
(2010) 10 P&H CK 0302

In the Punjab And Haryana At Chandigarh

Case No : FAO No"s. 65 and 2923 of 2009 (O and M)

Meena and Others

APPELLANT

Vs

Ram Transport and Another

RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A
Workmens Compensation Act, 1923 — Section 30, 4

Citation : (2012) ACJ 1364 : (2011) 162 PLR 696 : (2011) 3 TAC 598

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—Both the appeals are connected and the cases arise out of death of a driver in the course of his duty due to heart attack. The contentions, that had been made by the representatives of the deceased, were that the deceased, who was employed as a driver of a truck that belonged to the 1st Respondent, was driving the vehicle and complained of chest pain. He allowed the alternative driver to take over and soon collapsed. The petition had been filed under the Section 163-A of the MV Act. The Tribunal assessed the compensation payable to the workman as resulting on the basis by the use of motor vehicle and awarded Rs. 3,05,600/- as compensation payable. The claimants have preferred an appeal in FAO No. 2923 of 2009 for enhancement and FAO No. 65 of 2009 has been filed by the Insurance Company for challenging the award on the ground of maintainability. Although it was disputed by the owner's representative that the deceased was a driver in the 1st Respondent's vehicle, the Tribunal has accepted the claimants' case that he was so employed on the basis of documentary evidence produced by the claimants that showed payment of tax at excise barriers by the deceased while driving the vehicle. I, therefore, will accept the said finding.

2. The point that calls for consideration in the case is whether the death could be said to be the result of a use of a motor vehicle to sustain a valid plea u/s 163-A of the MV Act. Among all the cases that have come through various

pronouncements of the Hon"ble Supreme Court and other High Court under situations of liability of the employer and the insurer for death due to heart attack during the course of employment, the focus of attention has always been whether the nature of work was such as to have induced the heart attack to make an adjudicator infer that the stress due to work was the precipitating factor for death. By the language used in Section 163-A, it is difficult to apply the situation of a person dying in the motor vehicle due to heart attack as resulting also through an accident by the use of a motor vehicle. The expression "accident" means an untoward mishap which is not expected or desired. I would therefore examine the case whether the death had arisen during the course of his employment and whether it was resultant to such employment. In all these types of situations, it is most desirable that the evidence is brought to the effect that the death had resulted only by the stress caused by the employment and there was no previous history of heart ailment for the person. A person that drives a heavy motor vehicle is put to loss of physical and mental stress and if the accident had taken place while he was still in the course of employment and it was brought through evidence that he had no previous history of heart ailment, it should only be taken that the death was on account of employment and the employer is liable. If there was a policy of insurance that covered the risk to the death of a workman during the course of such employment of driving a motor vehicle, then the Insurance Company would also become liable. There is whole body of case law coming through various Courts that have held that a death due to heart attack during the time when he was driving the motor vehicle as giving a valid cause of action against the employer. In *United India Insurance Company v. C.S. Gopalakrishnan* (1989) 2 LLJ 30 (Ker.), the Kerala High Court was considering the case of death of a Conductor of a bus, who died due to heart attack while he was sleeping in the bus and found the employer liable. A similar situation also was dealt with by the Bombay High Court in *Abdul Sattar Rehamanbhai*" case reported in 1989 LLR 239 that dealt with the liability of the employer for death due to heart attack when the Court held that it was immaterial whether the employee was actually performing his duties or not. The Hon"ble Supreme Court held in *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali* (2007) 11 SCC 668, that a finding of fact as regards the nature of work and the situation in which the deceased was placed shall be made to hold that the death was resultant to such work. The Hon"ble Supreme Court said "only because a death has taken place in the course of employment will not amount to accident as resulting from employment. Death must arise out of accident. There is no presumption that an accident had occurred." (see paras 23 and 25). The Court also said that "the onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. If the evidence brought on records establishes a greater probability which specifies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case. A crucial link between the causal connections of employment with death (is necessary). Such a link with evidence

cannot be a matter of surmise or conjecture. Any finding arrived at without pleading or legal evidence, the statutory authority will commit a jurisdictional error while exercising jurisdiction. There must be some evidence that the employment contributed to the death of the deceased. It is required to be established that the death occurred during the course of employment." (see paras 24 and 29).

3. In this case, a proper focus on what was relevant to be proved was not done due to ignorance of parties. Even the choice of forum was not appropriate. I considered the issue whether the case must be remitted only for the purpose of finding a causal link between the nature of his employment and the death. The claim has arisen from a family of young widow and two minor children. The compensation awarded had been to the tune of Rs. 3 lakhs and odd. The choice of remitting the matter to the Tribunal itself may not be appropriate in this case only because, in my view, even the application u/s 163-A ought not to have been filed. The application should have been only before the Workmen Compensation Commissioner. What is possible for this Court to do as an appellate authority u/s 30 of the Workmen's Compensation Act may not be possible for the Tribunal itself. A Tribunal exercising jurisdiction under the MV Act and a Commissioner appointed under the WC Act hold the respective offices due to different types of notifications. I therefore, hasten to consider the evidence on record myself and proceed to dispose of the case as one arising under the WC Act. It has been elicited in evidence of PW2, who gave evidence to the effect that her husband was having sound health and charming personality. The whole tenor of evidence is only to the effect that he died due to his work through his profession as a driver in a truck. It was not even suggested in her cross-examination that he already had some heart ailment or that the death was not the result of his employment. I, therefore, hold that he died only due to his employment which was due to the nature of an accident.

4. I have gone through the policy of insurance and I find that it is a package policy that includes the risk for death of the driver/employee under the WC Act. The Tribunal had evidence before it to hold that he was earning Rs. 2,100/- per month. He was 30 years of age and the appropriate factor under Schedule-IV is 207.98. The compensation payable u/s 4 of the WC Act would have been Rs. 2,18,379/- (Rs. 2,100 x 50% x 207.98 = Rs. 2,18,379/-). The award already passed by the Tribunal shall stand modified and reduced as above. The amount shall be payable with interest at 12% from the date of the petition till the date of payment. FAO No. 65 of 2009 filed by the Insurance Company shall stand allowed to the extent to reduction of the compensation in the manner referred to above and FAO No. 2923 of 2009 shall stand disposed of with modification of the award and rejecting the claim of the claimants seeking for enhancement of the award.