

(2012) 12 GAU CK 0011
In the Gauhati High Court
Case No : MFA (WC) No. 16 of 2002

Santi Rani Debnath and Another

APPELLANT

Vs

Anil Chandra Saha and Others

RESPONDENT

Date of Decision : 18-12-2012

Acts Referred:

Employees Compensation Act, 1923 — Section 3
Workmens Compensation Act, 1923 — Section 3, 3(1), 30

Citation : (2013) 138 FLR 435 : (2013) 2 GLT 745 : (2013) 3 LLJ 202 : (2013) LLR 946

Hon'ble Judges : Swapan Chandra Das, J

Bench : Single Bench

Advocate : S. Deb and Mr. M.K. Roy, for the Appellant; A. Gon Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

Swapan Chandra Das, J.—This appeal, u/s 30 of the Workmen's Compensation Act, has been admitted by this Court for hearing on the following substantial question of law. Whether a death caused due to illness arising out of and in course of employment of the workman could be termed as an accidental death within the meaning of Section 3 of the Workmen's compensation Act.

Heard learned senior counsel, Mr. S Deb assisted by learned counsel, Mr. M.K. Roy for the appellants and learned counsel, Mr. A Gon Choudhury for the respondent No. 2, the New India Assurance Company Ltd. 2. Respondent Nos. 1 and 3 have chosen to remain absent.

3. Brief Fact:

Sanjit Debnath, aged about 21 years, a bachelor, was employed as a Helper-cum-Cleaner of vehicle No. AS-01C-6315 (Truck), by the owner of the vehicle i.e. respondent No. 1. Date of hearing: 22.11.2012 Date of delivery of Judgment & order: 18.12.2012.

Respondent No. 3 was the engaged driver of the vehicle. On 16.08.1999 the vehicle with a load of Cashew nut started from Agartala for Calcutta. The case of the claimant petitioners is that on 21.08.1999 the vehicle reached Koochbihar, West Bengal and due to heavy rains the road was water-logged and the wheel of the vehicle was struck in clay-mud. Sanjit was asked by the driver to get down and to clear the mud so that the wheels of the vehicle can move. Accordingly, Sanjit done his job. But suddenly, the vehicle moved and Sanjit got a knock and as a result he suffered injuries. Further, as he was soaked with rain water he was caught with high fever. Thereafter, he was admitted in Alipurduwar Sub-Divisional hospital on 21.08.1999 and was under treatment by Dr. M.V. Choudhury. He died in hospital on 26.08.1999 at about 12.00 noon due to cardio respiratory failure in a case of severe malaria (cerebral malaria). It is the further case of the petitioners that Sanjit used to get a monthly wage of Rs. 2,500/- and Rs. 60/- per day towards tiffin etc. Notice was given to the owner for payment of compensation but no compensation was paid. The petitioners, therefore, filed the case before the Commissioner, Workmen's compensation for granting them Rs. 2,26,710/- as compensation.

4. Respondent Nos. 1 and 3 i.e. the owner and driver of the vehicle submitted a joint written statement admitting all the averments made in the claim petition. It is further stated that respondent No. 1 paid a sum of Rs. 9,500/- towards funeral expenses etc. after the death of the deceased. They have further stated that the vehicle was insured with the respondent No. 2, insurance company covering the risk of the driver and cleaner and so, the liability, if any, should be saddled on the insurance company.

Respondent No. 2, the New India Assurance Company Ltd., also contested the case filing written statement denying averments made in the petition and further stated that the deceased Sanjit Debnath died due to cerebral malaria, as per the documents submitted by the petitioners which is not connected with the job of the deceased and so far such death of the deceased because of ailment, unconnected with the job of the deceased, does not come under the purview of the provisions prescribed under the Workmen's Compensation Act. The respondents, therefore, prayed for dismissal of the claim.

5. The Commissioner, Workmen's Compensation in course of inquiry framed the following issues:

1. Was deceased Sanjib Debnath a workman under O.P. 1 on the date of alleged accident on 21.08.1999 as defined in Workmen's Compensation Act?

2. Whether Sanjib Debnath aged about 21 years succumbed to his injuries on 26.08.1999 due to an accident on 21.08.1999 at Koch Vihar, West Bengal under Alipur P.S. arising out of and in course of his employment under O.P. No. 1 as Assistant-cum-Cleaner of AS-01C-6315 (Truck)?

3. Is the claimant-petitioners to get any compensation under Workmen's Compensation Act? If so, what should be the quantum of compensation and who

is liable to pay it?

In due course, the appellant No. 1 examined herself as PW. 1 and on their behalf, they have also examined another witness namely, Tapash Saha of Pratapgarh, East Agartala. They have also proved the death certificate, school certificate and citizenship certificate (by birth) in the name of deceased Sanjit Debnath.

6. The Commissioner, Workmen Compensation, at the conclusion of inquiry and hearing, dismissed the claim holding that the claimants failed to prove that the deceased suffered any injury due to any accident and died as a consequence of any such injury, arising out of and in the course of his employment

7. It is an undisputed fact that the deceased Sanjit Debnath was employed as an Assistant (Helper-cum-Cleaner) of Truck vehicle No. AS-01C-6305 by the owner of the vehicle i.e. the respondent No. 1. It is also an undisputed fact that on 16.08.1999 the vehicle was driven by respondent No. 3, with the deceased as its Helper-cum-Cleaner, started for Calcutta from Agartala on 16.08.99 and on 21.08.1999 it reached koochbihar, and on that day, on the way, the deceased Sanjit Debnath was admitted in Alipurduwar Sub-divisional hospital with high fever and he died of "Cardio respiratory failure due to severe malaria (cerebral malaria)" on 26.08.1999 in hospital.

The substantial question of law formulated by this Court, as reproduced above, is to determine as to whether death cause due to illness arising out of and in the course of employment of a workman should be termed as an accidental death within the meaning of Section 3 of the Workmen's Compensation Act.

8. Learned senior counsel, Mr. Deb, appearing on behalf of the appellants, argued that Section 3 of the Employees Compensation Act, 1923 enables a injured workman and/or in case of death of the workman, his legal representatives, to claim compensation if the injury occurred arising out of and in the course of employment. It postulates two propositions to be satisfied: (i) arising of; and (ii) in the course of employment. It is contended by learned senior counsel, Mr. Deb that it is an undisputed fact that the deceased was asked by the driver to remove clay from the wheel of the vehicle with a view to set the vehicle in motion and the deceased while under heavy rain done his job, at that time, the vehicle started and the deceased received some injury for which he was admitted in Alipurduwar hospital and he was caught with high fever. According to learned senior counsel, had the deceased not get down from the vehicle he would not have suffered any injury and would not have soaked with rain water which resulted in high fever of the deceased and his consequential death and under such admitted fact and circumstances, the case of the claimants are covered by the provisions prescribed u/s 3 of the workmen's Compensation Act for granting compensation to them.

In support of his contention learned senior counsel, Mr. Deb relied on the following case laws:

- (1). H.L.(E) Clover, Clayton & Co., Ltd Vs. Hughies 1910 AC 242
- (2) Nisbet Vs. Rayne & Burn: (1910) 2 KB 689 CA.
- (3) Board of Management of Trim Joint District School Vs. Kelly: (1914) AC 667.
- (4) Project Officer, Sounda D. Colliery of Central Coal Fields Ltd. and Another Vs. Presiding Officer, Labour Court and Another .
- (5) Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, .

In contrast, learned counsel, Mr. Gon Choudhury for the respondent No. 2 has submitted that there is nothing to show that the deceased suffered any injury because of any accident and it is the case of the claimants that due to severe malaria the deceased had died. It means because of ailment unconnected with the discharge of duty, the deceased died and so, the Tribunal rightly decided the case. Death due to illness arising out of and in the course of employment cannot be termed as an accidental death due to injury within the meaning of Section 3 of the Employees Compensation Act.

9. For ready reference and for fair appreciation let us first reproduced here the provisions of Section 3(1) of Workmen's Compensation Act which reads thus:

3. Employer's liability for compensation

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable--

- (a) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.
- (b) In respect of any injury, not resulting in death (or permanent total disablement), caused by an accident which is directly attributed to-
 - (i) the workman having been at the time therefore under the influence of drink or drugs, or
 - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman, or
 - (iii) The willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

A careful reading of the above provision makes it clear that an "injury", "arising out of or in the course of employment", resulting in death or permanent total disablement or permanent partial disablement, etc., as the case may be, is a sine qua non for claiming compensation under Employee's Compensation Act.

10. It is the case of the appellant-petitioners that the deceased workmen died due to "cerebral malaria" as per the document i.e. the death certificate on which they relied to prove their case. The death certificate is marked as an item of Exbt. 1 series which reads that the cause of death was "Cardio respiratory failure in a case of severe p.f. malaria (Cerebral Malaria)". Had there be an accident arising out of use of the vehicle, the driver was duty bound to report to Police Station. Further, if the death was otherwise than a normal death due to disease, as recorded in the death certificate, Post Mortem examination was necessary to determine the cause of death, which has not been done. The claimants cannot go back to the documents relied by them and make out a third case by adducing oral evidence.

The appellant-petitioners, therefore, failed to make out any case that the deceased suffered any injury, as a result of any accident and therefore, substantial question of law has been framed as to whether death due to illness can be termed as an accidental death or not.

11. The word "accident" has not been defined in the statute but the judgment laws adequately defined it. "Accident" should be understood in the popular and ordinary sense as an unlooked for mishap or an untoward event which is not expected or designed. Normal death in the ordinary course, by bodily ailment or for the reason attributable to himself, even in the course of employment cannot attract the liability of the employer u/s 3 of the Act. The words "injury and accident" in Section 3 imply the existence of some external fact to cause apart from internal ailment of the body.

In the case of Kelly (supra) Lord Macnaghten remarked--

I come, therefore, to the conclusion that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed.

In the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , the Apex Court held:

the expression "accident" has not been defined in Workmen's Compensation Act. This expression generally means, some unexpected event happening without design. It can be said that the expression "accident" has been used in a popular and ordinary sense and means "mishap" or "untoward event not expressed or designed.

In the case of New India Assurance Co. Ltd. Vs. Ajoy Medhi and Another, , this Court held "Accident"--occurrence resulting in injury or death which is unexpected or un-designed on the part of the workman is an accident. Act is a piece of social security legislation and its various provisions ought to receive a liberal interpretation which is more favourable to the person for whose benefit the legislature in its great wisdom has legislated it.

The Division Bench of Gujarat High Court in the case of Ambalal Lallubhai

Panchal Vs. L.I.C. of India, has held thus:

The word "accident" has a very wide significance in its ordinary sense. The word though easy to understand when used in any particular context, is found to be difficult to define in a manner that would encompass all its shades of meanings. The expression "accident" generally means some unexpected events happening without design, even though there may be negligence and it is used, in a popular and ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not brought about by intention or design. Accidents can broadly be divided into two categories, viz., where there is some external act, agency or mishap and those where there is no such external act, agency or mishap. In legal contemplation, accident happens without any designed, intentional or voluntary causation such as an occurrence which happens by reason of some violence, casualty or vis major without any design or voluntary co-operation. An unexpected personal injury resulting from an unlooked for mishap or occurrence would be an accident. The word "accident" would get its colour from the context in which it is used.

In the case of Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, , the Apex Court held thus:-

"Accident", ordinarily, would have to be understood as unforeseen or un-comprehended or as that which could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, inter alia, having regard to the nature of the work and the situation in which the deceased was placed. An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. Death must arise out of accident. There is no presumption that an accident had occurred.

12. Let us now critically examined the fact of the case and the evidence adduced by the appellants.

The relevant factual aspect has been stated by the claimants in Para - 9/C of the claim petition thus:

9/C. That in the month of Sravana i.e. on 16th August, 1999, the deceased Sanjit Debnath started for Calcutta alongwith the vehicle AS-01C-6315 as per order of the owner of the vehicle i.e. O.P No. 1 with a load of Cashew nut for delivery at Calcutta. When the vehicle reached at Kooch-Bihar the road was water-logged due to heavy rain and the vehicle stopped in the clay mud of the road. The Assistant-cum-Cleaner, Sanjit Debnath got down from the vehicle and was working for removing the clay mud from the road with a view to drive the vehicle by the Driver. But suddenly when the vehicle started, the Assistant got a knock and as a result he got some injuries on his body and due to wetting in rain water, attacked with high fever. Then he was admitted to Alipur Sub-Divisional Hospital under Dr. M.V. Chowdhury of that hospital. The claimant-petitioners did not get any information about the illness of their son. The deceased was

admitted in the Hospital on 21.08.1999 and at about 10.00 am and he died on 26.08.1999 at 12 Noon due to Cardio respiratory failure in case of cerebral Malaria. The claimant-petitioners got the information about their son after his death.

In her deposition PW. 1 i.e. the claimant-petitioner No. 1 stated thus:

On 16.08.99 said vehicle started for Calcutta with a load for giving delivery at Calcutta. On the way at Kuchbihar an accident occurred on 21.08.99 and my said son while working in the vehicle fell down from the vehicle and thereby sustained injuries. He was shifted to Alipur Hospital where he died on 26.08.99.

PW. 1, being the mother of the deceased, narrated the fact of the incident, may presumed to have, as she heard from the owner and driver of the vehicle. She did not narrate as to from whom she learnt about the incident. However, she has simply stated that her son got injured on fall from the vehicle and she stated nothing about getting wet due rain and the fever or consequent death because of malaria but in her cross-examination, she admitted that her son died of malaria.

According to the petitioners, PW.2 was in the vehicle when the accident/incident occurred. In his deposition he stated thus:

On 16.08.99 I was taking some cashewnut by a vehicle No. AS-01-C-6315 (Truck) from Agartala to Calcutta. I was also going by that truck. On the way at Kuchbihar we found the road was water blocked due to heavy rain and by the driver it is difficult to drive the vehicle. The Assistant of that truck Sanjit Debnath was asked by the driver to get down from the vehicle and to clean the glass of the vehicle and also to clean the vehicle's wheel and accordingly Sanjit got down from the vehicle and cleaned those things and thereafter he boarded the vehicle. When the driver started the vehicle Sanjit fell down from the vehicle and sustained injuries. Immediately thereafter we had taken him nearby hospital situated at Alipur Duwar. On 21.08.99 said Sanjit was admitted in the hospital but ultimately he died on 26.08.99. When he was admitted in the hospital it was detected that he was attacked by high fever, leaving Sanjit at Hospital we left that place and had gone to Calcutta. From Calcutta we came back to Alipur Duwar on 25.8.99 and Sanjit died on 26.8.99.

In cross-examination he stated that he did not have any business license.

If we scrutiny the claim petition and written statements of respondent Nos. 1 and 3 (owner and driver) we find no whisper that PW.2 was travelling with the Truck vehicle at the time of occurrence. No documentary evidence adduced to strengthen the case of the petitioners that PW.2 was in the vehicle in the capacity of the owner of the goods or otherwise. Under such circumstances, it is very difficult to place implicit reliance on the evidence of PW.2. Further, neither in the petition nor in the evidence of PWs. 1 and 2 nothing stated as to what was the injury sustained by the deceased and in which part of the body. The death certificate which is relied by the petitioners clearly speaks the cause of the death

as "Cardio respiratory failure in a case of severe p.f. malaria (cerebral malaria)".

13. Personal injury under the Act means physiological injury. It may be external, or may be internal. Physiological injury suffered by a workman which led mainly to the progress of a disease unconnected with the employment may also amount to the personal injury compensable under the Act if the work which the workman doing at the time of occurrence of the injury did in fact contribute to its occurrence. "Accident" and "injury" are distinct in cases where an accident is an event happening externally to a man but sometimes the accident may be an event happening internally to a man and in such cases "accident" and "injury" coincide.

In the case of *Clover Clayton* (supra) the workman suffered rupture due to an aneurism, while tightening a nut by a spanner. The House of Lords considering the case observed thus:

It seems to me important that we should regard not merely the question "was this an accident or not?" but also the entire sentence at the commencement of the Act of 1906, in which the liability of the employer to make compensation is set up. It runs as follows: "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act." The injury must be caused by an accident, and the accident must arise out of the employment.....

...The first question here is whether or not the learned judge was entitled to regard the rupture as an "accident" within the meaning of this Act. In my opinion he was so entitled. Certainly it was an "untoward event". It was not designed. It was unexpected in what seems to me the relevant sense, namely, that a sensible man who knew the nature of the work would not have expected it. I cannot agree with the argument presented to your Lordships that you are to ask whether a doctor acquainted with the man's condition would have expected it. Were that the right view, then it would not be an accident if a man very liable to fainting fits fell in a faint from a ladder and hurt himself. No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident. It cannot be disputed that the fatal injury was in this case due to this accident, the rupture of the aneurism under the strain.

The principle laid down above cannot be applied in the present case since there is nothing to show that the deceased suffered any injury in the course of his employment. The point formulated by this Court as to whether illness arising out of and in the course of employment could be termed as an accident. Since in the above reported case there was an injury suffered by the workman and because of that injury ultimately the deceased died, ratio of that decision cannot be applied in the facts and circumstances of the present case.

14. Ordinary dictionary meaning of the word "injure" (as per Oxford dictionary) is (1) do or undergo physical harm to, (2) harm or impair something, and (3) do injustice or wrong to. "Injury" means (1) an instance of being injured, (2) the fact of being injured and (3) harm or damage. The Apex Court in the case of *The State of Tripura Vs. The Province of East Bengal*, wherein the Apex Court has held thus:

The word "wrong" in ordinary legal language means and signifies "privation of right". An act is wrongful if it infringes the legal right of another, and "actionable" means nothing else than that it affords grounds for action in law. Ordinarily, the word "injury" is used in the same sense of actionable wrong, while "damage in contrast with injury means loss or harm occurring in fact whether actionable as injury or not.

In the case of *Shakuntala Chandrakant Shreshti* (supra), the Apex Court has held--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.

In the case of *Kelly* (supra) the House of Lords at page 680 observed "injury" and "accident" were not to be separated, and that "injury by accident" meant nothing more than accidental injury or accident as the word is popularly used.

The word "injury" in Section 3(1), is a wider term than bodily injury and is not confined to some actual physical hurt to the body of the employee. It may include a disease also. For, when a disease is contacted as a result of the passage of virus, it sets up physiological conditions which can be described in medical language as a disease. It is, however, obvious that it is the consequential result of an injury namely, the travelling of the bacillus. It does not, however, mean that by calling the consequences of accidental injury, as disease, one can alter the nature of the consequential result of the injury that has been inflicted.

In the case at hand the diseased died because of cerebral malaria. There is no iota of evidence that the diseased suffered any injury. Even if we accept the case of the appellant-petitioners that the diseased was soaked with rain water and as a result he suffered fever, such a fever cannot result in cerebral malaria At least there is no medical evidence to that effect. Had it been so that the deceased being get wet out of rain water, caught with fever and consequently died, it would be said that the illness was connected with the employment of the

diseased. Under such circumstances, I am of the considered opinion that the case laws referred by learned senior counsel, Mr. Deb can in no way be in aid of the case of the appellant's. Death caused due to illness which is not consequential or connected with the discharge of duty, cannot be termed as an accidental death due to injury arising out of accident and hence the appeal is liable to be dismissed.

I find total justification in the decision of the Commissioner, Workmen's Compensation and the appeal accordingly, stands dismissed.