
(1963) 03 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 37 of 1962

Public Works Department

APPELLANT

Vs

Smt. Kausa

RESPONDENT

Date of Decision : 02-03-1963

Acts Referred:

Workmens Compensation Act, 1923 — Section 10, 2, 3, 3(1)

Citation : AIR 1966 MP 297 : (1967) 14 FLR 150 : (1966) J LJ 81 : (1967) 1 LLJ 340

Hon'ble Judges : P.R. Sharma, J

Bench : Single Bench

Advocate : S.T. Mungre, for the Appellant; S.L. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Sharma, J.—This appeal has been preferred by the State Government against the order dated the 13th of March, 1962 passed by the Commissioner for Workmen's Compensation Gwalior in Case No. 7 of 1959.

2. The opponent Mt. Kausa had presented an application on 2-6-1959 u/s 22 of the Workmen's Compensation Act (hereinafter referred to as the Act) against present appellant alleging that her husband Gokul who was working as a gang-jamadar in connection with the repair work on the Sakhya Vilash Road was murdered by certain persons of whom some were gangmen.

3. The learned Commissioner has held that the deceased was killed while he was performing his duty as a gangman by certain miscreants. He has, however, not held that any of the miscreants were members of the gang which was working on the said road. P.W 1, Mr. Khetwani, P.W.D. Overseer, stated that the work of repairs was being done on the 8th furlong of the 6th mile from Gwalior on the Gwalior-Jhansi Road; whereas Gokul was found lying murdered near a well at the 5th furlong. P.W. 4, Atraj, who was working in the same gang has stated that Gokul left the gang at about 12 noon saying that he would collect the wages of

the gangmen from the office. He never returned thereafter to join the gang. P.W. 3, Nandram saw Gokul taking his meals along with the other gang-men at about 12 noon. On his return some two hours later he saw Gokul lying murdered at a distance of about 20 paces from the place where he had originally seen him. This evidence is altogether insufficient to prove that Gokul met his death at the hands of any of the gang-men who were working under him.

4. On the evidence as it stands on the record the only facts which can be held as proved are that Gokul was a workman in the gang which was employed by the Public Works Department to work on the Gwalior--Jhansi Road. On the relevant day he had left the gang saying that he would collect the salary of the labourers from the office. While he was taking his meals near a well at a distance of about 3 furlongs from the place where the road repair-work was being carried on Gokul was murdered by certain unknown persons. The question which falls for consideration on these facts is whether the death of Gokul can be said to be the result of an "accident arising out of and in the course of his employment". It was held by Dixit J. (as he then was) in *Parwatibai Vs. Manager, Raj Kumar Mills*, that the word "accident" in Section 3(1) of the Workmen's Compensation Act, has been used in the popular and ordinary sense; and all that it means is "mishap" or "untoward event not expected or designed. If the injury or death from the point or view of the workman, who dies or suffers the injury, is unexpected or without design on his part, then the death or injury would be by accident although it was brought about by other causes. The death of Gokul in the present case was certainly neither expected nor designed by him. It would, therefore, amount to an "accident" within the meaning of Section 3(1) of the Workmen's Compensation Act.

5. The next question which has to be considered is whether the death of Gokul in the present case can be said to have "arisen out of his employment". I am in respectful agreement with the view taken by a Division Bench of the Bombay High Court in *Trustees of the Port of Bombay Vs. Yamunabai*, that the words "arising out of his employment" are wide enough so as to cover a case, where there may not necessarily be a direct connection between the injury caused as result of an accident and the employment of the workman.

In the case aforesaid a bomb had been placed in the premises of a workshop by some unknown person, which exploded and caused an injury to the workman. It was held that since the workman was not responsible for the placing of the bomb, and the injury due to its explosion was caused at the time and place at which he was employed, the injury was a result of an accident arising out of his employment. The same principle was given expression to by Dixit J. in *Parwatibai Vs. Manager, Raj Kumar Mills*, in the following words:

Thus if a particular accident would not have happened to a workman had he not been employed to work in the particular place and condition, then it would be an accident arising out of the employment."

6. Gokul would not have been at the place where he was murdered, had it not been for the fact that he had left the place where the gang was working for the purpose of collecting salary of the labourers from the P.W.D. office. The mere fact that while on his way to the office he sat down in order to take his meals would not alter the fact that he happened to be where he was at the time when he was murdered on account of the fact that he was on his way to the P.W.D. office. On applying the principles laid down in the decisions aforesaid to the ascertained facts of this case it must, therefore, be held that the death of Gokul was an accident arising out of his employment. The finding of the trial Court on this point, is therefore, hereby upheld.

7. According to Sub-section (2) of Section 2 of the Workmen's Compensation Act the exercise and performance of the powers and duties of any department acting on behalf of the State shall, for the purpose of this Act, be deemed to be the trade or business of such department. The purpose of this sub-section is to include the Government departments which are engaged in any work which is covered by the Act within the category of "employers". The Chief Engineer of the Public Works Department was certainly managing the department on behalf of the Madhya Pradesh Government. He would, therefore, be a "Managing Agent" of the Madhya Pradesh Government within the meaning of Clause (f) of Section 2 of the Act, and would as such be liable for the present claim.

By Section 10 of the Workmen's Compensation Act, as it stood before its amendment by Act No. 8 of 1959, the period of limitation for presenting an application under the Act was one year from the date of death; but the Court had the power to condone the delay for sufficient reasons. I am of the opinion that the Government by omitting to decide the petitioner's claim for a sufficiently long time has provided a sufficient reason for the Court to condone the delay. It may only be pointed out that it is not usual on the part of the State to contest a claim of this nature on a purely technical ground.

8. I do not, therefore, see any force in this appeal. It is hereby dismissed; but in the circumstances I do not make any order as to costs.