
(2000) 11 GAU CK 0014
In the Gauhati High Court
Case No : MFA (WC) No. 5 of 2000

New India Assurance Co. Ltd.

APPELLANT

Vs

Ujjala Debbath and Others

RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Citation : (2001) ACJ 1219 : (2001) 2 LLJ 392

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. D. Biswas, for the Appellant; Mr. A. Chakraborty and Mr. P.K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

1. The short question involved in this appeal whether the award of Rs. 1,84,170 along with interest @ Rs. 12% p.a. given by the Commissioner under the provisions of the Workmen's Compensation Act could be sustained in law in view of the fact that the workman Sudhir Debnath, who was a driver working under Bikash Pal, died at Barasat while on duty.

2. I have heard Mr. D.K. Biswas, learned counsel for the appellant-Insurance Co., also heard Mr. A. Chakraborty, learned Sr. counsel assisted by Mr. P.K. Paul, learned counsel for the claimant-respondents.

3. It may be mentioned here that the deceased was working as a driver under respondent No. 4 is an admitted fact. He was sent on duty from Udaipur to Calcutta with the Truck No.TR-01-1695 driven by him. On 1.7.1997, the workman was coming from Calcutta towards Udaipur with the loaded Truck. He stopped the vehicle at Barasat town for taking meal. After taking meal, he slept inside the cabin of the vehicle. In the morning he fell ill and complained of chest pain. The attendant of the vehicle along with others removed him to Barasat District hospital where he was declared dead. It is available from record that he complained of chest pain and, therefore, the death can be connected with the

ailment complained of.

4. Mr. Biswas, learned counsel for the appellant argued that his death cannot be related to be a motor accident since the cause of his death has no nexus or casual connection with his employment. According to him, it is true that he died in course of his employment but the reason for his death was personal to him and cannot be related to his employment.

5. Mr. Chakraborty, learned Sr. counsel for the respondents, however, submitted that the workman had to drive the Truck from Udaipur to Calcutta. It was a strenuous job and on his return journey, because of the strain and stress, he had developed chest pain to which he succumbed instantaneously. Therefore, the cause of his death has to be considered as an accident arising out of and in course of his employment.

6. Mr. Biswas, learned counsel for the appellant has referred to a decision reported in Saurashtra Salt Manufacturing Co. v. Bai Valu Raja, AIR 1958 SC 881. The relevant observation of the Supreme Court made in this judgment is quoted below:-

"....It is well settled that when a workman is on a public road or a public place or on 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. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him...."

7. In addition, Mr. Biswas, learned counsel for the appellant also referred to a decision of the Supreme Court in General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, In paragraph 12 of the aforesaid judgment, the Supreme Court held as under; -

"...The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment...."

8. Reliance has also been placed on the decisions of Supreme Court in Union of India (UOI) and Others Vs. Sunil Kumar Ghosh, and in Maghar Singh Vs. Jashwant Singh, in order to show that there is no causal connection between the

cause of death and employment of the deceased workman.

9. It has been submitted at the bar without any objection that this plea was not specifically pleaded before the Court of the first instance. Even no question was put to the witness in this direction. Therefore, this Court in appeal cannot entertain this question for adjudication.

10. I have given due consideration to the respective submissions and the decisions referred to above. It is true that in order to succeed, it must be proved that there is a nexus between the cause of death and the employment. In the instant case, it is an admitted fact that he was sent to Calcutta for driving the Truck for carriage of goods back to Udaipur in Tripura. This is undoubtedly a strenuous Job and the workman who had no history of any previous cardiac disorder suddenly developed chest pain and died on his return journey. This simple fact would show that the cause of death of the workman is relatable to his employment and the death having arisen in the course of his employment, the legal heirs are entitled to compensation.

11. A Division Bench of this Court in National Insurance Co. Ltd. v. Sabita Gope 2000(1) GLT 27, dealt with a similar question where the death of the driver who died in sleep has been held to be an accident arising out of and in course of employment. The Division Bench after discussion of almost all the leading judgments available on this subject rendered the verdict. I do not find any scope to distinguish the case at hand with the case dealt with by the Division Bench. In my considered opinion, the cause of death of the workman due to chest pain was because of excessive stress and strain he had to undertake in driving the vehicle continuously from Udaipur to Calcutta and back. The causal connection is apparent on the admitted fact itself. Therefore, it would be difficult to hold, in the absence of specific pleadings and evidence, that the death was not out of employment of the deceased workman. The award, therefore, needs no interference.

12. In the result, the appeal is dismissed. No costs.