

**(2009) 02 UK CK 0013**  
**In the Uttarakhand High Court**

Smt. Som Lata and Others

APPELLANT

Vs

Pradhan Prabandhak, Roza Sugar Works

RESPONDENT

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**Date of Decision :** 12-02-2009

**Acts Referred:**

Employees Compensation Act, 1923 — Section 30

**Citation :** (2009) 2 UC 846 : (2009) 1 UD 156

**Hon'ble Judges :** B.C.Kandpal, Acting C.J.

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

B.C. Kandpal, A.C.J.

1. This appeal, u/s 30 of Workmen's Compensation Act, 1923, has been preferred against the judgment and order dated 5.2.2004 passed by the Workmen's Compensation Commissioner/Assistant Labour Commissioner, Dehradun, in W.C.A. Case No. 29 of 2001, Smt. Som Lata and Ors. v. Pradhan Prabandhak Roza Sugar Works.

2. The claimant-Smt. Som Lata, who is the wife of deceased-Ashok Kumar, filed W.C.A. Case No. 29 of 2001 claiming a compensation of Rs. 1,92,140/- in respect of the death of her husband on the ground that her husband (deceased) was employed as "Taul Lipik" under the respondent in "Roza Sugar Works" for the crushing session 1991-92 and while discharging his duty at main gate he died at 2.00 p.m. on 11.1.1999 in the course of his employment. It has been alleged that inspite of the fact that deceased was declared dead by the doctor of the employer post-mortem of deceased was not got conducted by the Manager of the factory. According to the claimant, the age of her husband-Ashok Kumar (deceased) was 37 years at the time of accident and he was getting a monthly salary of Rs. 2000/-.

3. The respondent filed written statement contending therein that Sri Ashok Kumar was employed on the post of trainee clerk, not on the post of Taul Lipik. It

was also pleaded that deceased had started the work on the said post since the seasonal year 1992-94 and on 11.1.1999 he was on weekly rest and on the said date deceased had not done any weighing work and he remained worked in his shift w.e.f. 4th January, 1999 to 10th January, 1999. It has further been stated that plea taken by the claimant with regard to death of her husband during the course of work of weighing the articles, is not correct. It has also been alleged that death of deceased-Ashok Kumar had taken place on the day of his weekly off at his residence Roza and his dead body was sent to his permanent residence. It has also been pleaded that compensation under Workmen's Compensation Act is payable only in case of death of a person in the course of or out of the employment and in this case death of the deceased is natural one, therefore, the legal heirs of deceased are not entitled for compensation in case of natural death. It has also been pleaded that before the death deceased had been paid a sum of Rs. 2000/- per month as traineeship allowance. In the additional pleas, it has been pleaded that on 11.1.1999 was the weekly off day of deceased-Ashok Kumar and he died in Mess Bungalow No. 7 at 2.00 p.m. and death was caused on account of heart failure. It has also been pleaded that deceased workman does not come within the definition of "workman" under the provisions of Workmen's Compensation Act as death of deceased had not taken place arising out or in the accident during the course of employment. Therefore, the answering opposite party is not liable to pay any compensation under Workmen's Compensation Act.

4. The learned Workmen's Compensation Commissioner on the basis of pleadings adduced by the parties framed following issue:

Whether deceased-Ashok Kumar died in accident arising out of or in course of employment? If yes, its effect?

5. Parties led oral as well as documentary evidence in support of their cases. On a carefully consideration of the evidence on the record, the learned Workmen's Compensation Commissioner held that death of the deceased did not occur in the course of and out of his employment which is the condition precedent to allow compensation under Workmen's Compensation Act. Accordingly, the Workmen's Workmen Commissioner rejected the claim petition filed by the claimant, vide judgment and order dated 5.2.2004.

6. Feeling aggrieved by the aforesaid impugned judgment and order, the appellant-claimant has preferred the present appeal, u/s 30 of Workmen's Compensation Act, 1923, before this Court.

7. Heard Sri M.C. Pant, learned Counsel for the appellants, Sri A.N. Sharma, learned Counsel for the respondent and perused the record.

8. The short controversy involved in the case is as to whether deceased-Ashok Kumar Singh has died during the course of his employment or not.

9. From perusal of the evidence adduced by the parties before the Workmen's

Compensation Commissioner it is quite clear that on the date of death of deceased-workman it was weekly off day of the deceased and he died at this residence. Sri Vinod Kumar Singh produced in the case by the opposite party was Time Keeper in the factory and he has given a categorical statement that on the date of death of workman-deceased i.e. on 11.1.1999 deceased was on his weekly off and he had died at this residence allotted to him by the factory. Another witness Sri Mahesh Chandra Gupta who was also a workman in the factory also supported the statement of Sri Vinod Kumar Singh and narrated that deceased-Ashok Kumar Singh was on his weekly off on the date of his death and he had died his natural death. On the other hand, claimant-Smt. Som Lata has examined herself before the learned Commissioner and alleged that on the date of accident her husband was working in the factory and he had died due to heart attack. In her cross-examination this witness has admitted that on the date of death of her husband she was not present there and she is not aware on which date her husband used to remain on weekly off, therefore, her statement has rightly been disbelieved by the learned Commissioner. Another witness produced by the claimant is Sri Devendra Singh Rathi. This witness has also stated that deceased on the date of his death was weighing the articles in the factory and he was on his duty. Although this witness has stated that he used to do the weighing work at the gate in Cane Department but in the attendance register brought before the learned Commissioner his name did not figure and therefore the learned Commissioner has turned his statement as interested statement and accordingly disbelieved the same. In view of the categorical statements of the witnesses produced by the opposite party-factory the learned Commissioner has rightly come to the conclusion that deceased had died at his residence when he was on his weekly off.

10. Learned Counsel for the respondent has submitted before me that in this case death of deceased-Ashok Kumar could not be said to have been caused by any accident arising out of and in course of employment. In support of his submission, he has invited my attention towards the decision of Hon"ble Apex Court in the case of Jyothi Ademma v. Plant Engineer, Nellore and Anr. reported in 2006(5) Supreme 327, paragraphs No. 8, 9 and 10 of which read as follows:

8. In the present case it has been brought on record that the deceased was suffering from chest disease and was previously being treated for such disease. The High Court also noted that the job of the deceased was only to switch on or off and, therefore, the doctor had clearly opined that there was no scope for any stress or strain in his duties. In view of the factual findings recorded the High Court's judgment does not suffer from any infirmity.

9. However, it has to be noted that the amount has already been paid to the appellants, as stated by learned Counsel.

10. Considering the peculiar circumstances of the case, we direct that there shall be no recovery from the appellant of any amount 6 paid, though in view of our judgment she is not entitled to any compensation.

11. Having considered the entire material available on record as well as hearing learned Counsel for the parties and going through the above-cited judgment, I do not find any reason to interfere with the findings recorded by the Workmen's Compensation Commissioner. The view taken by Workmen Compensation Commissioner appears to be correct in the light of the observations made by the Hon''ble Apex Court in paragraphs-8, 9 and 10 of the judgment reported in Jyothi Ademma's case (supra).

12. The Workmen Compensation Commissioner has recorded the finding of fact on the point of workman holding that death of the deceased-Ashok Kumar did not occur in the course of and out of his employment, rather death of deceased had taken place at his residence on the day of his weekly off and the same is not liable to be interfered with in this appeal. I do not find any substantial question of law involved in this appeal and the same is liable to be dismissed.

13. Accordingly, the appeal is dismissed. The impugned judgment and order dated 5.2.2004 passed by Workmen's Compensation Commissioner, is hereby confirmed.