohli

Transport Co. It was alleged by the respondent that on 24.2.93 her husband was sent to Batote by his employer appellant on some duty where on

the morning of 25.2.93, he was found dead on the road side. FIR was lodged by two drivers namely Raj Kumar and Vijay Kumar who too were

under the employment of appellant and were sent by the appellant with the truck because some and there truck of the appellant had met with an

accident at Batote. These two drivers confirmed of their employer was also sent on duty to Batote. However, three issues were framed by the trial

court and it was held that the deceased Sham Singh husband of respondent died during the course of employment. Regarding wages of the

deceased, respondent claimed that the wages of deceased were Rs. 1500/ per month, but the appellant urged that his wages were only 800/ per

month. The court on the basis of Rs. 8007 awarded compensation of Rs. 58,934/. Learned counsel for the appellant has urged before me firstly

that the deceased on the date of 24.2.93 was not in the employment of appellant. Secondly, he had exposed himself by his own imprudent act

which the learned counsel has explained that the deceased had consumed excessive alcohol and had exposed himself on the road side in the cold

season which was the cause of his death for which the appellant is not liable to pay any compensation. In support of his arguments he has referred

the following authorities :

1) Mackinnon Mackenji and Co. Pvt. Ltd. Vs. Ibrahim Mehmood Issak (1969ACJ422(SC)

2) Steel Authority of India Vs. Kanchanbah Mohanty (1995 (1) ACJ 270 (para4)

Hyderabad Steel Tubes Vs. Akhtar Begum (1997 ACJ 1011)

1972 (2) Lab. LJ 598 (Rajasthan)

1984(2) ACC 513 (518)

3. Learned counsel for the respondent has raised a preliminary objection that no substantial point of law is involved which is requirement of sec.30

of Workmen's Compensation Act, so no appeal can lie. 2ndly, he has contended that he has succeeded in proving that the deceased was in the

employment of the appellant on the date of the accident of death which according to him has no nexus with the employment. He has relied on the

following authorities :

Leela Devi vs. Ram Lal Rahu (II (1988) ACC.617)

State of Rajasthan vs. Kanta (I (1990) ACC 181)

Raveendran vs. Semavally (I (1996) ACC 172(DB)

4. Heard the learned counsel for the parties and I have given mu thoughtful consideration to the argument advanced before me. Contention of

learned counsel for respondent that no substantial question of law is involved so the appeal u/s 30 of Workmen's Compensation Act cannot lie

because question whether the deceased was in the employment or not on the date of accident is squarely a question of fact. According to the

learned counsel, labors court has resolved the controversy on the basis of

evidence so the appellate court cannot go into it. I agree with the learned counsel for the respondent that the appeal can lie only if there is a substantial question of law involved. There are not two opinions about it.

However, in this case wherein meager evidence has been adduced, the court has got the power to go into it whether the findings arrived at by the trial court are in accordance with law or not. In the present case, only widow has come into the witness box from the side of respondent and appellant has examined the Manager, so the evidence led in this case is meager. In such circumstances, the appellate court can certainly go into the evidence and see whether the findings are correct. This view is fortified by Steel Authority of India vs. Kanchanbala Mouny (1995 (1) ACJ 277) (para4). For these reasons, therefore, the contention of learned counsel for the respondent that the appeal does not lie is ruled out.

I have gone through the file. The deceased admittedly was on the roll of appellant when he was sent to Batote where on the other day he was found dead. Here, respondent has come into the witness box and has contended that her husband told her that some vehicle of his employer has met with an accident, so he was to go to attend the work of his employer. This statement is supported by Sh Vijay Kumar and Raj Kumar, two drivers who had lodged the FIR whose statements have not been recorded, but in the FIR they have given the information to the police that these two drivers are into the employment of appellant, some truck had met an accident in Batote so these two drivers were sent by the appellant to Batote. According to them, deceased also who was in the employment of same employer appellant was also deputed to Batote where he was found dead on the other day. The appellant has not taken any plea that the service of deceased was terminated on the day before he was sent to Batote by the appellant. It was incumbent on to the appellant to prove that the deceased had ceased to be his employee on the date of accident, which he has failed to prove so it is held that the deceased was in the employment of appellant when he met with an accident in Batote. The Labour court has very rightly arrived at its conclusion that the deceased was under the employment of appellant he went to Batote where he died.

Now the second contention of learned counsel for the appellant is that the deceased has taken excessive alcohol and had expose himself to the

cold on the roadside which was not part of his duty for which the appellant could not be held responsible and could not be directed to pay

compensation. He has cited number of authorities wherein it has been held that casual relationship between the nature of employment and the cause

of death should be there on counsel for appellant there was imprudent act of the deceased which caused his death whereby it cannot be deemed

that he died in the course of employment.

7. On seeing the record, it is an admitted fact that respondent has admitted that her husband was taking alcohol and aforesaid two informers also

have reported that the deceased had taken alcohol. Autopsy was conducted, but the report has not been filed by the Doctor to show the cause of

death. It is not authentic to conclude that the deceased died due to consuming of alcohol. It was incumbent duty on the employer to prove that the

deceased died due to consuming of excessive alcohol. No evidence has been led and there is no medical report to that effect. At the same time, it

is written in the FIR that he was found dead on the roadside. Even if it is presumed that he had exposed himself in the cold where it was showing

and raining, even then the employer cannot absolve himself from his liability, that in such circumstances the employer was liable to arrange for his

stay with warm clothes and bedding. There was no proper arrangement for that. So there is complete nexus between the death and employment of

the deceased. This view is fortified by the case *Leela Devi vs. Ram Lal Rahu* (II (1988) ACC 617) (supra). In this case, the deceased employee

was assigned the duty on Jan. 31, 1993/Feb 1, 1984 between midnight and 8 A. M. It was winter season. No woolen clothing was provided to the

deceased nor any heating arrangement was made at the place of his duty despite request. As a result of bitter cold, the deceased started having

pain in the stomach. He was removed to the Hospital where he breathed his last on Feb. 1, 1984. It was held that:

If the employee's unexplained or apparently natural death has occurred during the course of employment, the adjudicator is not relieved of the

responsibility of finding out whether there was any causal connection between the nature of employment and the death, whether the employment

was an attributable cause or whether it accelerated the death, whether the death was not only due to the disease from which the workman was

suffering, but also on account of the factors which have a bearing upon or which are coupled with the employment etc. If such or similar factors are

present, then, the employer is liable and it can be said that the death occurred as a consequence of and in the course of employment. The

Commissioner having failed to appreciate correctly the true meaning and ambit of expression ""by accident arising out of and in the course of his

employment"" occurring in the material statutory provision has committed an error in the field of substantive law.

8. Similarly, in the present case also, the appellant has failed to prove the natural death or death which has no nexus with the employment. For

these reasons, therefore, it is held that there is no room for interfering in the Judgement of Labour Court. The appeal is dismissed.