

**(2001) 03 KAR CK 0084**  
**In the Karnataka High Court**

Senior Divisional Controller, North West Karnataka Road  
Transport Corporation

APPELLANT

Vs

Smt. Shoba and Others

RESPONDENT

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**Date of Decision :** 08-03-2001

**Acts Referred:**

**Citation :** (2002) 3 ACC 216 : (2001) 3 KCCR 161 SN

**Hon'ble Judges :** Chandrashekaraiah, J

**Bench :** Single Bench

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**Judgement**

Chandrashekaraiah, J.—This appeal is by the employer challenging the order passed by the Commissioner for Workmen's Compensation, Belgaum awarding compensation of Rs. 1,26,119/- with interest and penalty.

2. The facts in this case are as follows:

The respondents are the LR's of the deceased workman Somappa @ Somashekar Hosamane who died on 23.7.1994 in K.L.E. Hospital at Belgaum.

The deceased was working as a conductor in the appellant's Corporation. On 19.7.1994 at about 1.30 p.m. while he was on his way to report to duty at Bailhongal Depot suddenly collapsed. Thereafter, he was taken to K.L.E. Hospital at Belgaum for treatment. While he was under treatment in the hospital he died on 23.7.1994. This death has made the LR's of the deceased to file a petition before the Commission for Workmen's Compensation for compensation.

3. On the pleadings of the parties the Commissioner framed several issues. One of such issue i.e. issue No. 1 is relevant for consideration in this appeal which reads as follows:

Whether the death of the deceased is due to the course of employment and out of employment?

This issue has been answered by the Commissioner in the affirmative. The Commissioner by extending the theory of notional extension has held that the

deceased died during the course of employment.

4. Now the question that arises for consideration in this appeal is:

Whether the Commissioner is right in holding that the alleged injury comes within the course of his employment or it falls outside the scope of employment?

It is an admitted fact that the deceased while on his way to report for duty at Bailhongal on 19.7.1994 at about 1.30 p.m. suddenly collapsed and thereafter, he was taken to the hospital and ultimately he died in the hospital on 23.7.1994. RWs. 1, 2 and 3 in their deposition have stated that the deceased was required to report for duty as conductor on 19.7.1994 at about 2 p.m. and, therefore, he had left the house at about 1 p.m. to join the duty at Bailhongal Depot. It is further stated that while he was going to depot he suddenly collapsed. This evidence clearly shows that the incident happened is not within the place of employment but is on the road. No doubt, the Corporation in their statement of objection denied the incident by stating that the accident neither has taken place during the course of employment nor it arises out of employment. But, the Commissioner by extending the theory of notional extension has held that the incident has happened during the course of employment.

5. Mr. L. Govindaraj, learned Counsel appearing for the appellant, relying upon the decision in the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , submits that the incident occurred while the employee was on his way to the place of employment which is away from the place of employment and, therefore, the injuries sustained by employee cannot be said to be arising out of and in the course of his employment.

6. Learned Counsel for the respondents in reply to the said submission relied upon the decision in the case of General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, , submits that the facts in this case are similar to the facts involved in the case before the Supreme Court referred to above and, therefore, the Commissioner is right in awarding compensation by extending the doctrine of notional extension.

7. The Supreme Court in the case of G.M., BEST Undertaking has held as follows:

Under Section 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. As 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. But none of the decisions cited at the Bar deals with a transport service operating over a large area like Bombay. They are, therefore, a little assistance, except insofar as they laid down the principles of general application. Indeed, some of the Law Lords expressly excluded from the scope of their discussion cases where the exigencies of work compel an employee to traverse public streets and other public places.

8. The reason for the Supreme Court to hold that the accident had occurred during the course of employment is because of the fact that the employee was provided with free transport facility. The said facility is a proved necessity giving rise to an implied obligation on the part of the employee in the said post as a part of his duty. Further, it was held that free transport facility provided to an employee is a condition of his service. In the case on hand there is no such free transport facility provided to the deceased employee and, therefore, it is not a condition of service. It is not the case of the deceased employee that at the time of incident he was travelling in the vehicle provided by the employer. Therefore, it is not a fit case to apply the theory of notional extension. The Supreme Court in the case of Regional Director, ESI Corporation & Am. referred to supra considered all the decisions of the Supreme Court including the one reported in General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes, and has held as follows:

Although the facts of this case are quite dissimilar, the principles laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that; (1) there was an accident; (2) the accident had a casual connection with the employment, and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.

9. The facts in this case are that one Francis De Costa met with an accident on 26.6.1971 while he was on his way to his place of employment a factory at Koratty. The accident occurred at a place which was about 1 km. away to the north of the factory. The time of occurrence was 4.15 p.m. It has been stated that the duty-shift of the respondent would have commenced at 4.30 p.m. The respondent was going to his place of work on bicycle. He was hit by a lorry belonging to his employers M/s. J & P Coats (P) Limited.

10. On these facts the Supreme Court considering all the cases including the case General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes (supra) has held that the injuries suffered by the employee in the said accident could not be

said to have been caused by an accident arising out of and in the course of employment.

11. The facts in this case are also identical with that of the case before the Supreme Court. Therefore, I am of the considered view that the Commissioner is not right in holding that the incident had taken place within the course of employment.

12. In the result, I pass the following order:

- (i) appeal is allowed;
- (ii) the impugned award is set aside;
- (iii) no costs.