

(2010) 06 KAR CK 0047

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 8214 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Zaheeda Banu and Others

RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Workmens Compensation Act, 1923 — Section 30, 4

Citation : (2011) 128 FLR 187 : (2011) 1 KarLJ 174 : (2010) 4 KCCR 3023 : (2011) 3 LLJ 299

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Srishaila, for A.M. Venkatesh, for the Appellant; Patel D. Karegowda, for R1 to R7; R8 - Services H/S, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—The appeal has come up for orders regarding application for condonation of delay in filing this appeal.

2. There is a small delay of 22 days which was not objected to by Sri Patel D. Karegowda, learned Counsel for the respondents 1 to 7.

3. Accepting the explanation offered in the affidavit accompanying the application, we allow IA No. II of 2006 for condonation of delay.

4. We have taken up the matter for admission with the consent of learned Counsel for the parties.

5. An employee who was working as a driver it appears died while he was working as a "driver" sitting in the cabin of the vehicle. The dependents had filed a petition u/s 4 of the Workmen's Compensation Act, 1923 [for short "the Act before the Commissioner seeking for compensation due to the death of their breadwinner while working.

6. While the employer blissfully remained absent, the insurance company who

had given the cover to the employer took up the stand of the claimants being not entitled to claim relief for the reason that the death of their breadwinner was not necessarily due to stress and strain attributable to the nature of the employment, but may be in the normal course.

7. The employee was aged 38 years. The insurance company now has come up with this appeal u/s 30 of the Act with the contention that the claimants had not proved that death was due to the stress and strain caused on the employee due to the work pressure while in such employment.

8. Appearing on behalf of the appellant, Sri Srishaila. Learned Counsel submits the contention of this nature is supported by the judgments of the Supreme Court which are as under:

[a] Malikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd. and Another,

[b] Rashida Haroon Kupurade Vs. Div. Manager, Oriental Ins. Co. Ltd. and Others, .

[c] Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, .

9. While any principle for concluding that death has occurred in the course of employment, it may be material to ascertain as to whether the death was in the natural course of events or otherwise and in a given case whether it was not in the course of employment but due to some other reasons also may be possible, the contention is that the claimants had not examined any medical person to make good their case that the employee had died due to the work pressure and not a natural death.

10. While in a given case any possibility may exist, the burden is always upon the person who takes up such defence. In the present case, the fact is that the employee had died while he was actually working, in the sense, he was in the cabin of the vehicle which he otherwise used to drive. We cannot presume that either a dead person had been placed in the cabin or the employee died due to some other extraneous reasons and not necessarily due to the employment.

11. The driving job is undoubtedly a tension filled job, particularly, to cope with present day traffic and other things. There cannot be any presumption that even when a person dies while actually working in the job that his death may not be due to the employment, but may be due to something else. Such presumption is nothing short of a perversity. If the insurance company should have taken up a defence that death was not either in the course of employment or not due to the pressures of the work which the employee was performing, the burden is heavily upon the insurance company who after giving a policy to cover the risk of the employer tries to find out untenable, petty and cantankerous reasons to wriggle out of their liability which is not befitting its status as an insurance company which is Nationalized and having regard to the object of the Workmen's Compensation Act, which is a piece of social welfare legislation, such untenable

stands only exposes the public sector undertakings in poor light but more importantly results in undue harassment to the poor claimants and works at cross purposes to the object of the Act itself.

12. In the present case, when there is no dispute that the person who died was actually sitting in his work place i.e., cabin while he was at the steering, there can never be any presumption that death was due to some other reason. The Judgments relied upon by the learned Counsel for the Insurance Company are not relevant for the present case. We do not find any applicability of the law laid down in these decisions to the present case.

13. The appeal is dismissed with costs. The balance of the amount in deposit before this Court to be transmitted to the Commissioner forthwith to be made available for distribution to the claimants at the earliest along with costs.