
(2019) 07 BOM CK 0219
In the Bombay High Court
Case No : First Appeal No. 01470 Of 2018

Santokh Singh And Another	Vs	APPELLANT
Acchru Ram And Another		RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302

Citation : (2019) 07 BOM CK 0219

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : Pavankumar S. Agrawal, U.S. Malte

Final Decision : Dismissed

Judgement

Vibha Kankanwadi, J

1. The basic question that is required to be addressed in this appeal is whether 'murder' of deceased in this case amounted to "accident during the course of employment?" Present appeal has been filed by the original claimants, who are the legal heirs of deceased Jagjeevan Singh @ Jaggi, challenging the dismissal of their claim petition for compensation by learned Ex-officio Commissioner for Employee's Compensation and Civil Judge Senior Division, Hingoli in F. A. No. 03 of 2015 dt. 05-01-2018. [Parties are addressed by their nomenclature before the Trial Court].

2. Petitioners are the parents of deceased Jaggi. Jaggi was serving as cleaner on truck bearing No. PB-13-AB-9943, owned by respondent No. 1. He was aged 22 years. One Abdul Gafur @ Salim Salauddin was working as driver on the said truck. The said truck was proceeding from Malerkotla towards Andhra Pradesh. The said driver as well as Jaggi were the occupants of the truck. When they had reached near Balapur, deceased was hit by a hard substance on his head by driver Abdul. Deceased expired on the spot. Said driver had thrown the dead body on the side of the road and then fled away from there. Police had

investigated the matter, after the incident was reported. Initially accidental death was reported. However, after it was revealed that it is a case of 'murder', the driver has been prosecuted. Petitioners contended that the said accident had taken place during the course and arising out of employment with respondent No. 1. The insurance policy taken by respondent No. 1 from respondent No. 2 covers risk of cleaner. Jaggi was earning Rs. 6,000/- p. m. Hence, petitioners claimed compensation of Rs. 6,45,840/- with interest.

3. Matter proceeded ex-parte against respondent No. 1. Respondent No. 2 has resisted the claim. All the averments in the petition have been denied specifically. The relation between deceased and respondent No. 1 as employee and employer has been denied. It is stated that deceased was travelling from the truck as fare paid passenger, whose risk was not covered under the policy. It has been contended that since deceased was murdered, it can not be said to be an 'accident' that too during the course of employment.

4. After the issues were framed, petitioners have led oral as well as documentary evidence. Respondent No. 2 preferred not to lead any evidence. After taking into consideration the evidence and hearing both sides, the learned Trial Court has dismissed the petition on the ground that though the relationship between respondent No. 1 and deceased has been proved as employer and employee; yet, when Jaggi has been murdered, his death can not be considered as "death during the course of employment". Hence, this appeal.

5. Heard learned Advocate Shri. Agrawal for appellants and learned Advocate Shri. Malte for respondent No. 2. Respondent No. 1, though duly served remained absent.

6. It has been vehemently submitted on behalf of appellants that though the fact that Jaggi was murdered can not be denied, yet it ought to have been considered as to whether it amounted to "accident" or not. He relied on the decision in Smt. Rita Devi v. New India Assurance Co. Ltd. [(2000) 5 SCC 113 : AIR 2000 SC 1930] wherein Apex Court has settled the law on the point. Intention behind the act is required to be considered. Therefore, the learned Commissioner ought to have allowed the petition. Learned Advocate for appellant has placed on record photo copy of decision in Sessions Trial No. 222 of 2014, which was filed against Abdul and respondent No. 1-herein. Learned Additional Sessions Judge, Akola has acquitted both of them from the charges under Section 302, 201 r/w. 34 of Indian Penal Code on 28-05-2019. He has relied on the observations that there was no evidence adduced on the point of motive.

7. Per contra, learned Advocate for respondent No. 2 has supported the reasons given by the learned Trial Court. He has pointed out that in his cross, PW 1 Santok Singh has admitted that there was quarrel between Jaggi and Abdul about 2-3 days prior to incident. Therefore, when the murder has taken place due to the personal quarrel, then it can not be said to be "during the course of employment". There was motive for Abdul to commit murder of Jaggi. The

learned Trial Court has rightly dismissed the petition.

8. At the outset, it is required to be considered as to what is the law laid down by Hon'ble Apex Court in Rita Devi's case (supra). The Supreme Court drew distinction between a "murder" which is not an accident and a "murder" which is an accident. The Supreme Court laid down the test that if the dominant intention of the felonious act is to kill any particular person, then such killing is not accidental murder but a murder simpliciter. However, if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act, then such murder is an accidental murder. Para 10 of the judgment is relevant and is reproduced hereunder:

"10. The question, therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

(Emphasis supplied)

9. Further note of the decision by Division Bench of this Court in Bhagubai v. Central Railway [A.I.R. 1955 Bom. 105] the deceased was stabbed to death while he was on his way to join duty. It was not disputed that the death was a result of an accident or that it arose in the course of his employment. The dispute was whether it arose out of the employment of the deceased. The Division Bench held at page 404 as follows:

"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 has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has 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 extend the peril. But if the peril which he faces has

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 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."

10. Thereafter, at page 405-406, it was held as under:

"Once the peril is established, it is for the employer then to establish either that the peril was brought about by the employee himself, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connection between the accident and the employment which the applicant has to establish is not a remote or ultimate connection but a connection which is only proximate. Once that proximate connection is established the applicant has discharged the burden, and in this case the proximate connection between the employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death."

11. Thus, taking note of these decisions, it is now required to be seen what were the circumstance under which it is stated that Jaggi was murdered.

12. Respondent No. 2 can not have any first hand knowledge about those circumstances and motive. Claimants were also not present when the incident took place. However, the learned Trial Court has relied on the admissions given by PW 1 Santokh Singh to arrive at the conclusion that there was motive for the driver to commit Jaggi's murder. Perusal of cross-examination taken by respondent No. 2 would reveal that PW 1 has admitted that there was quarrel between Jaggi and Abdul 2-3 days earlier and at that time PW 1 was present. Claimants have stated that Jaggi and Abdul left in truck on 16-05-2014. The date of murder is 24-05-2014. Respondent No. 2 wanted to say that since quarrel had taken place 2-3 days prior to they left home, there was motive for Abdul to commit murder of Jaggi. The learned Trial Court after taking note of the fact of quarrel, concluded that there was motive for Abdul to commit murder. In fact, that was not the proper Court to decide whether there was motive for Abdul for committing murder or not. However, that point was required to be addressed prima facie, to arrive at as to whether the said murder amounts to 'accident'.

13. Now, the subsequent development is definitely required to be considered. Abdul and respondent No. 1 have been acquitted by the competent Court i.e.

Sessions Court. The observations of the said Court are important. Prosecution in that case as it appears from the judgment of the Sessions Court had not adduced any evidence about motive. Only on the point of last seen together, Abdul and respondent No. 1 were prosecuted. It has also come on record in that case that claimant No. 1 had made inquiry with Abdul and found that he and Jaggi had haulted at Chittorgarh in Rajasthan. Thereafter, Jaggi went at some other place (not with Abdul), then went missing. Claimant made inquiry with Abdul but he gave evasive reply and therefore, he became suspicious about him. Then Balapur Police had shown photographs of dead body of Jaggi after some days. From these facts, the link was tried to be established. But if at Chittorgarh itself Jaggi got separated from Abdul, then how it can be termed that he was on duty. How his body came in Balapur has not been explained by prosecution. Another fact to be noted that even the employer has been made accused in this case. Claimants can not deny the police action, papers etc. When according to police, even respondent No. 1, employer had motive to commit murder of Jaggi, then how the insurance company can be held responsible for payment of compensation? The peril Jaggi has suffered would then be personal. The facts in the above said cases can be distinguished on the count that in those cases, employer himself was not made as accused of committing murder of employee for some cause. When it was not established that Abdul and respondent No. 1 were lastly in the company of Jaggi, Jaggi was with the Truck when murdered, then the peril Jaggi suffered can not be said to be incidental to his employment.

14. Though the judgment of the Sessions Court was not before learned Tribunal, yet the ultimate decision does not appear to be erroneous. No interference is required in the said decision.

15. For the afore-said reasons following order is passed.

ORDER

16. Appeal is hereby dismissed.

17. No order as to costs.