
(1984) 07 KAR CK 0003
In the Karnataka High Court
Case No : M.F.A. No. 1000 of 1981

Mines Manager, Mysore Minerals Ltd.

APPELLANT

Vs

Kattemma and Others

RESPONDENT

Date of Decision : 09-07-1984

Acts Referred:

Workmens Compensation Act, 1923 — Section 10 (ii), 10 (iii), 3 (1)

Citation : (1985) ACJ 34

Hon'ble Judges : S.R. Rajasekhara Murthy, J;G.N. Sabhahit, J

Bench : Division Bench

Advocate : R.J. Babu, for the Appellant; Lokesh Malavalli and S.N. Hatti, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Sabhahit, J.—This appeal by the Mines Manager, Mysore Minerals Limited, Harishankar Iron Ore Mines, Nandihalli, Sandur, is directed against the order dated 27th November, 1980, made by the Labour Officer and Commissioner for Workmen's Compensation, Bellary District, Bellary, in W.C. No. 29 of 1977-78, on his file, awarding compensation of Rs. 11,520/- for the death of Siddaramappa in the accident that occurred on 21.2.1977.

2. On 21.2.1977, at about 5 p.m. the lorry bearing registration No. MY 5851, met with an accident. It was carrying iron ore. In addition it was also carrying 40 workers to their village. When the lorry toppled down, two workers suffered fatal injuries and died. One of them was Siddaramappa. Siddaramappa was working in the mines and he was getting, according to Respondent No. 1, his wife, Rs. 4/- per day as wages. Respondent No. 1 averred that the mines had arranged for bringing all the workers from their village to the mine in the lorry and taking them back in the evening after the work was over, in the lorry. The workers were staying in Krishnanagar which was about 7 to 8 miles away from the place where the mine was situated. Hence she averred that the accident happened in the course of employment and therefore she made an application to the

Commissioner under the Workmen's Compensation Act for compensation of Rs. 13,500/- .

3. The Commissioner issued notices to the Manager, Mysore Minerals Ltd., Harishankar Iron Ore Mines, Nandihalli, Sandur Taluk, Bellary District, to furnish all particulars in form No. 7 and 34 u/s 10(iii) and 10(ii) of the Act. The Manager filed objections. He contended that the accident did not occur in the course of the employment and hence the company was not liable to pay the compensation. Further he asserted that Mr. D. Kumara Goud who was the mineral dealer and transport contractor and also Mr. T.G. Neelakantappa who was the lorry owner, should be added as parties. Accordingly the Commissioner, by his order dated 24.2.1977, permitted the Applicant to implead Mr. T.G. Neelakantappa as the second Respondent and Mr. D. Kumara Goud, as third Respondent. Since the Respondents denied the liability, an enquiry was held. The claimant examined herself and two witnesses on her behalf. The Manager examined himself on behalf of the Respondent-mine.

4. The Commissioner, appreciating the evidence on record, held that the accident occurred during notional extension of employment as the worker was going to his house in the lorry as arranged by the mine and in that view, having regard to his wages, he awarded compensation of Rs. 11,520/- to the claimant.

5. Aggrieved by the said order, the Mines Manager has instituted the present appeal before this Court.

6. The Learned Counsel appearing for the Appellant strenuously urged before us that the company never arranged for the transport of workers either from their houses to the mine or from the mine back to their houses. Hence he submitted that the accident did not occur during the course of employment and as such the company was not liable to pay the compensation. As against that the Learned Counsel appearing for the claimant-Respondent argued supporting the order of the Commissioner.

7. The sole point therefore that arises for our consideration is:

Whether the Commissioner was justified in holding that the accident occurred and the workman died during notional extension of employment?

8. The Supreme Court of India, in the decision in General Manager, B.E.S.T. Undertaking, Bombay v. Agnes 1958 65 ACJ 473 (SC) has explained the concept of "notional extension of employment". The Supreme Court has observed that u/s 3(1) the injury must be caused to a workman by an accident arising out of and in the course of his employment; the question when does an employment begin and when does it cease, depends upon the facts of each case. The Supreme Court further pointed out that the courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working; there is a notional extension at both the entry and exit by time and space; the scope of such extension must

necessarily depend on the circumstances of a given case; an employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment; a contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport; a theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion. Bearing these principles in mind we would presently proceed to appreciate the evidence on record to find out whether there is truth in the version of the workmen that they were directed by the company to travel in the lorry to the mine for work and back from the mine after their work to their houses. If that is proved it becomes obvious that the workman died during notional extension of employment. That depends upon the facts and circumstances of the case.

9. In the instant case, the claimant as well as two witnesses examined on her behalf, have clearly stated that they were working in the mine along with others, that the deceased was also working with them and that they were given the facility by the company to come to the work spot in the lorry and to go back from the work spot in the lorry. This was denied no doubt by the Manager for obvious reasons. The question however is whether the witnesses examined on behalf of the claimant should be relied upon.

10. It is needless for us to point out that the oral evidence should be appreciated in the light of broad probabilities. The evidence on record shows that the mine is about 7 or 8 miles away from the village where the workmen live. The Manager has stated in his evidence that some workmen have been provided with huts to stay at the mine and the rest of them come from outside. A suggestion was put to him that for those workers who live outside, an arrangement was made to bring them in the lorry and to send them back in the lorry. But the Manager has stated that it was left to them to make their own arrangement. It is in this context that we have to examine the probabilities. Is it probable that the workmen would be in a position to make their own arrangement to come to the work spot which is about 7 or 8 miles away from their village or is it probable that the Mines Manager would ask the lorry to bring the workers from their village and leave them back after the work was over, to their village? It is in this broad perspective that we have to appreciate the evidence of the claimant and two witnesses examined on her behalf.

11. PW1 is Kattemma. She is the widow of the deceased. She has stated: [in vernacular, hence not reproduced]. This testimony is fully corroborated in the evidence of PW2 Magdum Sab as also in the evidence of PW3 Imamsab. It is no doubt true that a suggestion is put to the first two witnesses that no such arrangement was made by the mine. But to PW3 a very strange suggestion was put in the cross-examination which reads:

It is not true to say that company has not directed the employees to travel in the

transport lorries.

That means, the company had directed the employees to travel in the lorry. Looking at the evidence in a broad common sense, we are persuaded to hold that it is quite probable that the company had asked the driver of the lorry to bring the coolies from their village and to leave them back, after the work was over, to their locality. It would be too much to think that the company expected these workers, who earn Rs. 3/- to Rs. 4/- per day to make their own arrangement for their transport, as is spoken to by the Manager.

12. It may also be noted in this context that inspite of three workers deposing consistently there is the only rebuttal evidence of the Manager. The Manager has not examined the lorry driver to show that the company had not instructed him to carry the labourers. In the circumstances, the preponderance of probability is in holding that the company did ask the lorry driver to bring the 30 or 40 workers to the work spot, i.e., to the mine and to take them back, after the work was over, in the evening. That is what the Commissioner has held. We have no reason to differ. He had the additional advantage of observing the demeanour of the witnesses in coming to that conclusion. We have adjudged it on broad probabilities.

13. That being so, we are constrained to hold that there is no substance in this appeal and the same is liable to be dismissed and we dismiss the same. No costs.