
(2019) 01 JH CK 0122

In the Jharkhand High Court

Case No : Miscellaneous Appeal No. 6 Of 2011

M/s. Oriental Insurance Company Ltd.

APPELLANT

Vs

Neero Mahto And Ors

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Workmen's Compensation Act, 1923 — Section 3, 3(1), 30

Citation : (2019) 01 JH CK 0122

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Bharti Singh, Arvind Kumar Lall, Shashi Kumar Verma, S. N. Das

Final Decision : Dismissed

Judgement

1. Heard Ms. Bharti Singh, counsel appearing for the appellant.
2. Heard Mr. Arvind Kumar Lall, counsel appearing for the respondent no. 1.
3. Heard Mr. Shashi Kumar Verma, counsel appearing for the respondent no. 2.
4. This appeal has been filed by the insurance company against the order dated 30.07.2010 passed by the court of Commissioner, Workmen Compensation, Hazaribagh in Workmen Compensation Case No. 18 of 2008, whereby the said court has directed the appellant to pay an amount of Rs. 3,38,957/- as compensation to the claimant.
5. The brief facts which are involved in this are as follows:-
 - (a) The father of the deceased and his mother and sons filed an application before the court of Workmen Compensation at Hazaribagh, which was registered as W. C. Case No. 18 of 2008 and as per their case, the deceased was employed with Sri Dev Muni Yadav (Respondent No. 2 herein) as a khalasi in his vehicle bearing no. JH 09G-6366.
 - (b) As per the case of the claimant, on 26.02.2008 the driver of the aforesaid

truck namely, Kalin Mahto along with the deceased was carrying mustered oil from Harpalpur, Madhya Pradesh to Purulia, West Bengal. On 29.02.2008 at about 11:00 a.m., the truck reached near the village of the driver and accordingly, the driver parked the truck in front of the house of Subhash Sao, besides G.T. Road, and went to his house about half kilometre away by leaving the deceased to look after the truck. The driver had come back at night and found that the deceased was there along with the truck. Accordingly, the driver came back to his house and slept.

(c) However, at 2:00 a.m. in the night, when the driver came to leave for Purulia, he noticed that neither the truck nor the deceased were there and ultimately, the deceased i.e. Khalasi was found dead. An F.I.R. was also lodged in connection with the incident.

(d) Pursuant to the application for claim for compensation, a show cause reply was filed by the owner of the vehicle i.e. the employer, who supported the case of the claimant and so far as the insurance company (appellant) is concerned, they had filed a written statement indicating that there is no proof that the deceased was an employee of opposite party no. 1 and that he had died during the course of employment and it was also contended that the case was that of an intentional murder and not an accident and hence, in the case of intentional murder, which did not occur arising out of and in the course of employment, the claimant was not entitled to any compensation. It was also contended that as per the F.I.R., it was alleged that the cousin of the deceased had come to the vehicle at about 4:00 p.m. and the khalasi was murdered by his cousin.

6. Counsel for the appellant submits that the learned court below has awarded the compensation to the claimant by holding that the deceased had died during the course of employment and there was no proof regarding his salary, but still, the compensation has been awarded to the claimant.

7. Counsel submits that the solitary question of law, which is involved in this case, is whether the learned court below is justified in holding that the deceased had died in course of employment although the deceased had expired due to intentional murder and his death was not an accident ?

8. On the aforesaid question of law, the parties herein have advanced their extensive argument.

9. Counsel for the appellant submits that as the case was relating to intentional murder of Khalasi and had nothing to do with his course of employment, therefore, the learned court below has wrongly awarded compensation in favour of the claimant. She has referred to the judgment passed by Hon'ble Supreme Court reported in 2009 (2) JCR 4 (S.C.) and has referred to Para 4, 12, 13 & 18 of the said judgment to submit that only because the death has occurred, the same is not sufficient to fasten liability upon the insurance company and such death arising out of intentional murder, cannot be said to be arising out of employment and in course of employment. She has referred to another judgment

passed by Hon'ble Supreme Court reported in II (2000) ACC 291 S.C. (Rita Devi (Smt.) and Ors. Vs. New India Assurance Co. Ltd. and another) and has referred to Para 10 of the said judgment and has submitted that there is a difference between a murder, which is not an accident and a murder which is an accident. In the instant case, the murder of the deceased was not related to his employment and accordingly, the claimant was not entitled to have any claim under the provisions of Workmen's Compensation Act, 1923.

10. Counsel appearing on behalf of the claimant, on the other hand, submits that admittedly the vehicle was moving from Madhya Pradesh to Purulia (West Bengal) and it is not in dispute that the respondent no. 2 was the employer and was also the owner of the truck. He further submits that the vehicle was having one driver and a Khalasi and when the vehicle reached near the village of the driver, the driver had left the vehicle in the custody of the Khalasi and had gone to his home which was about half a kilometer away. The driver had also come and checked as to whether the Khalasi was taking care of the vehicle or not and subsequently, he went off to sleep. Later on, when the driver came, he found that neither Khalasi nor the vehicle was found and ultimately, the Khalasi was found dead.

11. Counsel further submits that the Khalasi was in charge of taking care of the vehicle, which was a part of his duty and accordingly, while taking care of the vehicle, he was murdered and the vehicle was also taken away. He submits that merely because allegation was levelled that he was murdered by his cousin, the same is not sufficient and the authority below has considered that the Khalasi was discharging his function in the course of his employment and accordingly, has granted compensation to the claimants of the deceased.

12. The counsel for the claimant has referred to the judgment passed by Hon'ble Bombay High Court reported in I (1990) ACC 29 (Salama Begum & Ors. Vs District Branch Manager Maharashtra State Cooperative Land Development Bank and Another) and also the judgment reported in I (2017) ACC 133 (Bom.) (Oriental Insurance Co. Ltd. vs. Enayat Khan and Ors.) to submit that in the case of murder also it has been held that compensation under the Workmen's Compensation Act, 1923 is payable if the death occurred during the course of employment.

13. After hearing the counsel for the parties and after considering the materials on record, this Court finds that admittedly the vehicle involved in this case belonged to respondent no. 2 who had employed one driver as well as Khalasi (deceased) for the purposes of carrying mustered oil in the vehicle from Harpalpur (Madhya Pradesh) to Purulia (West Bengal). Admittedly, during the course of movement, the vehicle was parked near the village of the driver and accordingly, after parking the vehicle by the side of the road the driver had gone to his home to sleep, which was about half a kilometer away and left the vehicle in the custody of Khalasi. Admittedly, when the driver had come later, he found that the Khalasi as well as the vehicle was missing and ultimately the Khalasi

was found dead.

14. The contention of the appellant that the khalasi died out of intentional murder and accordingly he was not entitled for compensation under Workmen's Compensation Act, 1923, is rejected in view of the fact that the Khalasi was put in charge of the vehicle and was performing his duty, while the driver had gone to sleep in his home which was half a kilometer away and ultimately, the vehicle as well as the Khalasi were found missing and subsequently the Khalasi was found dead.

15. This Court further finds that in the judgment passed by Hon'ble Supreme Court reported in 2009 (2) JCR 4 (S.C.) which has been relied upon by the appellant, the Hon'ble Supreme Court, by interpreting the provisions of Section 3 (1) of the Workmen's Compensation Act, 1923, has clearly held that under Section 3 (1) it has to be established that there was some casual connection between the death of the workman and his employment. It was further held that if the workman dies a natural death because 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. The Hon'ble Supreme Court has also interpreted the term "accident" and has held that the expression "accident" is used in popular and ordinary sense of the word as denoting a mishap or untoward event which is not expected or designed.

16. This Court finds that the very fact that the Khalasi was left with the vehicle to take care of the vehicle and ultimately the driver found the Khalasi as well as the vehicle missing, clearly indicates that there was sufficient connection between the death of the workman and his employment and accordingly, such case would be covered by Section 3 of the Workmen's Compensation Act, 1923.

17. This Court further finds that the ratio of the aforesaid judgment which has been relied upon by the counsel for the appellant is, in fact, in favour of the claimant under the facts and circumstances of this case. So far as the other judgment which has been relied upon by the counsel for the appellant, which is reported in II (2000) ACC 291 S.C. (Rita Devi (Smt.) and Ors. Vs. New India Assurance Co. Ltd. and another) is concerned, this Court finds that the Hon'ble Supreme Court has drawn a distinction between a murder which is not an accident and a murder which is an accident and it depends on the proximity of the cause of such murder.

18. This Court is of the considered view that the ratio of the said judgment, which has been relied upon by the counsel for the appellant, is in favour of the private respondent in as much as murder of Khalasi in the instant case, was closely linked to his employment. This Court finds that from the perusal of the

impugned judgment, the authority below after considering the materials on record has clearly held that the deceased was an employee of the respondent no. 2 herein and his death had occurred during the course of his employment and arising out of his employment.

19. Section 30 of the Workmen's Compensation Act very clearly contemplates that appeal against the award under Workmen's Compensation Act shall be entertained only when substantial question of law is involved.

20. In my view, no substantial question of law is involved in this case. Moreover, the findings recorded by the Court below cannot be held to be perverse or based on no evidence.

21. For the aforesaid reasons, I do not find any merit in this appeal, which is accordingly dismissed.