
(1999) 09 GAU CK 0034
In the Gauhati High Court
Case No : F.A. No. 115 and 125 of 1997

National Insurance Co. Ltd. and Others	APPELLANT
Vs	
Sabita Gope and Others	RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 4, 4A

Citation : (2000) ACJ 1153 : (2000) 1 GLT 27 : (2000) 1 LLJ 1375

Hon'ble Judges : N.S. Singh, J;D.N. Chowdhury, J

Bench : Division Bench

Advocate : B. Bhattacharjee and R. Bhattacharjee, for the Appellant;

Judgement

D.N. Chowdhury, J.—The first Appeal No. 115 of 1997, preferred by the National Insurance Company Ltd. is directed against the judgment and award dated March 11, 1997 passed by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in case No. T.S. (W/C) 29 of 1994 upon a claim petition under the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") awarding compensation to the claimants under the said Act. The Claimants also made a cross-objection against the said judgment and award against the Insurance Company. Both the matters were taken up together for hearing:

2. Broad facts are cited herein below :-

The deceased Ajit Gope was the son of the Claimant No. 2, Smt Sushama Gope and: husband of the claimant No. 1., Smt Sabita Gope. Ajit Gope was a driver of a Truck bearing No. TRL - 3974 owned by Shri Amalendu Saha, Opposite Party No. 1 in the claim petition. On May 7, 1993 deceased Ajit Gope was sent on duty from Khowai to Guwahati along with P.W.2, Shri Pradip Ghosh who happened to be the Assistant to Ajit Gope. In the morning of May 10, 1993, Ajit Gope and Shri Pradip Ghosh started from Guwahati towards Khowai and reached Patharkandi of Cachar District (Assam). Due to strike they could not proceeded further. At night after taking their meal the said Ajit Gope slept inside the cabin of the truck and

Shri Pradip Ghosh, P.W.2 slept on the top of the truck. In the next morning when P.W.2 got down from the truck he saw Ajit Gope lying dead in the cabin of the truck. Pradip Ghosh along with others informed the Patharkandi Police Station about the incident and the police came there and took away the dead body. The claimants accordingly lodged their claim initially before the learned Commissioner for Workmen's Compensation-cum- Assistant Labour Commissioner, Cachar, Silchar, Assam since the accident took place there and in due course the case was transferred u/s 21(2) of the Act to the learned Commissioner, Workmen's Compensation, West Tripura, Agartala since both the claimants and Opposite Parties are residents of Tripura. The National Insurance Company Ltd., the insurer was later on added as opposite party No. 2 on amendment. The deceased was 25 years old at the time of accident and his wage was Rs. 2000/- per month according to the claimants. Both the Opposite parties, the employer as well as the Insurance Company submitted their written objection. The owner raised the plea of non- maintainability and defect of the parties and also claimed that since the death of the deceased was an un-natural death the claimants were not entitled to get any compensation under the Act. The owner further stated that the vehicle was insured with the National Insurance Company Ltd. and at the relevant time the insurance policy was in force and as such compensation, if any, awarded would be paid by the Insurance Company. The Insurance Company also raised the plea of non-maintainability and denied their liability. According to the Insurance Company the personal injury to the deceased was not caused by accident arising out of employment of the deceased and in the absence of any injury arose out of an accident of a vehicle, the claim petition was not maintainable. The Insurance Company also pleaded that the deceased had no valid driving licence and that the vehicle had no valid fitness certificate at the time of accident and accordingly, prayed for dismissal of the claim petition.

The claimants examined the wife of the deceased, Smt. Sabita Gope as well as Shri Pradip Ghosh, the Assistant to the deceased driver, Ajit Gope. The Opposite-parties did not adduce any oral evidence. The claimants also submitted a photo copy of the Insurance Policy apart from the original Employment Exchange Card, School Transfer Certificate of the deceased. The learned Commissioner, Workmen's Compensation after considering the evidence on record accepted the statement that the deceased was earning Rs. 2000/- per month and he was aged about 25 years at the time of accident. The learned Commissioner considered the evidence of P.W.1 as to the wage of the deceased which was also not specifically denied by the owner in any manner in his written objection. The learned Commissioner accepted the evidence of P.W. 1 and P.W. 2 and came to a positive finding that the deceased Ajit Gope went to Guwahati in course of his employment and when he was returning from Guwahati he was very much discharging his duties in course of his employment. He was compelled to halt at Patharkandi during the bandh observed there and as a result he took his meal and slept inside the cabin of the truck. The learned Commissioner further held

that the driver could not leave the truck uncared for at night. Because he was found dead on the following morning by the Assistant to the driver and from the evidence of the Assistant nothing came out that the driver died as a result of any untoward incident or attack by any person. The learned Commissioner further observed that there was no evidence on record to show that the deceased driver was suffering from any serious ailment for which he could have collapsed. In the circumstances, the learned Commissioner held that there was reasonable ground to presume that the deceased expired due to excess exhaustion and stress as a result of his constant driving of the truck. The learned Commissioner took note that the deceased was 25 years and he was earning a wage of Rs. 2000/- per month. The learned Commissioner took 216.91 as factor and as per Explanation II u/s 4 of the Act he treated the monthly income of the deceased at Rs. 1000/- only and accordingly, worked out dues of the claim at Rs. $400 \times 216.91 = 86,764/-$. The learned Commissioner also awarded interest @ 6% per annum on the aforesaid amount of compensation. The Commissioner further awarded Rs. 17353/- towards penalty.

3. The Insurance Company in the appeal questioned the legitimacy of the award on the ground that in the instant case the personal injury was not caused by accident arising out of and in the course of employment of the deceased driver and accordingly, the learned Commissioner fell into error in overlooking the provisions contained in Section 3 of the Act. The claimants on the other hand, in the Cross-Objection-cum-Appeal supported the award but questioned the amount of compensation as well as the amount of interest awarded to the claimants on the misconstruction of the provisions contained in Section 4 of the Act.

4. Mr. B. Bhattacharjee, learned counsel appearing on behalf of the Insurance Company invited our attention to the materials on record including the pleadings as well as the evidence in the claim proceeding and submitted that the death of the deceased was not caused due to any personal injury that was caused to the workman by accident arising out of and in the course of his employment. Learned counsel submitted that the Workmen's Compensation Act provides for the payment by certain classes of employers to their workmen of compensation for injury by accident and in the instant case on the own showing of the claimants the death of the deceased was an un-natural death and, therefore, the same under no circumstances would have been treated as an accident within the meaning of Section 3 of the Act. Mr. Bhattacharjee submitted that unless an employee can establish that the injury caused had its origin in the employment, he cannot succeed in a claim. The words "accident arising out of his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment. The learned counsel submitted that the claimants' evidence pointedly referred that the deceased died of heart failure under the circumstances which could not have been termed as an accident or mishap. Mr. Bhattacharjee submitted that the evidence on record did not indicate about any

causal connection between the accident and the employment. Learned counsel further submitted that Section 3(1) of the Act sets out the limits of the accident. All accidents are not covered. It only covers those personal injuries that is caused to a workman by accident arising out of and in the course of his employment. The scheme of the Section unerringly points that the accidents must take place within or during the period of his employment. The workman breathed his last while he was in sleep, learned counsel submitted. Mr. Bhattacharjee in support of his case referred to a decision of the Supreme Court rendered in *Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, Mr. S. Deb, learned senior counsel for the respondents on the other hand, submitted that the decision of the Supreme Court in *Francis De Costa (supra)* did not have any application on the facts situated. So much so that was a case under the Employees' State Insurance Act meant for the employees employed in factory and the provisions were not very material with the Act in question. Mr. Deb submitted that u/s 3(1) of the Act, the claimant is to establish that a personal injury is caused to a workman by an accident arising out of and in the course of his employment. In the instant case the employment of the employee started from the moment he boarded the truck from Khowai on May 7, 1993 and he continued till his death. The deceased died in an accident and that accident was caused in connection with his employment. Since three ingredients were proved it was for the employer to disprove the same and the employer in the instant case preferred not to lead any evidence. Mr. Deb in support of his contention referred to a Full Bench decision of this Court rendered in *Assam Railways and Trading Co. Ltd. v. Saraswati Devi*, reported in 1958 A.C.J. 394 . Mr. Deb, learned senior counsel also referred to some other decisions in support of his contention reported in *Broach Municipality Vs. Raiben Chimanlal and Others*, Director (T & M), D.N.K. Project, v. D. Buchitali, 1988 ACJ 654, T.N.C.S. Corporation Ltd., v. S. Poomalai 1995 I LLJ 378. Mr. Deb submitted that the learned Court below did not commit any error in arriving at his conclusion that the deceased Ajit Gope died due to personal injury that was caused to the workman by accident arising out of and in the course of his employment though the learned Commissioner fell into error in fixing the amount of compensation u/s 4 of the Act and awarding interest u/s 4(a) of the Act which is the subject matter of First Appeal (Cross-Objection) No. 125/1997. First Appeal (Cross-Objection) No. 125/1997 shall be dealt separately.

5. The Workmen's Compensation Act, 1923 was enacted to provide for payment by certain classes of employers to their workmen of compensation for injury by accident. Section 3 of the Act creates liability of the employer to pay compensation in accordance with the provisions referred to in Chapter II of the Act in the matter of personal injury that is caused to a workman by an accident arising out of and in the course of his employment. The employer's liability is absolute and the employer can avoid the liability only in the cases mentioned in the Section itself. Accident is not defined in the Act. Therefore, the meaning of accident must be given as understood by the ordinary people in general. As per

SHORTER OXFORD ENGLISH DICTIONARY, Third Edition, revised with addenda (Volume I) the word "accident" means I. anything that happens an event; especially an unforeseen contingency; a disaster. Similarly, the BLACK'S LAW DICTIONARY, 6th Edition defines the word "accident" as follows:-

"In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling a change; a happening; an incident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense the word may be defined as meaning; a fortuitous circumstances, event, or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlocked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency; fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progresses or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence."

However, it must be remembered that the dictionary assists in appreciating and comprehending the general sense of the words. However, the words of a dictionary will not control the scheme of the statute. The Supreme Court in Deputy Chief Controller of Imports and Exports, New Delhi Vs. K.T. Kosalram and Others, observed :

"What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject-matter, the purpose or the intention of the authority and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author."

6. The meaning of the word "accident" is to be gathered from the context, the subject-matter, the intention of the Legislature, effect of the meaning given and the object of the enactment. While dealing with the meaning of the word "accident" in the expression "accident arising out of and in the course of employment" in the (English) Workmen's Compensation Act, 1906 in Board of Management of Trim Joint District School v. Kelly 1914 AC 667 (HL), VISCOUNT HALDANE L.C. observed as follows:-

"It seems to me important to bear in mind that "accident" is a word the meaning of which may vary according as the context varies. In criminal jurisprudence crime and accident are sharply divided by the presence or absence of mens rea. But in contracts such as those of marine insurance and of carriage by sea this is not so. In such cases the Maxim "in jure non remota cause sed proxima spectatur" is applied. I need only refer your Lordships to what was laid down by LORD HERSCHELL and LORD BARMWELL when overruling the notion that a peril or an accident in such cases is what must happen without the fault of anybody in *Wilson v. Owners of the Cargo per the Xantho* 1888 57 LT 701.

It is therefore necessary, in endeavouring to arrive at what is meant by accident to consider the context in which the word is introduced. The scope and purpose of that context may make the whole difference.

..... "..... What was held in *Fenton v. Thorely* 1903 AC 443 was the injury and accident were not to be separated and that "injury by accident" meant nothing more than accidental injury or accident as the word is popularly used," In the same case *EARL LOREBURN* observed as follows:-

"A good deal was said about the word "accident". Etymologically, the word means something which happens - a rendering which is not very helpful. We are to construe it in the popular sense, as plain people would understand but we are also to construe it in its setting, in the context and in the, light of the purpose which appears from the Act itself. Now, there is no single rigid meaning in the common use of the word. Mankind have taken the liberty of using it, as they use to many other words, not in any exact sense but in a somewhat confused, or rather in a variety of ways."

..... "..... In short, the common meaning of this word is ruled neither by logic nor by etymology, but by custom, and no formula will precisely express its usage for all cases."

The House of Lords in the aforesaid case held that the injuries caused by deliberate violence which arose out of and during the course of employment also, amounted to "accident". The word "accident" is construed in a wide canvass depending on the context keeping in mind the ordinary and popular sense in which it is used and understood by the persons concerned. The English Courts have also taken the view that man slaughter arising from negligent driving on the road is covered by the contract of indemnity in respect of accidental injury; (1921) 3 KB 327 and (1927) 2 KB 311, - referred and relied in *Marles v. Philip Trant and Sons Ltd.* 1954 1 QB 29 (CA) by DENNING L.J. in this context it would be appropriate to refer to a decision of the Bombay High Court rendered in *Bhagubai, v. General Manager, Central Railway, V. T. Bombay*, reported in 1954 II LLJ 403. In the above case, the deceased was employed in Central Railway at a station and he lived in the railway quarters adjoining the railway station. It was found that the only access for the deceased from his quarters to the railway station was through the compound of the railway quarters. One night the

deceased left his quarters a few minutes before midnight, in order to join duty and immediately thereafter he was stabbed by some unknown person. There was no evidence that the employee was done to death because someone was interested in murdering him. Nor was there any evidence that the employee was bound to be murdered whether he was on the spot in the course of his employment or any where else. The Bombay High Court in that case held that the accident arose out of the employment. While deciding the case CHAGLA, C.J who delivered the judgment in the aforesaid case made the following observation:-

"There must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. The cause contemplated is the proximate cause and not any remote cause. If the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face then a causal connection is established between the accident and the employment. The fact that the employee shares that peril with other members of the public is an irrelevant consideration. The peril which he faces must not be something personal to him; the peril must be incidental to his employment. He must not by his own act add to the peril or extend the peril. Once the peril is established it is for the employer then to establish either that the peril was brought about by the employee himself, that he added or extended the peril, or that the peril was not a general peril but a peril personal to the employee."

7. From the evidence on record it thus emerges that the deceased reached Patharkandi and was compelled to halt there due to bandh. The deceased had to be in the particular spot at that particular moment in course of his employment and by reason of his employment, he met with untoward event or mishap or occurrence took place because he was there in course of his employment. The claimants established their burden. No other duties or burden is imposed on the claimants to prove and establish any further requirement. The claimants established the proximate cause of death of the deceased and also established the proximate connection between the employment and his injury which is the accident caused to the deceased at that particular spot in course of his employment thus resulting in his death. In our opinion the learned Commissioner rightly reached his conclusion and imposed liability on the employer u/s 3 of the Act. The ratio of Francis De Costa (supra) does not support the contention of the appellant. In the aforesaid decision the Supreme Court accepted the decision of the Bombay High Court rendered in Bhagubai (supra). In the aforesaid decision referring to Dover Navigation Co. Ltd. v. Isabella Craig 1940 AC 190 the Supreme Court laid down the following principles:

- (1) there was an accident
- (2) the accident had a causal connection with the employment, and

(3) the accident must have been suffered in course of employment.

In the instant case, the claimants proved and established that the accident had a causal connection with the employment of the deceased workman. The deceased met with the accident in course of his employment.

8. For the reasons stated above, we do not find any merit in this appeal and the appeal is accordingly dismissed with costs.

F.A. (Cross-Objection) No. 125/97

9. Facts are already indicated in the earlier judgment in F.A. No. 115/1997.

10. In the cross-objection the controversy relates to awarding of the interest as well as the amount of compensation payable to the claimants u/s 4 and 4-A of the Act. The appellant- claimants did not dispute the use of the factor 216.91 by the learned Commissioner in awarding the compensation in terms of Schedule IV of the Act. What is disputed herein about the reference to the unamended provision of Explanation II of Section 4 of the Act. The Explanation II of unamended provision reads as follows:-

""Explanation II - Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purposes of Clause (a) and Clause (b) shall be deemed to be thousand rupees only."

11. To decide the issue precisely it would be appropriate to refer the provisions of Sections 4 and 4A of the Act (as amended by Act 30 of 1995) which are quoted below:-

"4. Amount of compensation - (1) subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) Where death results from the injury: an amount equal to (fifty percent) of the monthly wages of the deceased workman multiplied by the relevant factor;

..... Explanation II - Where the monthly wages of a workman exceed (two thousand, rupees), his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be (two thousand rupees) only;

4-A. Compensation to be paid when due and penalty for default. (1) Compensation u/s 4, shall be paid as soon as it falls due.

..... (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve percent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty percent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving any reasonable opportunity to the employer to show cause why it should not be passed.

Explanation - For the purpose of this sub-section, "Scheduled Bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).

(3A) The interest payable under Sub-section (3) shall be paid to the workman or his dependent, as the case may be, and the penalty shall be credited to the State Government."

The amended Act came into force on September 15, 1995. Prior to the amendment the Act stood as follows:-

"4. Amount of compensation - (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) Where death results from the injury: an amount equal to forty percent of the monthly wages of the deceased workman multiplied by the relevant factor;

..... Explanation II. - Where the monthly wages of a workman exceed one thousand rupees, his monthly wages for the purpose of Clause (a) and Clause (b) shall be deemed to be one thousand rupees only,

.....

.....

4-A. Compensation to be paid when due and penalty for default - (1) Compensation u/s 4 shall be paid as soon as it falls due.

.....

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of six percent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty percent of such amount, shall be recovered from the employer by way of penalty."

12. When the claim petition was pending, the amendment took place and when the learned Commissioner delivered the judgment on March 11, 1997, the amendment already came into force. In this circumstance the learned Commissioner ought to have given effect to the amended provisions of the Act in deciding the compensation. Mr. Deb, learned senior counsel for the claimant-

appellants accordingly referred to a decision of the Kerala High Court "in Oriental Insurance Company Ltd. Vs. Asokan, whereby the Kerala High Court has held that Section 4 of the Act (as amended by Amendment Act, 1995) has retrospective application. Mr. Deb also referred to a Division Bench decision of this High Court in Oriental Insurance Co. Ltd. Vs. Khajuni Devi and Others, and another unreported judgment of this Court passed in MA (F) No. 1/94 (Smt Sandhya Goswami and Ors. v. Smt Bani Choudhury and Anr.,) and MA (F) No. 30/94 (Smt. Dipali Debnath and Ors., v. Smt Bani Choudhury and Anr.), disposed on July 2, 1999. In the instant case, the award was passed on March 11, 1997 that is after the amendment. On the date of award the amended provisions of the Act were to come into force and the Court was to give effect to a law which was for the time being in force.

13. In the light of the decisions enumerated above, more so in view of the two decisions of this Court, we are of the view that the Legislature by amending Sections 4 and 4A of the Principal Act, 1923 did not change the colour and content of the Act and the liability of the employer for paying compensation. The Legislature did not bring any distinction between the accidents that took place prior to the amendment (Act 30 of 1995) and those which took place after the amendments. The amending provisions do not suggest any limitation.

14. In the instant case, the award was made on March 11, 1997 i.e., after amendment of Sections 4 and 4A it came into force with effect from September 15, 1995 even though the accident took place on May 11, 1993 i.e. during the period in which the related unamended provisions of Sections 4 and 4A were in force. As discussed above, we are of the view that the Act is a special Legislation for the benefit of the labour/workmen and if any benefit is conferred on the workman by virtue of the amended provisions of Sections 4 and 4A of the Act, the said benefit is available on the date when the case is finally adjudicated and, apart from it, the related provisions of the Act which afforded benefits to the workman should be construed liberally in favour of the workers and, as such, the claimants should get the benefits of it. Accordingly, we hold that the learned Commissioner fell into error in not giving effect to amended provisions of the Act, in other words, a failure on the part of the learned Commissioner to afford the benefits available and conferred on a workman like the deceased under the related provisions of Sections 4 and 4A of the Act. We accordingly modify the award dated March 11, 1997 as follows:-

The claimants shall be entitled to a compensation of 50% of the monthly wages of the deceased X 216.91 that is Rs. 1000/- x 216.91 which comes to Rs. 2,16,910/-. In view of the amended provision of Sections 4A of the Act the claimants shall also be entitled to get 12% simple interest per annum. The award is modified accordingly. All other directions or terms given in the award dated March 11, 1997 by the learned Commissioner, Workmen's Compensation, West Tripura, Agartala in T. S. (W/C) No. 29 of 1994 shall remain the same. It is ordered accordingly.

15. The appeal F.A. (Cross-Appeal) No. 125/1997 is allowed to the extent indicated above. The respondents shall deposit the balance amount within two months from today. No order as to costs.