
(2004) 11 AP CK 0086
In the Andhra Pradesh High Court
Case No : CMA No. 1515 of 2002

National Insurance Co. Ltd.	Vs	APPELLANT
M. Lalitha and Another		RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2005) 1 ALD 568 : (2005) 105 FLR 336

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Kota Subba Rao, for the Appellant; G. Vidyasagar, for the Respondent

Judgement

L. Narasimha Reddy, J.—This C.M.A. is filed u/s 30 of the Workmen's Compensation Act (hereinafter referred to as "the Act") against the order dated 20-9-2001 by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad-I, in WC No. 69 of 1999.

2. The 1st respondent herein presented the claim before the Commissioner alleging that her husband, by name, Chittari was employed as Foreman with the 2nd respondent, and that on 12-3-1999, when he was returning after completion of duties, met with an accident at Balanagar, and died as a result of the injuries. She claimed compensation of Rs. 5,55,910/-, under the provisions of the Act.

3. The 2nd respondent and the appellant herein opposed the claim. According to them, the accident did not take place during the course of employment and thereby, they are not liable. The 1st respondent was examined as PW-1 and Exs. A-1 to A-5 were marked on her behalf. The 2nd respondent herein was examined as RW-1 and Exs.B-1 to B-3 were marked. On behalf of the appellant, RW-2 was examined and Exs.B-4 was marked. On a consideration of the respective pleas of the parties, the Commissioner awarded a sum of Rs. 1,39,708/-.

4. Sri Kota Subba Rao, learned Counsel for the appellant submits that the death of the workman took place after the office hours, and in that view of the matter,

it cannot be said that it occurred during the course of employment. Placing reliance upon the judgment of the Supreme Court in *Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, , learned Counsel submits that the 1st respondent was not entitled to be paid any compensation.

5. Though Respondents 1 and 2 were served with notices, they have not chosen to enter appearance. On the request made by this Court, Sri G. Vidyasagar, learned Counsel, assisted the Court, on behalf of the 1st respondent.

6. Sri G. Vidyasagar, learned Counsel submits that though the employment of a worker, on a particular day, commences and ends at a particular point of time, there are instances where a notional extension can be given to it, depending on the attendant circumstances. Placing reliance upon the judgments of the Supreme Court in *General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes*, , learned Counsel submits that even after being relieved from duties, an employee can still be said to be in employment, while travelling in a transport, provided by an undertaking, or if he is yet to cross the premises.

7. It is not in dispute that the husband of the 1st respondent was employed as Foreman with the 2nd respondent. He died on 12-3-1999, while returning to his home, after the duty hours. u/s 3 of the Act, an employer becomes liable to pay compensation for the injury, or death caused to a workman, by accident "arising out of, and in the course of his employment". In this case, the 1st facet, namely, "accident arising out of employment" can be safely be ruled out. It has only to be seen as to whether the death occurred during the course of employment. It is true that in *Regional Director, E.S.I Corporation and Anr. v. Francis De Costa and Anr.* (supra), the Supreme Court held that if an employee meets with an accident while going to his place of employment, before he joins duty, the employer cannot be held liable to pay the compensation. The principle laid down by the Supreme Court in *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, , and *B.E.S.T. Undertaking v. Mrs. Agnes* (supra), was discussed therein.

8. A perusal of the judgments rendered by the Supreme Court so far reveals that though as a broad principle it was held that the employment of a workman does not commence until he reaches the place of employment, and, ceases, once he leaves the place of employment, and exceptions to the same are not ruled out. It depends on the mode of transport used by the employee in reaching or leaving the place of duty, and the place where the incident resulting in injury or death takes place. In *B.E.S.T. Undertaking v. Mrs. Agnes* (supra), the death of an employee undisputedly after the working hours, but during the course of travel, in the transport of the employer, was treated as the one "during the course of employment". In *Bhagubai v. Central Railways* (1954) II LLJ 403 (Bom.), the fact that the incident took place within the property belonging to the employer, though before the employee was yet to join the duty, was treated as a factor to attract the liability. American and English decisions referred to in the judgment of the Supreme Court in *Regional Director, E.S.I Corporation and Anr. v. Francis De Costa and Anr.* (supra), hardly provide any consistency in this direction.

9. In the instant case, the Commissioner framed a specific issue on this aspect. The evidence led by both the parties was scanty. Obviously, for that reason, the Commissioner recorded a finding that the accident took place during the course of employment. When such an important issue was framed, the discussion was required to be pointed, and the conclusion ought to have been supported by reasons. Strictly speaking, this Court is of the view that it is a matter for remand. However, having regard to the fact that several years have elapsed since the date of accident, and that it would be too difficult for either parties to adduce any further evidence, this Court is of the view that ends of justice would be met if the compensation payable to the 1st respondent is confined to the amount already received by her. Though learned Counsel for the appellant strongly opposed, this Court is adopted having regard to the peculiar facts and circumstances of the case, and not as a principle.

10. Before parting with the case, the Court places on record the valuable assistance rendered by Sri G. Vidyasagar, learned Counsel.

11. The appeal is partly allowed, restricting the compensation payable to the 1st respondent to the one already received by her. The appellant shall be entitled to withdraw the amount, which is now lying with the Commissioner. There shall be no order as to costs.