
(2000) 01 OHC CK 0016
In the Orissa High Court

National Insurance Co. Ltd.

APPELLANT

Vs

Nalini Dehwari and Others

RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2003) 1 ACC 587

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Judgement

P.K. Misra, J.—The insurer has filed this appeal u/s 30 of the Workmen's Compensation Act challenging the judgment passed by the Commissioner for Workmen's Compensation-cum-Deputy Labour Commissioner, Cuttack (for short, "the Commissioner").

2. Claimant-respondent No. 1 is the widow of late Dhruba Charan Dehwari and claimants-respondent Nos. 2 and 3 are the parents of the deceased. The deceased was employed as a driver in truck bearing No. OR 05-3915 belonging to respondent No 4. The said truck was going from Cuttack to Burla being loaded with Amul Spiay. On the way the vehicle was waylaid by culprits and the consignment of the Amul Spray was looted and subsequently from a nearby place, the body of the deceased driver was recovered. The claim application was filed by the widow and the parents of the deceased alleging that death had occurred in an accident arising out of and in course of employment.

3. The owner filed written statement admitting about the employment. It was stated by him that the deceased was getting a sum of Rs. 1,800/- per month towards salary and Rs. 15/- per day towards feeding allowance. It was further stated that compensation, if any, should be paid by the Insurance Company. The Insurance Company filed written statement denying in general terms the allegations made in the claim application.

4. The Commissioner found that the deceased was an employee under present

respondent No. 4 and had died because of the attack by the miscreants. Accordingly, the Commissioner directed payment of compensation by the Insurance Company.

5. In this appeal, it is contended that the death of the deceased had nothing to do with his employment as even according to the case of the claimants the deceased had been waylaid and killed by the miscreants. In other words, it is contended that death did not arise out of the employment of the deceased.

6. From the materials on record, it appears that the truck in question had been waylaid on the way to Burla by miscreants and the driver was killed. It is evident that the deliver became a victim of the offence at a time he was engaged in discharging the duties assigned to him. The deceased would not have faced such a situation if he would not have been driving the vehicle for and on behalf of the employer at the time of the incident. Thus, prima facie, it appears that there was causal relationship between the death and the employment of the deceased as a truck driver, as the deceased happened to be at the place of occurrence due to his engagement as a driver.

7. The learned Counsel appearing for appellant has placed reliance upon the decisions of the Apex Court in *Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahmmud Issak* 1969 ACJ 422 (SC), and *Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another*, and the decision of the Madras High Court in *Special Officer, Periyakulam Anna Polythene Workers Industrial Co-operative Society Ltd. Vs. Ayyammal (Smt.) and Another*,

In the decision in *Mackinnon Mackenzie & Co. v. Ibrahim Mahmmud Issak* (supra), it was observed at pp. 425-26:

(5) To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words, there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises "out of employment". To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act....

A similar view had been expressed in the decision in *Francis De Costa's* case

(supra).

8. There is no dispute about the principle of law laid down by the Supreme Court in the aforesaid cases. The main question to be decided is as to whether there is a causal relationship between the accident and the employment. As observed by the Apex Court in the decision in *Mackinnon Mackenzie & Co. v. Ibrahim Mahmmud Issak* (supra), the expression "arising out of employment" is not confined to the mere nature to employment. "The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of these factors, the workman is brought within the zone of special danger, the injury would be one which arises "out of employment"." In the decision in *Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others*, it was observed:

It is well-settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there.

(Emphasis added)

If the deceased would have been travelling on his own and would have been killed due to some incident, there cannot be any doubt that the accident could not have been taken to be one arising out of employment, but in the present case, the very nature of the employment of the deceased made it necessary for him to drive the vehicle which ultimately resulted in his death as the miscreants waylaid him and killed him obviously with a view to facilitate removal of the tins of Amul Spray which were being transported. Thus, it can be very well concluded that by the nature of his employment, he had to undertake the said journey which exposed him to the hazards ultimately causing his death.

9. Almost under similar circumstances, when a driver of a taxi was killed for the purpose of stealing the taxi by miscreants while the deceased was driving the taxi, it was held by a Division Bench of the Kerala High Court in the decision in *United India Insurance Co. Ltd. Vs. Philo and Others*, that the accident arose out of the employment. Similarly, a Division Bench of the Bombay High Court presided by Chagla, C.J., in the decision in *Bhagubai Vs. General Manager, Central Railway, V.T., Bombay*, , while allowing compensation to the claimants, observed:

Now it is clear that 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. It is equally clear that the cause contemplated is the prominent cause and not any remote cause. The authorities have clearly laid down that 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. It is now well-settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril causal connection is established between the employment and the accident.

10. An analysis of the materials on record and the decisions mentioned above clearly indicates that there is a causal connection between the unfortunate death of the driver and his being employed as a driver under the owner. The decision of the Madras High Court in *Special Officer, P.A.P. Workers' Industrial Co-op. Society Ltd. v. Ayyammal (supra)*, cited by the Counsel for appellant is, however, clearly distinguishable. In that case, the husband had come to the worksite where wife was working and a quarrel ensued between them and the husband killed the; wife. In such circumstances, it was held that there was no causal connection between the death and the employment of the deceased. It is obvious that the facts in the said case were completely different and the ratio of the decision cannot be applied to the present case.

11. The learned Counsel appearing for the appellant, however, submitted that the driver added to the peril by not taking the helper with him. For the aforesaid purpose, the Counsel has relied upon the report of the police that the helper who was going with the driver had got down near Choudwar and thereafter the driver proceeded alone. Apart from the fact that such a question had not been raised before the Commissioner, even assuming that the driver had proceeded alone from Choudwar, it cannot be said that by such act "he had added to the peril". The persons who waylaid the driver did not do so merely because the driver was alone. Even if a helper would have been there, it is obvious that he would have met the same fate. In the facts and circumstances of the case, it cannot be said that the deceased had not by his own act added to the peril. The peril which he faced had nothing to do with his own action.

12. The learned Counsel for the appellant then contended that the Commissioner had not framed any issue as to whether the claimants were dependants or not. On a perusal of the written statement of opposite party No. 2 (the present appellant) it does not appear that the Insurance Company was resisting the application on the ground that the claimants were not dependants. Out of the three claimants, claimant No. 1 is the widow and the wife must be considered to be dependant upon the husband unless otherwise proved. The father of the deceased while being examined has stated that the deceased was the sole breadwinner of the family. It is thus obvious that apart from the wife, the parents of the deceased were also dependants. Since specific objection had not been raised, it cannot be said that the Commissioner committed any illegality in not

framing specific issue on this aspect. A perusal of the judgment of the Commissioner makes it apparent that the Commissioner has referred to the relevant materials on record and came to the conclusion that the claimants were legal representatives and dependants.

13. The learned Counsel appearing for the appellant also challenged the quantum payable to the claimants. The Commissioner has referred to the evidence of the owner himself and held that the deceased was getting salary of Rs. 1,800/-. Even though it was claimed that the deceased was aged about 28 years, the Commissioner has referred to the driving licence and on the basis of the age mentioned therein has held that the deceased was 31 years. Thus, it cannot be said that the Commissioner has applied a wrong principle, nor committed any substantial error of law while assessing the quantum payable.

14. For the aforesaid reasons, I do not find any merits in this appeal which is accordingly dismissed. There will be no order as to costs.

15. It appears that out of deposited amount a sum of Rs. 75,000/- has already been disbursed to claimants-respondents. Out of the balance amount along with accrued interest, fifty percent shall be kept in fixed deposit in the name of the claimant-respondent No. 1 and the balance fifty percent shall be kept in the names of claimants-respondent Nos. 2 and 3 in a fixed deposit, for a period of five years with permission to withdraw quarterly interest.