

**(2014) 05 UK CK 0005**  
**In the Uttarakhand High Court**  
**Case No : A.F.O. No. 436 of 2007**

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Lata Devi and Others

RESPONDENT

**Date of Decision :** 13-05-2014

**Acts Referred:**

Employees Compensation Act, 1923 — Section 3 3(1) 3(1) 30

**Citation :** (2015) 4 ACC 421 : (2015) ACJ 2074

**Hon'ble Judges :** Alok Singh, J

**Bench :** Single Bench

**Advocate :** D.S. Patni, Advocate for the Appellant; R.P. Nautiyal and B.S. Koranga, Advocate for the Respondent;

**Final Decision :** Allowed

## **Judgement**

Alok Singh, J.

1. Present appeal is directed against the judgment and award dated 25.7.2007 passed by Workmen's Compensation Commissioner, Chamoli whereby compensation of Rs. 2,79,018 was directed to be paid by insurance company to the claimants. Brief facts of the present case, inter alia, are that Chandramani was working as mason with Jai Prakash Industries, Vishnu Prayag, Marwari Tehsil Joshimath, District Chamoli. On 9.7.2004, when employee Chandramani was on duty, he started complaining severe stomach ache, therefore, firstly, he was rushed to the dispensary of respondent No. 4 wherefrom he was taken to District Government Hospital in ambulance. He died on 17.7.2004 in District Government Hospital during his treatment. At the time of death, Chandramani (employee) was 40 years of age.

2. Employer-respondent No. 4 was having Group Personal Accident Policy from insurance company wherein Chandramani was also one of the beneficiaries. In the written statement, defence taken by the appellant is that Chandramani was only daily wager and he was not a regular employee of respondent No. 4. He did

not meet with an accident and he died due to his old stomach ailment, which aggravated all of a sudden and he was not working at any place as mentioned in Schedule III of the Employee's Compensation Act, 1923, therefore, stomach ailment cannot be attributed to the conditions of service.

3. Learned Workmen's Compensation Commissioner found that since Chandramani developed stomach ailment while on duty and died during his employment, therefore, his dependants are entitled for compensation, as fixed by him. It was further observed by the learned Commissioner that since employer was having Group Personal Accident Policy, therefore, insurance company is liable to pay compensation to the claimants. Feeling aggrieved, insurance company has preferred present appeal under section 30 of the Act.

4. I have heard Mr. D.S. Patni, Advocate for the appellant, and Mr. R.P. Nautiyal, Sr. Advocate with Mr. B.S. Koranga, Advocate for respondent No. 4. Despite valid sufficient service none appears on behalf of the claimants-respondent Nos. 1 to 3. I have carefully perused the record as well.

5. Although an appeal under section 30 of the Employee's Compensation Act, 1923 can only be admitted and heard on substantial question(s) of law, however, perusal of the order-sheet would reveal that no substantial question of law was ever formulated. Therefore, in my considered opinion, in the present appeal, the following substantial question of law arises for adjudication:

Whether any compensation can be awarded under the Employee's Compensation Act, 1923 in the event a workman dies due to disease suffered by him, which cannot be attributed to condition of the services?

6. Hon'ble Apex Court in the case of Jyothi Ademma Vs. Plant Engineer, Nellore and Another, has held as under:

"(5) Section 3 (1) of the Act which is relevant for the purpose of this case 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 willful 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 willful 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 workmen."

(6) Under section 3(1) it has to be established that there was some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

(7) The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In *Fenton v. Thorley & Co. Ltd.*, (1903) AC 448, it was observed 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. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, A.C. in *Trim Joint District School Board of Management v. Kelly*, (1914) AC 676, as follows:

"I think that the context shows that in using the word "designed" Lord Macnaghten was referring to designed by the sufferer."

(8) In the present case, it has been brought on record that the deceased was suffering from chest disease and was previously being treated for such disease. The High Court also noted that the job of the deceased was only to switch on or off and, therefore, the doctor had clearly opined that there was no scope for any stress or strain in his duties. In view of the factual findings recorded, the High Court's judgment does not suffer from any infirmity."

7. As per dictum of the Hon'ble Apex Court, it must be established that there was some causal connection between the death of workman and his employment. If workman dies as a natural result of the disease which he was suffering or while suffering from a particular disease as a result of wear and tear of the employment, no liability can be fixed upon the employer.

8. Perusal of the death certificate would reveal that Chandramani had died due to duodenal perforation with septicemia. It is nowhere denied that Chandramani was suffering from old stomach ailment. Un-disputedly, Chandramani never remained posted at any place as mentioned in the Schedule III of the Act, therefore, disease suffered by the deceased employee cannot be attributed to condition of service. Since Chandramani did not meet with an accident, therefore, section 3 of the Act cannot be pressed into service.

9. Careful perusal of the Group Personal Accident Policy would reveal that the

insurance company is liable to make payment in the event the insured person sustained bodily injury resulting solely or directly from the accident caused by external, violent and visible means. Since deceased was suffering from the disease which was not attributable to the job conditions of the deceased nor deceased met with an accident while on duty, therefore, in my considered opinion, neither employer nor insurance company is liable to pay compensation under section 3 of the Act. Therefore, substantial question of law is answered in favour of the appellant. Consequently, the appeal is allowed. Impugned judgment and award is hereby set aside. No costs.