

(2011) 10 SHI CK 0090
In the High Court Of Himachal Pradesh
Case No : FAO No. 342 of 2008

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Anita Devi and Others

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 3(1)

Citation : (2012) ACJ 2331 : (2011) 3 ShimLC 74

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—The short question which arises in this appeal is, whether there is any causal connection between the death of the deceased workman and his employment? The undisputed facts are that the deceased Sh. Bal Chand was employed as a driver of a Tanker No. MH-05-K7740 with one Sh. Prabhu K. Chandani. According to the owner, this Tanker was being used to spread Tar coal on the road as damper. It appears that to liquefy the tar coal some fire had been lit and the boiler exploded and the tar coal fell on the deceased and he died as a result of the injury sustained.

2. The claimants i.e. widow and children of the deceased filed a petition for grant of compensation under the Workmen's Compensation Act, 1923. The claim petition was resisted by the Insurance Company mainly on the ground that there was no connection between the employment of the deceased and incident. Sh. Deepak Bhasin, learned Counsel for the Insurance Company has forcefully urged that the onus was on the claimants to show that deceased suffered injuries in question during the course of employment. He submits that in fact the deceased was a driver and the accident did not take place while he was driving the vehicle but took place when he was warming himself near the fire lit up below the boiler of the tanker as is apparent from the reply filed by the owner of the vehicle.

3. Section 3 of the Workmen's Compensation Act provides that when a personal injury is caused to the workman by an accident arising out of or in the course of employment, his employer is liable to pay compensation in accordance with the provisions of the Act. The expression "arising out of and in the course of employment", has been the subject matter of consideration in a large number of cases.

4. In *Mackinnon Mackenzie and Company Pvt. Ltd. Vs. Ritta Farnandes*, the Apex Court while dealing with this phrase held as follows:

It is well established that u/s 3 of the Workmen's Compensation Act there must be some causal connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or his death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of the employment and the employer would be liable. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under circumstances which can be said to be accident, his death results from injury by accident.

5. In *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak*, the Apex Court held as follows:

To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words, there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such - to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises "out of employment". To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act.

6. In *Div. Personnel Officer, Southern Railway Vs. Karthiyani*, the workman drank water from a drum kept for the purpose in the employer's premises. He developed acute gastro-enteritis and died. A Division Bench of the Kerala High

Court at Ernakulam held that the death had arisen out of and in the course of employment.

7. The Apex Court in *State of Rajasthan v. Ram Prasad and Anr.*, (2001) 1 LLJ 177SC in a case where the employee was struck by lightning during the course of employment, held that this is also an accident arising out of and in the course of employment.

8. Following the aforesaid judgments, this Court in *National Insurance Company v. Smt. Gurmeeto and Others* Latest HLJ 2006 (HP) 33, held that even when the driver contracted a disease during the course of employment since he had to drive a truck without a wind screen and faced the vagaries of weather, his case was covered by Section 3 of the Act.

9. The Apex Court in *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another*, was dealing with a case wherein the deceased who was working as a cleaner of truck died of a heart attack while alighting from the truck. Though the deceased was on duty he had not died of an accident but due to disease. The question which arose before the Apex Court was as to whether the disease arose out of the employment or not. The Apex Court held as follows:

15. The said Act was enacted to provide for payment by certain classes of employers to workmen for compensation against injury by accident. The term "accidental injury" has not been defined under the Act. The liability of the employer for payment of compensation, however, would arise if a personal injury is caused to a workman by accident arising out of and in the course of his employment. What is necessary for attracting the charging provision contained in Section 3 of the Act is that (i) an injury must be caused to a workman; (ii) such injury must have been caused by an accident; and (iii) it arose out of or in the course of his employment.

16. Before we analyze the provisions of the Act, we may notice that in the Complaint Petition, there was no allegation that (i) the deceased met with his death by reason of any strain of work; and (ii) Appellant had no personal knowledge as regards quantum of or nature of work required to be performed by the deceased; and (iii) as to how service strain during his services was caused.

17. The deceased had admittedly suffered a massive heart attack. Nothing has been brought on record to show that the heart attack was caused while doing any job. Even according to employer, he at the relevant time was merely getting down from the vehicle.

The Apex Court went on to hold that to attract the provisions of Section 3 of the Act the following principles are attracted:

(1) There must be a causal connection between the injury and the accident 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 fact of each case.

10. In *Malikarjuna G. Hiremath Vs. The Branch Manager, The Oriental Insurance Co. Ltd. and Another*, the Apex Court was dealing with a case where the deceased was the driver of a vehicle. He had taken some passengers in his vehicle to a temple as per the directions of his employer. Thereafter, the passengers and the driver went to the temple to pay obeisance. There was a pond next to the temple and the deceased went to take a bath in the pond where he slipped and fell down and unfortunately died. The question that arose was whether this incident arose out of the employment of the deceased. The Apex Court held as follows:

9. u/s 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural death because 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.

After making reference to the decisions, the Apex Court held that since the deceased had gone to the pond of his own accord and slipped and fell into the water and died due to drowning, it could not be said that the principles mentioned in para 9 were attracted in the case and held that the claimants were not entitled to compensation under the Workmen's Compensation Act. As far as this judgment of the Apex Court is concerned, it would be pertinent to observe that it may have been the duty of the driver to take the passengers up to the temple but it was no part of his duty to go to the pond and take bath there and hence there was no causal connection between the death and the employment.

11. Claim petitions may arise out of the injuries or death caused due to two reasons. They may arise out of the diseases and/or out of the accidents. In case the death or injury is due to disease then it is incumbent upon the claimants to establish that the disease occurred or got aggravated due to the employment and the nature of work which the workman was doing. In case of an accident all that has to be proved is that there is a causal connection between the work which the workman was doing and the accident which was caused.

12. The workman has to prove two things that the accident occurred during the course of employment and had a causal connection with it. Admittedly, the accident occurred, in the present case, during the course of employment,

because even though the deceased workman may not have been driving the tanker but he was standing near the tanker and obviously it meant that he was on duty.

13. The question raised by Sh. Deepak Bhasin is whether boiling of tar was part of his duty or not. Assuming for the sake of argument that boiling tar coal was not part of his duty but was to be done by some other employee. Supposing a workman does a job which is related to his employment but may not be strictly part of his duty. In my view, it cannot be said that there is no causal connection between the employment and the accident. A driver is supposed to drive a vehicle but he is also required to do some other ancillary duties. If there is a break down the driver may try to repair the vehicle and he has to also replace punctured tyres etc. In certain cases, he may also help in loading and unloading the vehicle. These are only some examples to show that the duty of the driver is not limited to driving the vehicle. When we talk of causal connection it obviously encompasses within its scope all ancillary and connected works which an employer may normally expect his employee to do.

14. As per the material on record, the vehicle was a tanker loaded with tar coal which was to be spread on the road as a damper. Obviously, the tar coal had to be heated up so that it could be spread on the road. Even if this job was of some other workman but was performed by the driver it cannot be said that it had no causal connection with his employment. If the boiler burst while the driver was standing in front of it then this also has a direct nexus with his employment. Therefore, I am of the considered view that the question of law has to be answered against the Insurance Company and in favour of the workman. The death of the workman occurred during and out of the course of his employment as driver and had a direct causal connection with it. In view of the above discussion, the appeal is dismissed. No order as to costs.