

(2008) 04 MP CK 0084
In the Madhya Pradesh High Court
Case No : M.A. No. 1035 of 2007

National Insurance Co. Ltd.	Vs	APPELLANT
Shantidevi and others		RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Evidence Act, 1872 — Section 108
Penal Code, 1860 (IPC) — Section 381
Workmens Compensation Act, 1923 — Section 3

Citation : (2008) 4 MPLJ 328

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : C.P. Singh, for the Appellant; J.M. Poonegar for Respondent Nos. 1 to 7, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mody, J.

Being aggrieved by the order dated 29-1-2007 passed by Commissioner of Workmen's Compensation, Labour Court, Indore in Case No. 11/2004 whereby the claim petition filed by respondent Nos. 1 to 7 for compensation on account of death of Krishnaprasad was allowed and a sum of Rs. 1,84,170/- was awarded as compensation, the present appeal has been filed.

The appeal is admitted for final hearing on the following substantial question of law:

Whether findings of the Commissioner for Workmen's Compensation, Indore regarding presumption that deceased died during course of employment is in accordance with section 108 of the Indian Evidence Act?

Short facts of the case are that respondent Nos. 1 to 7 filed a claim petition under the provisions of Workmen's Compensation Act before the learned Commissioner alleging that Krishnaprasad, who was husband of respondent No.

1, father of respondent Nos. 2 to 6 and son of respondent No. 7, was employed as driver of a truck bearing No. MP09 K 7812 which was owned by respondent No. 8 and insured with the appellant. It was alleged that Krishnaprasad left with the truck loaded with goods from Indore to Assam on 12-6-1996 but thereafter he did not turn. It was alleged that complaint was lodged about missing of Krishnaprasad with Police Station Lasudia, Indore, upon that an investigation was made by the police. Since no information was received about whereabouts of deceased Krishnaprasad, therefore final report was submitted by the concerned police on 9-1-1999. Further case of respondent Nos. 1 to 7 was that Krishnaprasad was aged 30 years at the relevant time and his salary was Rs. 4000/- per month. It was alleged that since Krishnaprasad was in employment of respondent No. 8 and offending truck was insured with appellant, therefore respondent Nos. 1 to 7 are entitled for compensation.

The claim petition was contested by respondent No. 8 and also by the appellant on various grounds including on the ground that appellant-Insurance Company is not liable for payment of compensation. In reply it was alleged that since the offending truck was missing, therefore it cannot be presumed that Krishnaprasad has died. It is just possible that Krishnaprasad must be alive and living somewhere else. It was alleged that since it is not proved that Krishnaprasad has died in a motor accident, therefore appellant-Insurance Company is not liable for payment of compensation. In the plea raised in the written statement it was also alleged that appellant has appointed an investigator, after receipt of the investigation report, appellant is keeping its right reserved to amend the written statement. It was prayed that claim petition filed by respondent Nos. 1 to 7 be dismissed.

After framing of issues and recording of evidence, learned Court below allowed the claim petition filed by respondent Nos. 1 to 7 holding that Krishnaprasad was aged 40 years and was earning Rs. 2000/- per month. Since more than 7 years has lapsed and no whereabouts of Krishnaprasad is known, therefore, it has to be presumed that Krishnaprasad has died in a motor accident and after applying relevant factor, a sum of Rs. 1,84,170/- was awarded by the learned Court below for which appellant was held liable, against which the present appeal has been filed.

Learned counsel for appellant submits that findings of learned Court below is illegal and deserves to be set aside. It is submitted that there is nothing on record to show that appellant was missing since last 7 years, on the contrary on 9-1-1999 respondent No. 8 himself lodged a complaint against Krishnaprasad with Police Station Lasudia, Indore. On the basis of allegations made by respondent No. 8, a criminal case was registered against Krishnaprasad u/s 381 of Indian Penal Code. Learned counsel submits that FIR is on record wherein respondent No. 8 himself has informed the police station, Lasudia that his driver Krishnaprasad after unloading the goods carried from Indore to Assam has run away with the truck. It is submitted that in view of the FIR dated 9-1-1999,

learned Court below committed error in holding the appellant-Insurance Company liable for payment of compensation on the presumption that Krishnaprasad has died during course of the employment.

Learned counsel for appellant vehemently submits that no presumption can be drawn about the date and time of death u/s 108 of the Indian Evidence Act. For this contention, reliance is placed on a decision in the matter of Darshan Singh and Others Vs. Gujjar Singh (Dead) by Lrs. and Others, , wherein it was held that "there is no presumption as to exact time of death u/s 108. Date of death must be established on evidence by the person who claims a right on its basis."

Further reliance was placed on a decision in the matter of L.I.C. of India Vs. Anuradha, , wherein it was held that -- "The presumption raised u/s 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by the reference to section 108 could arise only on lapse of 7 years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings, the occasion for raising the presumption does not arise."

Reliance was also placed on a decision in the matter of Oriental Insurance Company Ltd. vs. Sorumbai Gogai, 2008 MACD (SC) 69 wherein in a case where an employee was not traced from more than seven years and the Commissioner held that the deceased employee was a workman and he died as a result of injuries sustained in an accident arising out of and in course of his employment and Commissioner awarded compensation of Rs. 2,24,000/- to the claimants, High Court dismissed the appeal filed against that award and note of the fact that FIR was lodged against the said employee under sections 420 and 406 of the Indian Penal Code to the effect that he himself had run away with the vehicle, the Hon"ble Apex Court held that Commissioner or the High Court did not assign any reason as to why the fact disclosed in the charge-sheet which was filed upon the investigation that Bipul Gogoi (the employee) himself had run away with the vehicle would not be a relevant fact, particularly when cognizance had been taken by a competent Court of law on the basis thereof. Section 3 of the W.C. Act would be attracted only when the conditions precedent therefor are fulfilled and not otherwise. The expression "accident" means an untoward mishap which is not expected or designed. Furthermore the rights of the parties were required to be determined as on the date of incident. It is difficult to hold that a subsequent event and that too by raising a presumption in terms of section 108 of the Evidence Act can give rise to fructification of claim, save and

except in very exceptional cases. Therefore the impugned judgment cannot be sustained and is set aside."

Mr. J.M. Poonegar, learned counsel for respondent Nos. 1 to 7 submits that learned tribunal after due appreciation of evidence on record, has come to the conclusion that Krishnaprasad is missing for more than 7 years and this presumption can be drawn u/s 108 of the Indian Evidence Act that Krishnaprasad has died during course of the employment which requires no interference. Learned counsel placed reliance on a decision of Hon"ble Apex Court in the matter of Mst. Ramrati Kuer Vs. Dwarika Prasad Singh and Others, , wherein in a suit for declaration and in alternative for possession, the Hon"ble Apex Court observed that "person not heard of for more than seven years after he disappeared from his place of residence must be presumed to be dead."

Further reliance was placed on a decision of Andhra Pradesh High Court in the matter of Addala Prabhavathi and Others Vs. M.N.V.S. Murali Krishna and Another, wherein claim for death of workman presented after more than 7 years wherein workman, a driver took a truck loaded with onions and there was no trace of driver and vehicle thereafter and claimants submitted that they had to wait till the expiry of 7 years as stipulated u/s 108 of Evidence Act to plead that workman was presumed to be dead, the Commissioner rejected the claim as time barred, the question whether there is sufficient cause to condone the delay was replied by the Andhra Pradesh High Court that claimants were virtually disabled from presenting a claim before expiry of 7 years and delay was condoned.

On the strength of aforesaid decisions, learned counsel for respondent Nos. 1 to 7 submits that no interference is called for by this Court in appeal. To prove the case, respondent Nos. 1 to 7 has examined Baijnathsingh as PW-1, Shantidevi as PW-2 while on behalf of appellant, Rajesh was examined and respondent No. 8 Vikram Singh who is employer has also appeared in witness-box.

Heard the arguments advanced by both the parties.

From perusal of record, it is evident that incident was dated 12-6-1996 when Krishnaprasad left Indore for Assam along with offending truck loaded with goods. The offending truck was insured with the appellant for the period w.e.f. 1-6-1996 to 31-5-1997. Claim case was registered against Krishnaprasad on the complaint of respondent No. 8 with Police Station, Lasudia u/s 381 of Indian Penal Code on 9-1-1999. There is nothing on record to show that from what date Krishnaprasad was missing. The initial point for the purpose of counting the period of 7 years for raising presumption u/s 108 of Indian Evidence Act was required to be proved by respondent Nos. 1 to 7. After completion of 7 years only the presumption can be drawn that Krishnaprasad had died. That period cannot be the period between 1-6-1996 to 31-5-1997 for which the offending truck was insured. Since presumption u/s 108 of Evidence Act is a limited presumption confined only to presuming the factum of death of the person

whose life or death is in issue. There cannot be presumption as to date or time of death. The presumption as to death by reference to section 108 could arise only on lapse of 7 years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. In the circumstances there is nothing on record to show that Krishnaprasad died between the period when the offending truck was insured with the appellant i.e. from 1-6-1996 to 1-5-1997 and criminal case was registered against Krishnaprasad on the complaint made by respondent No. 8 on 9-1-1999, this Court is of the view that learned Court below committed error in holding that Krishnaprasad died during course of the employment when the policy issued by the appellant was in existence.

In view of this, the appeal filed by appellant stands allowed. The order impugned herein passed by Commissioner for Workmen's Compensation, Indore stands set aside. The appellant shall be at liberty for refund of the amount.

No order as to costs.