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**(2008) 12 JH CK 0018**  
**In the Jharkhand High Court**

Smt. Dhela Rani and Another

APPELLANT

Vs

Sri Deepak Prasad and Others

RESPONDENT

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**Date of Decision :** 18-12-2008

**Acts Referred:**

Employees Compensation Act, 1923 — Section 3  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2010) ACJ 235 : (2009) 1 JCR 326

**Hon'ble Judges :** M.Y. Eqbal, J;Jaya Roy, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

M.Y. Eqbal, J.—This appeal is directed against the judgment and award dated 12.1.2004 passed by Motor Accident Claims Tribunal, Giridih in Claim Accident Case No. 47/99, whereby he has dismissed the claim application filed by the claimants-appellants.

2. The facts of the case lie in a narrow compass. The deceased Sunil Kumar Saw was waiting near his vehicle No. BR 23P-0672 at the Giridih bus stand for passengers. In the meantime the driver of another offending vehicle No. BR 17P-0687, namely Raju Thathera, quarreled with the deceased on the issue of taking passengers in the vehicle and thereafter the driver Raju Thathera of vehicle No. BR 17P-0687 turned his vehicle and dashed the same rashly negligently, as a result of which the deceased was crushed under the wheel of the vehicle and died. The claimants, who are the legal representatives of the deceased Sunil Kumar Saw, filed the claim application claiming compensation. The respondent-Insurance Company contested the case by filing written statement stating, inter alia, that the driver of the offending vehicle, namely, Raju Thathera was convicted for causing murder u/s 302 IPC. The defence of the Insurance Company was that the death was not caused by accident but by deliberate act of Raju Thathera with intent to commit murder of the deceased. So the claim application is not maintainable and the insurance company has no liability. The

Tribunal, after considering the facts of the case and the evidence adduced by the parties, came to the conclusion that Sunil Kumar Saw died due to running over the vehicle by the driver Raju Thathera. Before running of the vehicle, there was a quarrel between the deceased Sunil Kumar Saw and Raju Thathera on the issue of passengers. The tribunal further held that before causing death Raju Thethara abused the deceased and threatened to kill him by crushing and in fact after uttering these words and abusing, he crushed the deceased to death. The Tribunal, therefore, held that it was a deliberate act on behalf of Raju Thathera and he caused the death deliberately. Hence, the claim application is not maintainable and the claimants are not entitled to any compensation either from the owner of the vehicle or from the Insurance Company.

3. Mr. Arvind Kumar Mehta, learned Counsel appearing for the appellant, assailed the impugned award as being contrary to law and the fact available on record. Learned Counsel submitted that the Tribunal has committed serious illegality insofar as it failed to take into consideration that death was caused by the use of the motor vehicle and it was an accidental death. Learned Counsel submitted that the Tribunal further failed to consider that it was only due to rash and negligent driving of the offending vehicle, the deceased was dashed and sustained grievous injuries which resulted in his death. Learned Counsel lastly submitted that the Tribunal has erred in law in not following the decision of the Supreme Court in the case of *Rita Devi v. New India Assurance Co. Ltd.* (2000) S.C.J. 801.

4. Before appreciating the submission of the learned Counsel, I would first like to discuss as to whether in the instant case it was an accidental death or otherwise.

5. The term 'accident' has not been defined under the Motor Vehicles Act. The term 'accident' cause controversy inasmuch as whether an intentional injury causing death is an accident.

6. In the book 'Law of Insurance' by Raoul Colinvaux, (Fifth Edition), the author defines the word as under:

Definition of 'accident'?

The definition of the risk insured against under accident policies occasions peculiar difficulty. Many of the questions on them arise concerning the true meaning of the word 'accident,' and it is difficult so to define the word as to include the innumerable mishaps which happen in the daily course of human life: and it is often equally difficult to decide whether a mishap comes within the risk taken, or the exceptions made, by the terms of a particular policy.

Accident excludes intentional act of assured

Nor is an intentional act of the assured an 'accident' however unforeseen an injury may be which results from it. There was held to be nothing accidental in the assured pushing and pulling a drunken man from his premises, even though, unknown to him, his heart was in so weak a condition that he died from the

exertion. Thus, there is no accident where a person with a weak heart injures it by running to catch a train. In a Scottish case the assured was putting on his stockings when 'he felt something give way in his inside,' and soon died. He was held not to be covered by an accident policy. In South Africa a drunken man intentionally driving dangerously was held not to have been killed as a result of an 'accident.'

7. In the book 'Law of Motor Insurance' by Robert Merkin and Jeremy Stuart-Smith, First Edition, the term 'accident' has been defined as:

The word 'accident' is ambiguous, and might refer to what has happened from the point of view of the victim (in that he has suffered unexpected injury) or from the point of view of the driver (in that the victim's injuries were caused unintentionally). The difference between these two possibilities is brought into sharp focus in a deliberate running down case: injuries inflicted may be regarded as an accident in the former sense but not in the latter sense. The point divided the Court of Appeal in *Charlton v. Fisher*, the majority view being that a deliberate running down could be classified as an accident for the purposes of policy coverage. It may be that the point is of no real significance, as a direct action under the 2002 Regulations is probably unavailable on the separate ground that the rights of the victim as against insurers are the same as those of the assured, but that public policy precludes any action by the assured.

8. The term 'accident' caused controversy. Did it imply as in criminal jurisprudence, absence of mens rea or was mens rea irrelevant as in insurance contract. Lord Macnaghten in *Fenton's v. Thorely* case (1903) A.C. 443 observed that the Act used 'accident' in its popular sense as denoting an unlooked for mishap or an untoward event which is not expected or designed. (1972) A.C.J. 492, para. 13.

9. In Halsbury's Law of England, Fourth Edition at para.569, the term 'accident' has been defined as under:

569. Meaning of 'accident'. the event insured against may be indicated in the policy solely by reference to the phrase 'injury by accident' or the equivalent phrase 'accidental injury', or it may be indicated as 'injury caused by or resulting from an accident'. The word 'accident', or its adjective 'accidental', is no doubt used with the intention of excluding the operation of natural causes such as old age, congenital or insidious disease or the natural progression of some constitutional physical or mental defect; but the of what is included by the word is not entirely clear. It has been said that what is postulated is the intervention of some cause which is brought into operation by chance so as to be fairly describable as fortuitous. The idea of something haphazard is not necessarily inherent in the word; it covers any unlooked for mishap or an untoward event which is not expected or designed or any unexpected personal injury resulting from any unlooked for mishap or occurrence The test of what is unexpected is whether the ordinary reasonable man would not have expected the

occurrence, it being irrelevant that a person with expert knowledge, for example of medicine, would have regarded it as inevitable. The standpoint is that of the victim, so that even wilful murder may be accidental as far as the victim is concerned.

10. In para-575 of the Halsbury's Law of England, it is mentioned that injury caused by a wilful act is not an accident. Paragraph 575 reads as under:

575. Injury caused by a wilful act. An injury caused by the wilful or even criminal act of a third person, provided the insured is not a party or privy to it, is to be regarded as accidental for the purposes of the policy, since from the insured's point of view it is not expected or designed. Injuries sustained by a gamekeeper in a criminal attack upon him by poachers, by a cashier who was murdered by a robber, and by a master at an industrial school who was murdered by the boys, have been held to be accidental. However, if the immediate cause of the injury is the deliberate and wilful act of the insured himself, there would seem to be no accident, and no claim will lie under the policy, at any rate if the insured is not mentally disordered at the time of his act.

11. The word Accident as expressed by Lord Halsbury, LC in *Hamilton Frazor and Co. v. Pandrof & Co.* (1887) 12 APP Cas 518, 524, is the idea of something fortuitous and unexpected. Therefore, an injury is said to be accidentally caused whensoever it is neither willfully nor negligently caused.

12. According to Willes, J in *Fenwick v. Schmalz* (1868) LR 3 CP 313, 316, an accident is not the same as an occurrence, but is something that happens out of the ordinary course of the things. According to Oxford dictionary, accident 'is an unfortunate event which is unintentional and unexpected'. An effect is said to be accidental when the act by which it is caused is not done with the intention to causing it.

13. The main dispute raised by the Insurance Company is that the death of the employee namely the driver of the vehicle cannot be said to be an accident arising out of and during the course of 5 M.A. No. 132 of 2004 employment. The term 'accident' has not been defined under the aforesaid Act, but the law in this regard has been well settled. The word 'accident' would mean kind of event which is unlooked for and sudden and cause personal injury. The Workmen's Compensation Act, 1923 is in pari materia with the Workmen's Compensation Act, 1897. A similar question came for consideration before a Full Bench of the Allahabad High Court in the case of *Abida Khatoon v. General Manager, Diesel Locomotive, Varanasi* 1972 ACJ 489 and their Lordships have considered the English decisions while determining the meaning and connotation of the term 'accident' arising out of and in course of employment. The Full Bench followed various decisions, including the view taken by the court of appeal in *Nishet v. Reyne* 1910 (2) KB 689 and *Anderson v. Balfour* 1910 (2) ILR 497 and held that the definition of accident extended to case of death by murder. It was observed that injury by 'accident' is an integrated phrase and an event in the ordinary

and popular sense can be described as an accident even though it was caused by deliberate violence.

14. It is well settled that the word 'accident' excludes the idea of wilful and intentional act, but it includes 'murder' as it was an accidental happening so far as the workman is concerned. The term 'accident' for the purpose of law relating to compensation for personal injury sustained by workman and the employer's liability in that behalf includes any injury which is not designed by the workman himself and it is of no consequence that the injury was designed and intended by the person inflicting the same. In *Trim Joint District School Board of Management v. Kelly* 1914 AC 667 where an Assistant Master at an industrial school was assaulted and killed by two of the pupils while the Assistant Master was performing his duties, the House of Lords held that his death was caused by an accident for the purpose of the same statute. Viscount Haldane L.C. pointed out that the meaning of the term 'accident' would vary according as the context varies, and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence or absence of mens rea and the law of marine insurance where the maxim : *In Jure non remote causa set proxima spectatur* (in law the proximate, and not the remote, cause is to be regarded) applies. The learned Lord Chancellor said :

My Lords, if we had to consider the principle of the Workmen's Compensation Act as *res integra*, I should be of opinion that the principle was one more akin to insurance at the expense of the employer of the workman against accidents arising out of and in the course of his employment than to the imposition on the employer of liability for anything for which he might reasonably be made answerable on the ground that he ought to have foreseen and prevented it. I think that the fundamental conception is that of insurance in the true sense. And if so it appears to me to follow that in giving a meaning to 'accident' in its context in such a scheme one would look naturally to the proxima causa of which Lord Herschell & Lord Barmwell spoke in connection with marine insurance, the kind of event which is unlooked for and sudden, and causes personal injury, and is limited only by this, that it must arise out of and in the course of the employment. Behind this event it appears to us that the purpose of the statute renders it irrelevant to search for explanations or remote causes, provided the circumstances brings it within the definition. No doubt, the analogy of the insurance cases must not, as Lord Lindley points out in his judgment in *Fenton v. Thorley* be applied so as to exclude from the cause of injury the accident that really caused it, merely because an intermediate condition of the injury : in that case a rupture arising from an effort voluntarily made to move defective machine has intervened. If, so far as the workman is concerned, unexpected misfortune happens and injury is caused which the statute seems to me to impose in the interest of the employer, who cannot escape from being a statutory insurer, is that the risk should have arisen out of and in the course of the employment.

15. In the case of *Fenton v. J. Thorley & Company Ltd* 1903 AC 443 it was held

that in the Workmen's Compensation Act, 1897, the word 'accident' was used in popular and ordinary sense and meant mishap or untoward event not expected or designed. Lord Lindley has observed that the word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events.

16. Besides the various English decisions, some of which have been referred to hereinabove, I must also take notice of one important decision of the Bombay High Court in the case of Bhagubai Vs. General Manager, Central Railway, V.T., Bombay, in which the provision of Section 3 of the Workmen's Compensation Act was considered and the principle of law has been laid down. His Lordship Chagla, C.J. held:

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 some thing 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 the accident is established?

17. Similar question arose before the Supreme Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , where the

Supreme Court has made a clear distinction between murder and death arising out of accident. In that case, the fact was that some unknown persons hired an autorickshaw, but subsequently stole away the same and killed the driver. The legal representatives of the driver filed a claim case for the grant of compensation on the ground that the driver died in course of employment. The Tribunal allowed the claim against the owner of the auto-rickshaw and also fastened legal and statutory liability. However, the High Court allowed the appeal on the ground that the case was one of murder and not that of an accident. The matter ultimately went to the Supreme Court. The Supreme Court clearly laid down distinction between murder and death arising out of an accident. For better appreciation, paragraphs 10, 14 and 18 of the judgment are quoted herein below:

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.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was dutybound to have accepted the demand of fare-paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing theft of the autorickshaw.

18. In the instant case, as we have noticed the facts, we have no hesitation in coming to the conclusion that the murder of the deceased (Dasarath Singh) was due to an accident arising out of the use of motor vehicle. Therefore, the trial court rightly came to the conclusion that the claimants were entitled for compensation as claimed by them and the High Court was wrong in coming to the conclusion that the death of Dasarath Singh was not caused by an accident involving the use of motor vehicle.

18. Having regard to the discussions made hereinabove, in our considered opinion, an act is said to be accidentally caused when it is not caused either by a willful or negligent act, such act must not be done with a criminal intention to cause injury or death.

19. Coming back to the instant case, the undisputed facts are that before the incident took place, there had been a quarrel between the deceased Sunil Kumar Saw and Raju Thathera for the purpose of taking passengers in their respective vehicles. Because of such quarrel Raju Thathera, with the criminal intention to kill the deceased, started his auto rickshaw and dashed the deceased, as a result of which the deceased was crashed under the wheel and died. In our considered opinion, therefore, the offender Raju Thathera used the vehicle as a weapon to kill the deceased. In the aforesaid circumstances, it cannot be held to be an accidental death. It was the felonious act where death is caused with the criminal intent and with a motive to kill the deceased. We are, therefore, of the opinion that the dominant intention of the felonious act of the offender was to kill the deceased and, therefore, it is a murder simplicitor. We have, therefore, no hesitation in holding that the tribunal has rightly held that the claimant-appellant is not entitled for compensation.

20. For the reasons aforesaid, we do not find any merit in this appeal, which is, accordingly, dismissed.