
(2012) 07 AHC CK 0218

In the Allahabad High Court

Case No : First Appeal from Order No. 1997 of 2012

New India Insurance Company Limited, Allahabad

APPELLANT

Vs

Smt. Sumitra Devi

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Penal Code, 1860 (IPC) — Section 80

Workmens Compensation Act, 1923 — Section 2, 3

Citation : (2012) 7 ADJ 377 : (2013) 2 ALJ 670 : (2013) 137 FLR 55

Hon'ble Judges : Rajes Kumar, J;Anil Kumar Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Rajes Kumar, J.—This is an appeal by the Insurance Company challenging the order dated 4.4.2012 passed by the Commissioner Workmen's Compensation and Assistant Labour Commissioner, Allahabad. The appellant is an insurer of Tanker No. U.P.-65 H/2365. The brief facts of the case are that deceased Kunj Bihari was the driver of Tanker NO. U.P.-65 H/2365. On 17.1.2011 when he was going from Etawah to Auraiya at Bakewar, near Bharthana Chouraha Highway, Police Station Bakewar at 7 O" clock some bad elements tried to loot the tanker and on the resistance by the driver, he was shot dead and Khalasi Balwant Singh was injured by knife. The deceased Kunj Bihari was admitted in the hospital of Etawah and during treatment, on the same day, he died. Smt. Sumitra Devi, wife of the deceased, filed claim petition under the Workmen"s Compensation Act (hereinafter referred to as the "Act") claiming that the age of her husband was 45 years and he was getting Rs. 7,000/- per month towards salary and Rs. 100/- towards khoraki. The claim was made for Rs. 11,86,080/-. In the claim petition, the owner of the vehicle Sri Anil Gupta and the appellant were made party. In the written statement, though the averments made in the claim petition have been denied, but in paragraph-17 it was stated that the deceased was the driver of the vehicle and had the driving licence No. K-

2898/A/78 and K-398/C/ A/07 dated 26.6.2007 which was valid on the date of accident. The respondent No. 1 filed registration certificate, insurance policy note, permit, fitness certificate, driving licence, etc. The claimant filed copies of the post-mortem report, site plan, charge-sheet and First Information Report. Sri Ram Kishan independent witness was also produced. In the written statement, respondent No. 2 denied the averments made in the claim petition.

2. The Commissioner on the basis of the evidence has accepted the claim of the claimant that deceased Kunj Bihari was the driver of vehicle No. U.P.-65 H/2365 and was the employee of respondent No. 2. It has also been held that the deceased had the valid licence for the period 24.8.2007 to 6.9.2010 and further for the period 26.8.2010 to 6.9.2011. It has been held that Kunj Bihari died in the course of employment. However, in the absence of any cogent and reliable evidence relating to the salary of Rs. 7,000/-, the minimum wages at Rs. 4,998.03 p. of a driver of a private vehicle has been adopted. Since in the post-mortem report, the age of the deceased was shown at 50 years, the same has been adopted and accordingly compensation has been assessed at Rs. 3,82,572/-. Since the vehicle was insured, the appellant was directed to pay the amount of compensation.

3. Learned Counsel for the appellant submitted that the driver of the vehicle was not having the valid licence to drive the heavy motor vehicle (inflammable vehicle). He further submitted that it is a case of murder and not an accident and, therefore, no compensation is payable.

4. We do not find any substance in the argument of Learned Counsel for the appellant.

5. Form-54 and the licence of the driver are at pages 46 and 48 of the memorandum of appeal. In the licence there is a clear endorsement that the licence was for HMV and for hazardous goods. The licence was for the period 24.8.2007 to 6.9.2010 and from 26.8.2010 to 6.9.2011 therefore the deceased had the valid licence on the date of the accident for driving the heavy motor vehicle carrying hazardous goods. The Commissioner has rightly held that the driver had a valid and proper licence on the date of accident.

6. The next question is whether the present case where the anti social elements tried to loot the tanker and when the driver resisted he was shot at down causing injury and during treatment he died can be said to be the death of the deceased Kunj Bihari in an accident arising out of and in the course of his employment.

7. We are of the view that it is a clear case of accident and not murder. The anti social elements had no initial plan to kill Kunj Bihari. They intended to loot the tanker and when the driver resisted, he was shot dead. It is neither a case of attempt to murder nor a case of murder. The entire action was spontaneous.

8. Section 3 of the Workmen's Compensation Act, 1923 reads as follows:

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 [or permanent total disablement] 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 workmen, 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,

(2) [****]

(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is provided, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved, -

(a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within

the meaning of this section:

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply [in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State] as if such disease had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by [sub-sections (2), (2A)] and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

9. The deceased was driving the vehicle of the owner. Thus, injury/death was caused in the course of his employment, now the question for consideration is whether it was caused by the accident.

10. Workmen's Compensation Act as well as Motor Vehicles Act are beneficial legislation, therefore, liberal interpretation should be given so as to achieve the objects of the Act.

11. The Apex Court with reference to the provisions of the Motor Vehicles Act in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , held as follows :

Section 92A was in the nature of beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation, the approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

12. The Workmen's Compensation Act is a beneficial Act to compensate the loss suffered by the injured or by the dependants on account of injuries or death, as the case may be. Therefore, a wider meaning should be given to the word "accident" used in Section 3 of the Act. The word "accident" is not defined under the Act. In the absence of any definition it would be appropriate to consider the definition given in various dictionaries.

The word "accident" is defined as follows :

13. In the Advanced Learner's English Dictionary the word "Accident" has been defined as under :

Accident (accidents) 1- An accident happens when a vehicle hits a person, an object, or another vehicle, causing injury or damage. 2- If someone has an accident, something unpleasant happens to them that was not intended, sometimes causing injury or death. 3- If something happens by accident, it happens completely by chance.

14. In Law Lexicon the Encyclopaedic Law Dictionary the word "Accident" has been defined as under :

Accident: An undersigned, sudden or unexpected event; mishap; misfortune; disaster. (See Work Com. Act, 1923, Sections 2 and 3)

The word "accident" is constantly used in ordinary English, and therefore in law, in two senses, one much wider than the other. Strictly an occurrence can only be said to be accidental when it is due neither to design nor to negligence. For, if an act be intentional it is clearly no accident; if it be the result of culpable negligence, then by due care it could have been avoided and the negligent person cannot be allowed to excuse himself by declaring it an accident. In this

narrower sense of the word, an accident must be "nobody's fault". 12 App. Cas. 526.

The word "accident" generally denotes an event that takes place without one's foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected; change, casualty, contingency. (Webster Dict.); an event happening without the concurrence of the will of the person by whose agency it was caused. It differs from mistake in that the latter always supposes the operation of the will of the agent in producing the event although that will is caused by an erroneous impression of the mind.

15. In the Concise Law Dictionary the word "Accident" has been defined as under:

Accident. An undersigned, sudden or unexpected event; mishap; misfortune; disaster (See Workmen's Compensation Act (8 of 1923), Sections 2 and 3)

The word "accident" generally denotes an event that takes place without one's foresight or expectation an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected; chance, casualty, contingency. (Webster's Dict.)

An event happening without the concurrence of the will of the person by whose agency it was caused.

The word "accident" is derived from the Latin verb, "accidere" signifying "fall upon, befall, happen, chance." In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling a chance, a happening" an incident, an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense, the word may be defined as meaning : a fortuitous circumstance, event, or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; change or contingency, fortune, mishap: some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progress or develops; something happening by chance; something unforeseen unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence.

16. A sudden event occurring without intent or volition whether through negligence, carelessness, unawareness, ignorance or a combination of causes and producing an unfortunate result; an unexpected happening causing loss or injury which is not due to the fault of the person [Section 80, IPC (45 of 1860);

anything that happens.

17. The ordinary meaning of the word "accident" is an unintended occurrence which had an adverse physical result.

18. Death by drowning, though in shallow water whilst in a state of insensibility, is an "accident" within a life insurance policy. Sun-stroke is not an accident within a policy. Misfortunes in business are not accidents.

19. In the Legal Glossary the word "Accident" has been defined as under :

Accident. A sudden event occurring without intent or volition whether through negligence, carelessness, unawareness, ignorance or a combination of causes and producing an unfortunate result; an unexpected happening causing loss or injury which is not due to the fault of the person [s. 80 IPC] accident; anything that happens.

20. In the case of *Nisbet v. Rayne & Burn*, (1910) 1 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held:

That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act, 1906. In this case the Court followed its earlier judgment in the case of *Challis* (supra). In the case of *Nisbet*, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of *Nisbet*, and that it makes no difference whether the pistol shot was deliberately fired at *Nisbet* or whether it was intended for somebody else and not for *Nisbet*."

21. The judgment of the Court of appeal in *Nisbet's* case was followed by majority judgment by the House of Lords in the case of *Board of Management of Trim Joint District School v. Kelly*, (1914 AC 667) and in the case of *Smt. Rita Devi and others v. New India Assurance Co. Ltd. and another*, 2001 (1) ICC 76, by the Hon"ble Supreme Court.

22. In the case of *Smt. Rita Dew and others v. New India Assurance Co. Ltd. and another*, 2001 (1) ICC 76 (SC), arising from the Motor Vehicles Act has considered whether murder be an accident in a given case. In the said case, the driver of auto-rickshaw murdered by hirers of auto-rickshaw. The compensation was claimed u/s 163A of the Act. The question was whether it was a case of murder or accident and whether the legal representatives were entitled for the compensation. The Apex Court held as follows:

10. The question whether therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But, there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

11. In *Challis v. London and South Western Railway Company*, (1905) 2 KB 154, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully dropped on the train by a boy from the bridge, that, these injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver; in other words, it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto-rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto-rickshaw and in the course of achieving the said object of stealing the auto-rickshaw, they had to eliminate the driver of the auto-rickshaw then it cannot but be said that the death so caused to the driver of the auto-rickshaw was an accidental murder. The stealing of the auto-rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto-rickshaw is only incidental to the act of stealing of the auto-rickshaw. Therefore, it has to be said that on the facts and circumstances of this case, the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto-rickshaw.

23. Under the Motor Vehicles Act, 1988, the word "accident" arising out of use of

vehicle came up for consideration before the Apex Court in the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, . In the said case, a tanker filled with motor spirit, toppled and fell in a land adjacent to the road and the driver ran away from the scene leaving the tanker unattended, in a highly dangerous position. The passers-by were ignorant of what had happened there and the injured claimants as also the deceased went to the spot to know as to what was happening there and suddenly there was fire in the tanker due to its bursting and the entire area was engulfed in fire and about 70 persons died and 35 persons sustained injuries. The Apex Court held that a wider meaning of the phrase arising out of the use of the vehicle should be given and the present situation has been held as an accident to have arisen out of the use of the motor vehicle. The aforesaid view has been followed by the Division Bench of the Karnataka High Court in the case of Gouri Bi Vs. Khemraj, .

24. In the case of New India Assurance Co. Ltd. v. Yadu Sambhaji More and others, 2011 (1) TAC 171 (SC), there was a collision between petrol tanker and truck. The petrol tanker falling down on katcha ground about 5 feet below road. The petrol leaked from the tanker. The local people tried to collect the petrol leaking out of tanker. The petrol caught fire and there was a big explosion in which 46 persons died. Heirs and legal representatives of the deceased filed claim petitions. Tribunal dismissed all claim petitions on the ground that there was a time gap of about four hours between tanker met with road accident and fire and explosion and there was absolutely no connection between road accident and fire. The Learned Single Judge of the High Court set aside the order of the Tribunal. Letters of Patent Appeal of owner of tanker and insurer was also dismissed. Against the order of the High Court, the appeal has been filed, which has also been dismissed and the order of the High Court has been upheld. It has been held that death has occurred as a result of accident arising out of use of motor vehicle.

25. In the case of State of Assam v. Pranesh Debnath, (1993) 2 ACC 357, the vehicle met with an accident due to bomb blast as a result of which the claimant suffered permanent disablement. The Gauhati High Court held that the vehicle was in use at the time of accident took place.

26. In view of the above discussion, we are of the view that in the present case injury resulting the death had been caused by accident arising out of and in the course of his employment and, therefore, the claimants are entitled for compensation under the aforesaid Act. The Commissioner has rightly held so. In the result, the appeal fails and is dismissed.