

(2016) 04 JH CK 0098
In the Jharkhand High Court
Case No : W.P.(S) No. 411 of 2006

Ranjana Kumari

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Workmens Compensation Act, 1923 — Section 3

Citation : (2016) AAC 2285 : (2016) 3 AIRJharR 672 : (2017) 1 CivilLJ 387 :
(2016) 4 JCR 243

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. Sheela Prasad, Advocate, for the Petitioner; Mr. Amit Kumar,
Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Rongon Mukhopadhyay, J.—In this writ application the petitioner prayed for quashing the letter no. 4362 dated 11.09.2004 issued by the respondent no. 3 whereby and where under the claim of the petitioner under the Accident Compensation Scheme, 1988 of BSEB been rejected.

2. The facts which arise from the writ application is that the husband of the petitioner was appointed as Junior Electrical Engineer by the Bihar State Electricity Board. The husband of the petitioner was lastly posted as Junior Electrical Engineer in Electrical Supply Sub- Division, Chandil under Electric Supply Circle, Chaibasa. On 15.06.2003 while the husband of the petitioner was going to Village Palgram Chouka for official work he met with an accident with Truck No. WB-03/3856 near Village Sharbera, Chandil resulting in instant death. A case being Chandil P.S. Case No. 83 of 2003 was registered for the offences punishable under Sections 279, 304A, 427 of the Indian Penal Code. Since it was the case of the petitioner that her husband died in course of and during employment as he was assigned to do official work when he met with an accident

the petitioner submitted an application for accidental benefits in terms of the Scheme formulated by the Board. The application under the Accident Compensation Scheme, 1988 was forwarded by the competent authority and ultimately the impugned order as contained in letter No. 4362 dated 11.09.2004 was issued in which the claim of the petitioner was rejected on the ground that the said claim is not covered under the Scheme of the Board. Subsequently, the petitioner could come to know that the scope of the Scheme as envisaged in Clause 3 of the Scheme of 1988 was deleted and substituted by a new clause in terms of the Resolution No. 63 dated 15.01.1999 and in such circumstances the petitioner preferred the present writ application for quashing the Resolution dated 15.01.1999 as well as for quashing the letter No. 4362 dated 11.09.2004 rejecting the claim of the petitioner.

3. Heard Mrs. Sheela Prasad, learned counsel appearing for the petitioner and Mr. Amit Kumar, learned counsel for the respondents.

4. Mrs. Sheela Prasad, learned counsel appearing for the petitioner submitted that the Accident Compensation Scheme, 1988 was initially a beneficiary Scheme in consonance with the Workmen's Compensation Act but subsequently the eligible criteria been made stringent by imposing several conditions which in effect basically frustrates the purpose of the Scheme. It further been submitted that while issuing Resolution dated 15.01.1999 the very object and purpose resulting in formulation of the Accident Compensation Scheme, 1988 was totally ignored and no prudent man can fulfil the conditions which are presently in vogue. The initial provision with respect to Clause 3 of the Scheme of 1988 was in fact a beneficial provision and should have remained so but for the Resolution dated 15.01.1999 which the respondents being instrumentality of the State could not have brought into existence as the said Resolution is not in consistence with the Workmen's Compensation Act. In the light of the argument put forward by the learned counsel for the petitioner she submitted that her claim for the benefits under the Scheme on account of death of her husband could not have been rejected as there was a direct proximity with the assignment entrusted to her late husband and the subsequent death which was in course of employment.

5. Mr. Amit Kumar, learned counsel for the respondents, on the other hand, submitted that the claim of the petitioner rightly been rejected in view of the constituted/replaced Clause 3 of the Scheme of 1988 by virtue of Resolution dated 15.01.1999 and since the respondent-Board had acted in terms of its policy decision the said order cannot be faulted or cannot be said to be beyond the purview of the authority concerned. With respect to the Resolution dated 15.01.1999, learned counsel for the respondents submitted that the said substitution/amendment/modification does not close the door for eligible persons as only certain conditions have to be fulfilled in order to derive the benefits under the Accident Compensation Scheme, 1988.

6. The validity or otherwise of Resolution No. 63 dated 15.01.1999 to be considered at the preliminary stage because the outcome shall also govern letter

No. 4362 dated 11.09.2004 rejecting the claim of the petitioner. In terms of the Resolution No. 244 dated 30.06.1988 in exercise of the power as conferred under Section 79 of the Electricity Supply Act, 1948, the coverage of the Scheme been extended to those employees of the Board who died in an accident in the discharge of duty assigned to them in authorised manner by the competent authority. Clause 3 of the Scheme as was in existence prior to Resolution dated 15.01.1999 considered the scope of the Scheme and eligibility for such consideration been formulated therein and which is quoted herein below:-

"Wherein an employee of the Board dies in an accident in the discharge of duty assigned to him in a authorised manner by competent authority the dependents of the deceased employee shall be entitled to the following benefits."

7. The eligibility for being considered for the benefits under the Accident Compensation Scheme, 1988 was kept simple perhaps taking into consideration the basic objects and purpose for which the Scheme been formulated. However, by virtue of the Board's Resolution No. 63 dated 15.01.1999 Paragraph 3 of the Accident Compensation Scheme, 1988 issued vide Board's Resolution No. 244 dated 30.06.1988 was deleted and substituted with an amendment which is extracted below:-

"Wherein an employee of the Board dies in an accident at the work place in course of discharging of duty assigned to him in a authorised manner by competent authority and the death occurred due to hazardous nature of work and the safety measures as required under the Rules have properly been applied, the dependent of the deceased employee shall be entitled to the following benefits."

8. The scope of availing the benefits under the Scheme been amended and modified and certain stringent conditions have been added which was absent in the earlier substituted Clause, inasmuch as, it to be proved that the nature of work was hazardous and the safety measures as required under the Rules have strictly been followed. If the facts of the present case are taken into consideration where the husband of the petitioner died on the way while being assigned the job by his superior the same cannot be concluded to be a hazardous nature of work. The purport of Resolution dated 15.01.1999 would suggest that only in case of death inside the work place can the benefits to the dependents be acknowledged. The Resolution dated 15.01.1999 totally leaves aside the scope of any dependents claiming benefits under the Scheme on account of the deceased meeting with fatal accident which arises out of or in course of employment. The Resolution from the very face of it appears to have been formulated not as a beneficiary Scheme but as a Scheme which defeats the objects and purpose which led to formulation of Accident Compensation Scheme, 1988. The primary consideration, therefore, while taking into consideration the welfare legislation the causal connection between the accident and the employment. In the case of *Bhagubai v. General Manager, Central Railway, V.T., Bombay* reported in AIR 1955 Bombay 105 it was held as follows:-

"2. Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment to be in a particular place and by reason of his being in that particular place he to face a peril and the accident is caused by reason of that peril which he to face, then a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extends the peril. But if the peril which he faces nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident.

In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore, the connection between the employment and the accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else. It was suggested in the evidence that the employee was also a money-lender apart from being a mukadam in the service of the railway company. But the point was not pursued and it was not proved that by reason of his being a money-lender he had any enemies who were likely to fall upon him and do him to death.

Mr. Desai who appears for the railway company argued that a railway servant was prohibited from doing any other business. But it is not established that by his doing this prohibited business he brought upon himself the peril of being murdered."

9. In the case of National Insurance Company Limited v. Presiding Officer, Labour Court reported in [1997] 2 PLJR 947 relying on the judgment passed in the case of Bhagubai v. General Manager, Central Railway, V.T., Bombay (Supra) it was held that "The words arising out of employment are to mean that during the course of employment injury resulted from some risk incidental to the duties and the service which unless engaged in the duty owing to the master it is desirable to believe the workman would not otherwise have suffered. In other words, there must be a causal relationship between the accident and the employment".

10. In the case of Sumitra Devi v. Executive Engineer, Udar Asthan Irrigation

Division report in 1996 1 PLJR 183 it was held as follows:-

"19. According to the Supreme Court, there must be a causal relationship between the accident and the employment. If in course of the employment an employee to remain at a particular place and the nature of duties is such that he to face peril and the accident is caused by reason of the said peril which he to face then a causal relationship is established between the accident and the employment. In other words, if the nature of employment is such that it to suffer hazard or risks and the said risks caused injury, or death, or was one of the ordinary risks of the employment, or reasonably incidental to the employment then the compensation to be awarded. However, if in course of employment the employee dies for a reason different or unconnected with his employment, then he is not entitled to compensation.

22. In the case of Superintending Engineer, Parambikulam Aliar Project, Pollachi v. Andammal, (1983-II-LLJ-326), a Lascar appointed to regulate the flow of water in a branch canal by operating upon the sluices and shutters, was done to death at the place of duty by the person against whom he had made the complaint. There was nothing on the record to show that he had added the peril. The Madras High Court in the aforesaid circumstance held that there was causal and proximate connection between the employment and the accident and the accident will be treated to have arisen out of and in the course of his employment and, as such, the applicant is entitled to compensation.

23. In the case of Mohanlal Prabhuram v. Fine Knitting Mills Co. Ltd., 1958-65 ACJ 27 (Bombay), a workman of the mill while on duty was assaulted by a workman with the help of the outsiders resulting in serious injury to him. It was held that there was a causal relationship between the accident and the employment. Similarly, in the case of Naima Bibi v. Lodhne Colliery Co. Ltd., (1977-II-LLJ-69) a colliery worker while returning after performing his duty was assaulted by unknown persons in the colliery premises, as a result of which he died at the spot. The Calcutta High Court took the view that he had been at the spot because of his employment and, as such, the accident arisen out of and in the course of his employment and the employer is liable to pay the compensation."

11. In the case of Mahalakshmi Sugar Mills C. Ltd. and Anr. v. Union of India and Ors. reported in AIR 2009 SC 792 while considering the grounds for challenging the validity of subordinate legislation the same were delineated as under:-

"53. From these decisions, it may be deduced that validity of subordinate legislation may be questioned on the ground that :

(a) it is ultra vires the Constitution;

(b) it is ultra vires the parent Act;

(c) it is contrary to the statutory provisions other than those contained in the parent Act;

- (d) law-making power been exercised in bad faith;
- (e) It is not reasonable; and
- (f) it goes against legislative policy, and does not fulfil the object and purpose of the enabling Act."

12. In the background of the judicial pronouncements referred to above there is apparently a causal connection between the accident and the employment as the husband of the petitioner had met with an accident while he was proceeding towards Palgram Chouka village after being as signed some official work. The amended provisions seeks to negate or obliterate the beneficent provision as appearing in resolution no. 244 dated 30.06.1998. The resolution dated 15.01.1999 at clause 3 if seen in the context of the earlier resolution dated 30.06.1998 seems to stifle the very purpose and object for which the earlier resolution was brought to the fore. The object and purpose of the enabling act been defeated by virtue of clause 3 of the resolution dated 15.01.1999 and, therefore, the said clause in the resolution dated 15.01.1999 is hereby struck down as being against the spirit and contours of the object and purpose which the Accident Compensation Scheme 1988 sought to achieve. Consequently the refusal of the respondents to consider the claim of the petitioner under Accident Compensation Scheme 1988 is also set aside and the matter is remitted back to the respondent no. 3 who shall taken a decision on the claim of the petitioner afresh and in terms of the Accident Compensation Scheme 1988. The decision is to be taken by the respondent no. 3 within a period of four weeks from the date of receipt/production of a copy of this order.

13. It goes without saying that if the claim of the petitioner is found genuine the necessary benefits shall be made available to her expeditiously and preferably within a period of fourteen weeks from the date of passing a fresh order by the respondent no. 3.

14. This writ application stands disposed of.