

(2011) 02 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 2647 of 2010

Partap

APPELLANT

Vs

The Panipat Cooperative Sugar Mills Ltd. and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(8)
Workmens Compensation Act, 1923 — Section 2, 3, 3(1)

Citation : (2011) 162 PLR 631

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M.S. Bedi, J.—The following substantial question of law arises in the present case:

i) Whether a claimant having been injured on account of murderous assault 15 minutes prior to the starting of his shift will not be entitled to the compensation under the Workmen Compensation Act, 1923 and whether he cannot be said to be "employee" u/s 2(n)(ii) of the Act?

2. The learned Commissioner has relied upon Regional Director, E.S.L Corporation and Anr. v. Francis De Costa and Anr. AIR 1987 S.C. 432 and held that the Appellant did not receive injury during the course of employment.

3. I have heard counsel for the Appellant and gone through the abovesaid judgment. A perusal of the judgment indicates that the Apex Court in the said case while interpreting "employment injury" as defined in Section 2(d) of the Employees' State Insurance Act vis-a-vis disablement benefit u/s 51 of the said Act have held that injury suffered by an employee in the said case one kilometer way from the factory caused by an accident would not be an employment injury u/s 2(8) of the Employees' State Insurance Act. Section 2(8) defining "employment injury" reads as follows:

2(8). "employment injury" means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

4. A perusal of the abovesaid definition indicates that "employment injury" is, as per the Employees' State Insurance Act is a personal injury to an employee caused by an accident or an occupational disease arising out of and in the course of his employment, being an insurable employment. The broad principles which have been laid down in para 29 of the judgment are as follows:

29. Although the facts of this case are quite dissimilar, the principles laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a casual connection with the employment, and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.

5. Following the abovesaid guidelines, it can be safely arrived at a conclusion that in order to succeed in a petition for compensation on account of an accident, an employee would be required to prove; (i) there was an accident, (ii) the accident had a casual connection with the employment, and (3) the accident must have been suffered in course of employment. The liability of an employer to pay compensation under Workmen Compensation Act arises from Section 3 of the Act. It is a settled principle of law that liability for compensation u/s 3(1) of the Act arises from the following three conditions:

- i) Personal injury;
- ii) accident; and
- iii) arising out of and in the course of employment.

6. It is settled principles of law that in order to succeed in an application for getting compensation u/s 3 of the Act, a claimant has to establish the following points:

- i) The accident had arisen out of and in the course of workman employment;
- ii) there must be casual connection between the injury and the accident and the workmen done in the course of employment; and
- iii) the workman had seen that while doing a part of his duty or incidental thereto resulted into an accident.

7. Applying the abovesaid principles, I am of the opinion that the injured in the present case was going for his duties to the factory and his shift was to start at 2.00 a.m. He had worked from 2.00 a.m. to 10.00 a.m. It is a fact established on

the record that the incident had taken place 15 minutes before he joined his duty. It cannot be said that there is no connection between the accident and the employment. The claimant had been attacked while on his way to join his duties just few minutes before joining his duties in the factory. It is not necessary that workman must be working at the time of injury or the accident. The ratio of the judgment in Francis De Costa's case (supra) is not applicable to the facts of the present case. The law laid down in The Superintending Engineer, Mechanical-II, Tamil Nadu Electricity Board and Another Vs. Smt. Sankupathy, and the judgment of this Court in Managing Director, Haryana Dairy Development Coop. Federation Ltd. v. K.L. Sharma 2009 L.L.R. 408 granting compensation for an accident while the claimant was proceeding for his employment are applicable to the facts of the present case. The order passed by the Commissioner is illegal. The order dated October 19, 2009 passed by the Commissioner is hereby set aside. The matter is remanded back to the Commissioner to re-determine the compensation, if any, payable to the Appellant. The Appellant and the Respondent will appear before the Commissioner for re-adjudication of the matter considering that the incident/ accident had occurred during the course of employment on March 1, 2011.

Disposed of.