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**(1998) 12 OHC CK 0019**

**In the Orissa High Court**

**Case No : Miscellaneous Appeal No. 71 of 1996**

SAIL, Rourkela Steel Plant

APPELLANT

Vs

Rajesh Kisan

RESPONDENT

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**Date of Decision : 10-12-1998**

**Acts Referred:**

Workmens Compensation Act, 1923 — Section 30

**Citation : (1999) 1 OLR 326**

**Hon'ble Judges : P.K. Misra, J**

**Bench : Single Bench**

**Advocate :** R.K. Mohapatra, S. Swain, N.K. Sahoo, A.K. Parida, D.P. Dash, D.R. Swain and R.K. Dash, for the Appellant; Ashok Mohanty, P.R. Dash, T. Rath, S. Natia and S. Sahu, for the Respondent

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## **Judgement**

P.K. Misra, J.—The employer has filed this appeal u/s 30 of the Workmen's Compensation Act (in short, the "Act") against the award passed by the Workmen's Compensation Commissioner (in short, the "Commissioner"), Rourkela, awarding a sum of Rs. 55,652.

2. The claimant-respondent is the son of deceased Chaitan Kisan, who was admittedly working under the present appellant. It is alleged in the claim petition that the deceased while going to attend his "B" shift duty on 27.5.1988, his bi-cycle collided with running buffalo near the Traffic Gate of the appellant's factory as a result of which the deceased fell down and sustained injury and after being admitted to Ispat General Hospital, died on 28.5.1988. Alleging that the deceased had died in an accident arising out of and in course of employment, a claim application was filed.

The appellant while denying about the allegations made in the claim application contended that the deceased was found lying near the main gate of the plant and was taken to the medical unit inside the plant. On examination, the doctor found that the deceased was in a drunken State and was a chronic alcoholic. After giving some first aid, the deceased was referred to the Ispat General Hospital,

where the deceased was treated of Hansans infection, chronic alcoholic, massive upper G.I. bleeding and hepatic problem. It was submitted that the death of the deceased on 28.5.1988 was not due to any accident arising out of and in course of employment. It was also pleaded that the death having occurred on 28.5.1988, the application for compensation filed on 21.9.1993, after a lapse of more than five years was barred by limitation.

3. The Commissioner found that the deceased had fallen from bi-cycle and such fall was occasioned for the strain caused due to excessive heat due to hot summer. It was held that the accident arose out of and in course of employment and as such, the claimant was entitled to get compensation. In this appeal, it is contended by the learned counsel for the appellant that it cannot be said that the accident arose out of and in course of employment of the deceased. He has referred to the evidence of the two doctors who were examined as D.Ws. 1 and 2 and contended that the death of the deceased was due to chronic alcoholism and other ailments such as Hansans disease which resulted in liver failure. It is further claimed that though it was alleged that the deceased fell from the cycle being dashed with a buffalo, the Commissioner found that the deceased fell down from bi-cycle due to excessive heat which was contrary to the pleading as well as the evidence on record.

4. The main question for consideration is as to whether the accident can be said to have arisen out of and in course of employment. In the decision reported in AIR 1997 Supreme Court, 432 (Regional Director, E.S.I. Corporation and Anr. v. Francis De Costa and Anr. ), it has been observed by the Supreme Court as follows :

"..... Therefore, the employee in order to succeed will have to prove that the injury that he had suffered arose out of and was in course of his employment. Both the conditions will have to be fulfilled before he could claim any benefit under the Act.

6. In our judgment, by using the words "arising out of ..... his employment", the Legislature gave restrictive meaning to "employment injury". The injury must be of such an extent as can be attributed to an accident or an occupational disease arising out of his employment. "Out of" in this context, must mean caused by employment. Of course, the phrase "out of" has an exclusive meaning also. If a man is described to be out of his employment, it means he is without a job. The other meaning of the phrase "out of is "influenced, inspired, or caused by: out of pity; out of respect for him". ( Webster Comprehensive Dictionary- International Edition-1984). In the context of Section 2(8) the words "out of" indicate that the injury must be caused by an accident which had its origin in the employment. A mere road accident, while an employee is on his way to his place of employment cannot be said to have its origin in his employment in the factory. The phrase "out of the employment" was construed in the case of South Maitland Railways Pvt. Ltd. v. James 67 CLR 496, where construing the phrase "out of the employment". Starke, J. held "the words "out of require that the injury had its

origin in the employment."

7. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words "accident..... arising out of..... his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no casual connection between the accident and the employment."

5. In the decision reported in Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, , it was observed :

".....As a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension....."

6. In the decision reported in General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, , after referring to the aforesaid decision of the Supreme Court as well as several decisions of the House of Lords and Court of Appeal, it was observed :

"..... u/s 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily and when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment. A contractual duty or obligation on the part of an employee to use only a particular means of transport extends the area of the field of employment to the course of the said transport. Though at the beginning the word "duty" has been strictly construed, the later decisions have liberalised this concept. A theoretical option to take an alternative route may not detract from such a duty if the accepted one is of proved necessity or of practical compulsion....."

7. In the decision reported in 1969 (II) LLJ 812 (Mackinnon Mackenzia and Co. (Private) Ltd., and Rita Fernandez (Smt.)), after referring to Section 3(1) of the Workmen's Compensation Act, it was observed by the Supreme Court :

"..... It is well-established that under this section 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 if the 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 accidental, his death results from injury by accident....."

8. In the decision reported in Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, , it was observed :

"..... 5..... 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 casual 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 the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to Court for relief must necessarily prove it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from

the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it....."

9. From the aforesaid decisions, it becomes clear that in order to succeed, it is to be proved by the employee that (i) there was an accident; (ii) the accident had a causal connection with the employment; and (iii) the accident occurred in course of employment. Judged against the aforesaid back-drop of law, it has to be seen whether it can be said that the accident arose out of and in course of employment. In view of the fact that the accident had occurred in the factory premises while the deceased was about to join his duty, it can be safely concluded that the accident had occurred in course of employment. However, it has to be judged as to whether there was any causal connection between the accident and the employment of the deceased. It had been asserted in the application for compensation that the deceased had fallen down from the bi-cycle being dashed against a buffalo. The Commissioner has not accepted this assertion. The Commissioner has observed that the fall of the deceased from the bi-cycle was attributable to the stress and strain caused due to excessive heat during hot summer. Even assuming that the deceased fell down from the bi-cycle due to excessive heat and such fall was an accident arising out of and in course of employment, the question is as to whether such fall ultimately resulted in the death or even was a contributory factor for the death. From the statements and the reports of the doctors, who had treated the deceased, it is apparent that the deceased expired due to Hansans disease and liver problem. The fact that deceased was suffering from the aforesaid disease had no causal connection with his employment. The fall from the bi-cycle is not even remotely connected with the ultimate death (though within a few days) which occurred due to other diseases of the deceased. Since fall from the bicycle was not a contributory factor for the death, it is needless to delve into the question as to whether the fall from the bi-cycle was due to excessive heat as observed by the Commissioner, and as to whether such fall arose out of the employment of the deceased.

10. For the aforesaid reason, I am unable to accept the finding of the Commissioner that deceased died in an accident arising out of employment. As such, the award of the Commissioner is liable to be set aside. However, this judgment will not stand in the way of the employer to make any ex gratia payment to the claimants and if any such application is filed, the same may be considered sympathetically. There is no order as to costs.