

(2016) 04 UK CK 0012
In the Uttarakhand High Court
Case No : Appeal from Order No. 266 of 2010

Smt. Deepa Rautela

APPELLANT

Vs

J.K. Saukat Cement Pipe Pvt. Ltd.

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2016) 4 ACC 378 : (2017) 1 AnWR 214 : (2016) 151 FLR 543 :
(2017) 1 TAC 595

Hon'ble Judges : Servesesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. U.S. Bhakuni, Advocate, for the Appellant; Mr. Siddhartha Sah, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Servesesh Kumar Gupta, J.—Having heard the rival contentions, it transpires that the deceased Kundan Singh was a driver under the employment of respondent-J.K. Saukat Cement Pvt. Ltd. He was provided an accommodation also by his employer in a barrack situated within the precincts of the factory itself.

2. On 22.5.2006 at around 5 AM, he made his barrack-mates awakened making them aware about the cardiac arrest suffered by him and on account of such ailment, he lost his life while being shifted for the medical aid. His wife Smt. Deepa Rautela launched proceeding claiming compensation under the Workmen's Compensation Act, 1923 (hereinafter to be referred as "the Act") which was dismissed vide the impugned judgment.

3. It has been urged by learned counsel for the appellant that Mr. Kundan Singh lost his life during the course of his employment because he was staying within the premises of the factory, so the compensation should have been awarded. Another argument, so put forth, is that the main witness Kishan Singh, who carried his companion Kundan Singh (deceased) to the hospital, has not been

examined by the authority below and in want of his evidence, the impugned findings could not have been arrived at.

4. This Court is unable to agree with any of the contentions put forth on behalf of the appellant for the reason that it is evidently clear from all the documents on record that deceased suffered a cardiac arrest while he could not leave his bed in the morning of the fateful day. So, by no stretch of imagination, it can be inferred that the deceased died during the course of his employment. The Hon''ble Apex Court in the case of *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and another* (2007) 11 SCC 668, has held that even if an employee loses his life during the course of his employment i.e. while working actually on the spot and if he passes away due to cardiac arrest, then simply the liability to pay the compensation cannot be fastened on the employee; in such circumstances, the whole facts are to be evaluated on the anvil whether the employee lost his life on account of the stress and strain as a result of cardiac pain due to excessive and overwork as also the nature of the job.

5. In the present set of circumstances, the deceased lost his life while he was on his bed during the whole night, hence to presume that he died during the course of his employment, shall explicitly be against the law, as envisaged u/s 3 of the Act. The Hon''ble Apex Court in the case of *Rashida Haroon Kupurade v. Div. Manager, Oriental Insurance Co. Ltd.* (2010) (124) FLR 1007, has further made the position more clear that where the death occurred after six months of the accident, then it was opined that in order to bring the controversy in question under the purview of the Act, there should be some link between the death and the accident which occurred with the employee during the course of his employment. If the nexus is not there, then the compensation cannot be awarded, as contemplated u/s 3 of the Act, nonetheless, the death had been occurred after some time of such accident.

6. As regards not examining the witness Kishan Singh or any other person or even the employer, by whom or under whose instructions Kundan Singh was being shifted to the hospital, shall not affect the merits of the case for the reason that the burden to call such witness for deposition was on the applicant/claimant and not on the employer.

7. In view of the above discussion, this appeal has no force and it is hereby dismissed.

8. Lower court record along with a copy of this judgment be transmitted to the Court below for information.