

(1997) 09 PAT CK 0051

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1073 of 1986 (R)

National Insurance Co. Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Employees Compensation Act, 1923 — Section 3

Citation : (2000) ACJ 343 : (1997) 2 PLJR 947

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : G.C. Jha, for the Appellant; C.S. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—By this writ application, the petitioner National Insurance Co. Ltd. has challenged the order dated 22.11.85 passed by the Presiding Officer, Labour Court, Bokaro Steel City, Dhanbad, in Workmen's Compensation Case No. 24 of 1982 whereby it was held that the petitioner is equally responsible to make payment of compensation amount for the death of Durga Ram, driver of vehicle, who died during the course of his employment.

2. The facts of the case are not much in dispute. The deceased Durga Ram was employed by the owner of the vehicle No. WBQ 9491 as the driver. It appears that the deceased Durga Ram and the cleaner Deolal Ram were murdered by some criminals on the way while they were transporting diesel (a petroleum product) from Dhanbad to Bokaro. The dead bodies were recovered from the driving cabin of the truck-lorry No. WBQ 9491. The truck-lorry was found near Khakikala Nulla on Dumri-Bermo Road in the shape of an accident. The dependants of the deceased Durga Ram filed an application before the Commissioner, Workmen's Compensation under the Workmen's Compensation Act claiming compensation from the owner and insurer of the vehicle. On being noticed, the petitioner insurance company appeared and filed written statement challenging the maintainability of the application on various grounds. It was

stated that the coverage of risk undertaken by the insurance company is a contract between the insured and the insurer and the said contract has nothing to do with the said act according to which the employer is responsible for payment of compensation. A further stand was taken that the insurance policy between the petitioner and the owner does not contemplate any such event raising any liability on the insurer. The matter was ultimately heard by the Presiding Officer, Labour Court before whom evidence was adduced by the claimants. The Labour Court after considering the entire evidence on record, came to the finding that both the driver and the cleaner died in an accident or murder, which took place during the course of employment. They have been killed while they were transporting the goods in the vehicle which fact has been admitted by the opposite parties. According to the Labour Court, therefore, both the owner and insurer of the vehicle are jointly and severally liable for payment of compensation to the claimants. Accordingly, by order impugned, the Labour Court held the petitioner liable for payment of compensation.

3. Mr. G.C. Jha, counsel for the petitioner assailed the order of Labour Court as being illegal and without jurisdiction. According to the learned counsel, the cause of death was not because of the accident of the vehicle; rather it was because of acts of criminals for which the insurance company is not liable. The learned counsel submitted that murder of the deceased by the criminals does not amount to "an accident" within the meaning of Section 3 of the Workmen's Compensation Act and, therefore, no liability could be fastened on the insurance company. The learned counsel lastly submitted that it is the primary responsibility of the employer to pay compensation and unless the liability has been undertaken under the insurance policy, the petitioner cannot be held liable for payment of compensation.

4. On the other hand, Mr. C.S. Prasad, learned counsel appearing on behalf of the claimants, supported the impugned order by submitting that no evidence was led by the insurance company, nor the insurance of the vehicle was denied. The learned counsel submitted that since driver and the cleaner were murdered while they were transporting the goods of the employer and, therefore, the employer and the insurance company cannot be exonerated from liability for payment of compensation.

5. Before appreciating the submissions made by learned counsel for the parties, it would be useful to refer to Section 3 of the Workmen's Compensation Act.

(3) Employer's liability for compensation.-(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

6. From bare reading of the aforesaid provision, it is manifest that the liability to compensation arises if personal injury is caused to a workman by accident, provided the accident arises out of and in course of his employment. Under the proviso, if the personal injury results in death of the workman, the employer will be liable even though the workman may himself have contributed to the accident by being under the influence of drink or drugs or by wilfully disobeying the security measures or removing security devices.

7. The main dispute raised by the petitioner is that the death of the employee, namely, the driver of the vehicle cannot be said to be an accident arising out of and during the course of employment. The term "accident" has not been defined under the aforesaid Act, but the law in this regard has been well settled. The word "accident" would mean kind of event which is un-looked for and sudden and causes personal injury. The Workmen's Compensation Act, 1923 is in pari materia with the Workmen's Compensation Act, 1897. A similar question came for consideration before a Full Bench of the Allahabad High Court in the case of Mst. Abida Khatun Vs. General Manager, Diesel Locomotive, and their Lordships have considered the English decisions while determining the meaning and connotation of the term "accident" arising out of and in course of employment. The Full Bench followed various decisions, including the view taken by the Court of Appeal in Nishet v. Reyne 1910 (2) KB 689 and Anderson v. Balfour 1910 (2) LR 497 and held that the definition of "accident" extended to case of death by murder. It was observed that injury by "accident" is an integrated phrase and an event in the ordinary and popular sense can be described as an accident even though it was caused by deliberate violence.

8. It is well settled that the word "accident" excludes the idea of wilful and intentional act, but it includes "murder" as it was an accidental happening so far as the workman is concerned. The term "accident" for the purpose of law relating to compensation for personal injury sustained by workman and the employer's liability in that behalf includes any injury which is not designed by the workman himself and it is of no consequence that the injury was designed and intended by the person inflicting the same. In Trim Joint District School Board of Management v. Kelly (1914) AC 667, where an Assistant Master at an industrial school was assaulted and killed by two of the pupils while the Assistant

Master was performing his duties, the House of Lords held that his death was caused by an accident for the purpose of the same statute. Viscount Haldane, L.C., pointed out that the meaning of the term "accident" would vary accordingly as the context varies and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence or absence of *mens rea* and the law of marine insurance where the maxim: *In jure non remota causa, sed proxima spectatur* (in law the proximate and not the remote, cause is to be regarded) applies. The learned Lord Chancellor said:

My Lords, if we had to consider the principle of the Workmen's Compensation Act as *res Integra*, I should be of opinion that the principle was one more akin to insurance at the expense of the employer of the workman against accidents arising out of and in the course of his employment than to the imposition on the employer of liability for anything for which he might reasonably be made answerable on the ground that he ought to have foreseen and prevented it. I think that the fundamental conception is that of insurance in the true sense. And if so it appears to me to follow that in giving a meaning to "accident" in its context in such a scheme one would look naturally to the proxima causa of which Lord Herschell and Ixml Barm-well spoke in connection with marine insurance, the kind of event which is unlooked for and sudden, and causes personal injury, and is limited only by this, that it must arise out of and in the course of the employment. Behind this event it appears to us that the purpose of the statute renders it irrelevant to search for explanations or remoter causes, provided the circumstances bring it within the definition. No doubt the analogy of the insurance cases must not, as Lord Lindley points out in his judgment in *Fenton v. J. Thorley & Co. Ltd.* (1903) AC 443, be applied so as to exclude from the cause of injury the accident that really caused it, merely because an intermediate condition of the injury-in that case a rupture arising from an effort voluntarily made to move defective machine has intervened. If, so far as the workman is concerned, unexpected misfortune happens and injury is caused which the statute seems to me to impose in the interest of the employer, who cannot escape from being a statutory insurer, is that the risk should have arisen out of and in the course of the employment.

9. In the case of *Fenton v. J. Thorley & Co. Ltd.* (1903) AC 443, it was held that in the Workmen's Compensation Act, 1897, the word "accident" was used in popular and ordinary sense and meant mishap or untoward event not expected or designed. Lord Lindley has observed that the word "accident" is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word "accident" is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often

important to distinguish carelessness from other unintended and unexpected events.

10. Besides the various English decisions, some of which have been referred to hereinabove, I must also take notice of one important decision of the Bombay High Court in the case of Bhagubai Vs. General Manager, Central Railway, V.T., Bombay, , in which the provision of Section 3 of the Workmen's Compensation Act was considered and the principle of law has been laid down. His Lordship Chagla, C.J. held:

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 proximate 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, a causal connection is established between the employment and the accident.

In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore, the connection between the employment and the accident is established...

11. Considering the facts and circumstances of the case and the principle of law discussed hereinabove, I am of the definite opinion that the death caused to the deceased by the act of the criminals is nothing, but an-accident within the meaning of Section 3 of the Workmen's Compensation Act. The employer and the insurance company, therefore, shall be held liable for payment of compensation for such an accident caused to the deceased if it arose out of and in the course of his employment.

12. The only question that remains for consideration is as to whether such an accident arose out of and in the course of his employment. It has not been disputed either by the employer or the insurance company that during the relevant time when the deceased was murdered, he was transporting the

petroleum products in the truck from Dhanbad to Bokaro. It was further not disputed that while deceased was driving the vehicle and transporting the goods in the lorry, a dacoity took place whereby the deceased driver and the cleaner were killed by the miscreants. The Labour Court after considering all the evidence, both oral and documentary, came to the finding that the death took place during the course of their employment. The petitioner insurance company has not disputed this fact and, therefore, no further facts and law are necessary to be discussed. Suffice it to say, as held by the Apex Court that the words "in the course of employment" mean "in the course of the work which a workman is employed to do and which is incidental to it". The words "arising out of employment" are to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties and the service which, unless engaged in the duty owing to the master, it is desirable 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 bound to the mere nature of the employment. The expression applies to employment as such to its nature, its condition, its obligation and its incidents. If by reason of any of these factors, the workman is brought within these conditions, the injury would be one which arose "out of employment". It is well settled that if an accident had occurred on account of 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.

13. In the case of Salama Begum and Others Vs. District Branch Manager Maharashtra State Cooperative Land Development Bank and Another, , a similar question arose before the Bombay High Court. In that case, the jeep driver of the Maharashtra Development Bank took the officers of the bank to a village in connection with recovery proceedings conducted by the bank. The driver rested the jeep in the rest house and went to the market, where he was assaulted by some unknown persons in the crowd in the market and was found dead. The wife and the children of the deceased filed an application under the Workmen's Compensation Act. The Commissioner for Workmen's Compensation rejected the claim on the ground that the death of the driver was not the result of an accident arising out of and during the course of employment. In appeal, the Bombay High Court reversing the finding of the Commissioner held that the driver died while he was on duty at the hands of some other persons. The risk incurred by the driver for going to bazar after resting his jeep was incidental to taking the jeep to the village as against the risk to which all members of the public may have been exposed on account of unruly mob in the market. It was further held that the accident having taken place without the fault of the driver and while he was on duty in the village must be taken to be during the course of his employment and also arising out of employment on account of risk which was incidental to his duty of taking the bank officers to the village.

14. As stated above in the instant case, it has not been disputed by the

petitioner or the employer that the deceased driver and the cleaner were on duty while driving the vehicle and transporting the petroleum products from one place to another and on the way dacoity took place and they were murdered by the miscreants. In that view of the matter, I am of the opinion that the claim made by the claimants is perfectly legal and valid and they are entitled to compensation for the death caused to the deceased.

15. Mr. G.C. Jha, learned counsel for the petitioner, produced before me a copy of the order dated 15.7.1997 passed by a Bench of this court in C.W.J.C. No. 1067 of 1986 (R). The said writ application was filed by the insurance company against the award of the Commissioner, Workmen's Compensation, on the application filed by the cleaner, who also died along with the deceased driver. The learned counsel submitted that by the said order, this court held that since the cleaner was killed by some unsocial elements while he was driving the vehicle, the insurance company is not liable to pay compensation, rather the employer is liable to pay compensation. It appears that before the learned single Judge, the provisions of law have not been placed in its right perspective and as such, the question involved has not been decided.

16. Mr. G.C. Jha, the learned counsel, very fairly submitted that the vehicle was insured with the petitioner insurance company and the liability of the driver and the cleaner was covered on payment of additional premium by the owner of the vehicle. The learned counsel also produced before me a copy of the insurance policy from perusal of which it is evident that the petitioner insurance company undertook the risk of the driver and the cleaner as provided under the Workmen's Compensation Act. In that view of the matter, I am of the definite opinion that whatever compensation was awarded by the Presiding Officer, Labour Court, the employer and/ or the insurance company are liable to pay the same to the claimants.

17. For the reasons stated above, there is no merit in this writ application. It is, accordingly, dismissed.