
(2019) 03 J&K CK 0118

In the Jammu And Kashmir High Court

Case No : MA No. 556 Of 2014, IA No. 858 Of 2014

New India Assurance Co. Ltd

APPELLANT

Vs

Inderjeet Kour And Others

RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:

Employees Compensation Act, 1923 — Section 3, 4A(3)(a), 30

Citation : (2019) 03 J&K CK 0118

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Udhay Bhaskar, Parvinder Singh

Final Decision : Dismissed

Judgement

1. The New India Assurance Company Limited is in appeal against the award dated 7th July, 2014 passed by the Commissioner under Employees Compensation Act, 1923 (Assistant Labour Commissioner), Jammu (forbrevity, "the Commissioner") in case titled Inderjeet Kour and others v. M/S Natraj Agencies and another. The respondent Nos. 1 to 4 who are the dependents of Joginder Singh have filed a claim petition before the Commissioner under the Employees Compensation Act (ALC), Jammu claiming compensation to the tune of Rs.8.00 lakh from respondent No.5-appellant Insurance Company.

The compensation was claimed on the ground that the deceased was driver of the vehicle bearing Registration No.Jk02J-7874 and was working under the employment of respondent No.5. It is claimed that on 14th January, 2011, the deceased after loading the vehicle from Jammu Oil Depot was proceeding towards his destination at Srinagar, when he reached near Tomato Morh at Kudh, he could not proceed further on account of inclement weather condition and had to stay there stranded on the road for two days in severe cold conditions. It is pleaded that on account of mental stress and strain caused due to bad weather condition and total blockage of road, the blood pressure of the deceased shot up and he became quite critical. The Police shifted the deceased to the Government

Medical College, Jammu where he breathed his last on 17th January, 2011. The deceased, it is claimed, was 52 years old and had died during and in the course of his employment with respondent No.5. Accordingly, the claim petition was filed against the respondent No.5 and the appellant-Insurance Company on the ground that they were vicariously and severally liable to compensate the respondent Nos. 1 to 4.

The claim petition was contested by the appellant, whereas respondent No.5 despite service did not appear and was proceeded ex-parte. The appellant-Insurance Company objected to the jurisdiction of the Commissioner to entertain the petition and grant relief to respondent Nos. 1 to 4 on the ground that the claim was not covered under the provisions of the Employees Compensation Act, 1923 (hereinafter referred to as "the Act"). It was also the defence set up by the appellant in its objections that there was no causal connection to the death of the deceased workman with his employment under respondent No.5. It was stated that the death of the deceased was a natural death due to cardiac arrest and was not directly or indirectly related to his employment with respondent No.5.

2. On the basis of the pleadings of the parties, the Commissioner framed the following issues:-

"1. Whether the deceased ?Joginder Singh? falls within the definition of ? employee? as prescribed under the employee?s Compensation Act 1923 ? OPP

2) Whether the deceased met with an accident arising out of and during the course of his employment for respondent no.1? OPP

3) What was the age and wages of deceased at the time of accident?

OPP

4) Whether the vehicle in question was being used in violation of the terms and conditions of insurance policy? OPR-2

5) Relief."

3. The Commissioner did not concur with the objections raised by the appellant and held respondent Nos. 1 to 4 entitled to compensation to the tune of Rs.6,18,426/-. Aggrieved, the appellant is before this Court by way of instant appeal filed in terms of Section 30 of the Act and has formulated some questions of law for determination.

4. The impugned award has been assailed primarily on the two counts:-

i) In the absence of any established causal connection to the death of deceased with his employment, the Commissioner could not have made the appellant liable to reimburse the amount of compensation.

ii) Award of interest @ 12% per annum is exorbitant and the same could not have been awarded from the date of accident.

5. Having heard learned counsel for the parties and perused the record, I am of the view that no substantial question of law arise for determination in this appeal.

6. The question as to whether the death of the deceased was attributable to or aggravated by his employment is a pure question of fact to be determined on the basis of evidence that has come on record before the Commissioner. From the perusal of the evidence recorded before the Commissioner, few established facts which clearly emerge are that the deceased was employed as driver by respondent No.5 to drive the vehicle. The deceased, after loading the vehicle from Jammu Oil Depot was on his way to Srinagar to make the delivery. It is also not in dispute that due to bad weather conditions and blockade on national highway, the deceased could not move beyond Tomato Morh (Kudh). He remained stranded for two extremely cold nights and ultimately suffered heart stroke to which he later succumbed. From these established facts, it can be reasonably and legitimately inferred that the death of the deceased was due to stress and strain of his employment, and, the circumstances in which the deceased was placed during the course of employment aggravated his health condition.

7. In these circumstances, the plea of the appellant that there was no causal connection to the death of the deceased with his employment cannot be accepted. I am not impressed by the submissions of the learned counsel for the appellant-Insurance Company that the onus to prove that the accident had occurred and the injury/death caused in and during the course of employment, is on the injured or the dependents of the deceased workman and that in the instant case, the aforesaid onus has not been discharged. As noted above, there are certain established facts that have come on record from which the Commissioner has reasonably and legitimately inferred that the death of the deceased was attributable to the nature and conditions of his employment.

8. Learned counsel for the appellant-Insurance Company relies upon judgment of the Supreme Court rendered in the case of *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another*; (2007) 11 SCC 668 to buttress his submissions.

9. Per contra, learned counsel for the respondent Nos. 1 to 4 has placed reliance upon a judgment of the Madras High Court rendered in the case of *The Oriental Insurance Company Ltd. v. Nagaraj and others*; 2008(2) SCT 704 in which the Madras High Court has dealt with the issue in detail and has also discussed the ratio of the judgment rendered in the case of *Shakuntala Chandrakant Shreshti* (supra).

10. Before I consider the rival contentions of the learned counsel for the parties in light of the law cited before me, I deem it necessary to place it on record that this Court in the case of *United India Insurance Co. Ltd v. Inderjeet Kour and others* (MA No.636/2010) decided on 20.08.2018 has already considered and decided the similar issue.

11. The observations of this Court in paras 17 and 18 of the judgment are noteworthy and are reproduced hereunder:-

"17. Literal meaning of "Res ipsa loquitur" is that "thing speaks for itself". The circumstances in which the deceased met with untoward death speak for themselves and there should be no manner of doubt that the death of the deceased was nothing but as a result of stress and strain of driving in the hilly terrain from Jammu to Poonch and back. In the view I have taken, I am supported by the judgment of the Supreme Court rendered in the case of Mst. Parampal Singh Vs. M/s National Insurance Company and another; (2013) 3 SCC 409 decided on 14.12.2012. The facts of the case of Param Pal Singh (supra) are identical to the facts of the case in hand. In the aforementioned case, the deceased was employed as truck driver. On 17.07.2002, he was driving a Truck in connection with commercial transport operation from Delhi to Nimiaghat. When the truck reached near about of Nimiaghat, the deceased felt giddy and, therefore, parked the vehicle on the roadside near a hotel and soon thereafter, he fainted. The deceased was removed to a nearby hospital, where the doctors declared him brought dead. The claim petition was filed by the claimants before the Commissioner alleging that the death of the deceased was due to stress and strain of continuous driving in the course of his employment with the employer. In the backdrop of the aforesaid facts situation, the question that arose for determination before the Supreme Court was whether the death of the deceased was in an accident arisen out of and in the course of his employment with the employer. The Hon?ble MA No. 636/2010 Page 12 of 14 Supreme Court after taking note of case law on the subject including the English law, came to the conclusion that there was causal connection to the death of the deceased with that of his employment as Truck driver. What was held by the Supreme Court in the aforesaid judgment in paragraph 29 is as under:-

".....Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependant solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an ?untoward mishap? can therefore be reasonably described as an ?accident? as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer?s trade or business....."

18. For arriving at the aforesaid conclusion, the Supreme Court even discussed the decision rendered by the Supreme Court in the case of Shakuntala Chandrakant Shreshti (supra) heavily relied upon by the learned counsel for the appellant in the instant case. All aspects of the issue as were highlighted by the learned counsel for the appellant in the instant case were duly considered and analysed by the Supreme Court.

The discussion by the Hon^{ble} Supreme Court reflected from paragraph 21 and 26 answers all the questions raised by the appellant and even those not even contemplated by the appellant. At the cost of making the judgment a bit voluminous, I deem it absolutely necessary to reproduce the aforesaid paragraphs numbered from 21 to 26, which read as under:-

"21. We are not oblivious that an accident may cause an internal injury as was held in Fenton (Pauper) V. J. Thorley & Co. Ltd., (1903) AC 443, by the Court of Appeal. "...I come, therefore, to the conclusion that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed" Lord Lindley opined: "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 an unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended any 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 careless from other unintended and unexpected events. 22. There are a large number of English and American decisions, some of which have been taken note of in Employees' State Insurance Corporation, 1996 ACJ 1281 (SC), in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are: (1) There must be a causal connection between the injury and the accident and the work done in the course of employment. (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. (3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the facts of each case. 23. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, inter alia, having regard to the nature MA No. 636/2010 Page 14 of 14 of the work and the situation in which the deceased was placed. 24. There is a crucial link between the causal connection of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the

statutory authority will commit a jurisdictional error while exercising jurisdiction. 25. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred. 26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia are:

- (1) Stress and strain arising during the course of employment;
- (2) Nature of employment; and
- (3) Injury aggravated due to stress and strain."

12. The decision in the Inderjeet Kour (supra) is complete answer to the arguments raised on behalf of the appellant.

13. The other contention of the learned counsel for the appellant that the interest awarded by the Commissioner @ 12% per annum is exorbitant and could not have been awarded from the date of the accident. More so, when respondent Nos.1 to 4 had failed to report the above accident to the employer as mandated by the provisions of the Act.

14. I am not inclined to accept the aforesaid submission as the interest @ 12% is a statutory interest and, therefore, no fault can be found with the order of the Commissioner granting interest @ 12% on compensation per annum (See Section 4-A(3)(a) of the Act).

15. The law is well settled that interest on the delayed payment of compensation is payable from the date of the accident and not from the date of application as alleged by the appellant [see Vagher Mamad husein Gadh v. Gujrat Electricity Board, 1996 Lab IC 368 (Guj)].

16. For the foregoing reasons, I find no merit in this appeal. The same is accordingly, dismissed.