
(1997) 06 MP CK 0010
In the Madhya Pradesh High Court
Case No : L.P.A. No. 44 of 1991

State Bank of India

APPELLANT

Vs

Vijay Laxmi (Smt.)

RESPONDENT

Date of Decision : 28-06-1997

Acts Referred:

Workmens Compensation Act, 1923 — Section 2

Citation : (1998) 2 ACC 345 : (1999) ACJ 33 : (1999) 3 LLJ 579 : (1998) 1 MPLJ 432

Hon'ble Judges : A.K. Mathur, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : V.S. Shrotri, for the Appellant; S.P. Sethi, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

This Letters Patent Appeal is directed against the judgment passed by the learned single Judge in Misc. (First) Appeal No. 69 of 1986 affirming the order of the Commissioner for Workmen's Compensation (State Labour Court) at Jabalpur (hereinafter referred to as "Commissioner") in Claim Case No. 40/84/WC.

The respondent filed a claim petition under the Workmen's Compensation Act, 1923 (hereinafter referred to as "Act") before the Commissioner for grant of compensation for the death of her husband, Santanman Krishnan Mudaliar who was employed as a Messenger in the State Bank of India, at Barginagar Branch. Her assertions in the claim petition are that on August 10, 1983 her husband was proceeding on duty by public bus which plunged into river Narmada near Tilwaraghat. In the said unfortunate accident her husband died. The claimant raised her claim by issuing notice to her husband's employer, State Bank of India, but as no action was taken she filed the application for grant of compensation pleading, inter alia, that her husband had died in course of

employment, and she was entitled to get compensation which is to be computed on the basis of monthly wages received by her deceased-husband.

The claim of the respondent was resisted by the employer on the grounds that the deceased was not a workman within the meaning of Sec.2(n) of the Act and he did not die in an accident arising out of and in the course of employment. The Commissioner, on consideration of materials on record, did not accept the stand of the employer and granted compensation of Rs. 21,600/-, imposed a penalty of Rs. 2000/- and further directed for payment of interest at the rate of 6% per annum. In addition to the same cost of Rs. 200/- was awarded.

The aforesaid award of the Commissioner was assailed in appeal before this Court on two grounds; firstly, the deceased was not a worker within the meaning of Section 2(n) of the Act; and secondly, it was not an accident arising out of and in the course of employment. The learned single Judge repelling the aforesaid contention came to hold that deceased S.K. Mudaliar was in the employment of the appellant-Bank on monthly wages, and, therefore, he would be deemed to be a workman within the definition of Section 2(n) of the Act. While dealing with the contention relating to the accident arising out of and in the course of employment the learned single Judge opined that any workman who proceeds for duty from his residential quarter to the work site would be deemed to be leaving for the purpose of the employment and there is notional extension of employees premises. As no residential facility was provided at Barginagar to the deceased he was compelled to commute from Jabalpur, and therefore, his travel would be deemed to be in the course of his employment. Arriving at such a conclusion the learned single Judge confirmed the award relating to grant of compensation including interest and cost but set aside the direction imposing penalty.

Impugning the aforesaid judgment Mr. V.S. Shrotri the learned counsel for the appellant has contended that the finding of the learned single Judge that the deceased died in an accident arising out of and in the course of employment is erroneous inasmuch as there cannot be notional extension of employer's premises so as to include, a travel by public transport to the place of work. To substantiate his submission he has placed reliance on a decision rendered in the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, .

Mr. S.P. Sethi, the learned counsel for the respondent has supported the judgment for the reasons indicated therein.

Before we address ourselves with regard to the merits of the contention advanced by the learned counsel for the appellant we would like to state that the facts with regard to the employment of the deceased in the State Bank of India and payment of monthly wages to him are not in dispute. It is also admitted that the deceased was an unfortunate victim of the accident while travelling from Jabalpur to attend his duty at Barginagar. In this admitted factual scenario a singular question that falls for consideration is whether the accident can be

deemed to be one arising out of and in the course of employment.

We notice that the learned single Judge has observed that the deceased was not provided with an accommodation at Barginagar by the Bank, and he was not living at Jabalpur out of his own volition in spite of the facility of accommodation extended by the employer. It is admitted that Barginagar is 10-15 kms. away from the municipal limit of Jabalpur.

To appreciate the reasonings given by the learned single Judge it is appropriate to analyse the concept of notional extension of an employer's premises. The theory of notional extension might engulf some reasonable extension in both time and place and would cover some extended areas in some special cases but that would depend upon the facts of each case and, more so, if a causal connection between the accident and employment is established. That apart it is to be proved with certitude that the accident is suffered in the course of employment. Otherwise, the said concept cannot be extended to cover a journey undertaken to go to the place of work. In this context we may refer to the decision rendered in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, , wherein the Apex Court observed as follows at pp. 251-252 :

"It is well settled that when a workman is on a public road or a public place or on a public transport he is there as any other member of the place and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends up to point D, the theory cannot be extended beyond it. The moment a workman left point B, in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both, the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable."

Recently in the case of Regional Director, E.S.I. Corporation (supra) the Apex Court while dealing with the journey to the place of work has laid down as under (at page 38):

"Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act.

The words "accident.....arising out of.....his employment" indicate that any accident which occurred while going to the place of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

The other words of limitation in Sub-section (8) of Section 2 "in the course of his employment". The dictionary meaning of "in the course of" is "during (in the course of time, as time goes by), while doing", (THE CONCISE OXFORD DICTIONARY, New Seventh Edition). The dictionary meaning indicates that the accident must take place within or during the period of employment. If the employee's work shift begins at 4-30 p.m. any accident before that time will be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4-30 p.m. But this journey was certainly not in course of employment. If "employment" begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided."

In view of the aforesaid position of law the travel by public transport by deceased-Mudaliar cannot be regarded as a travel as a part of his duty. Nothing has been brought on record that the employee was obliged to travel in any particular manner under the terms of the employment nor he was travelling in a transport provided by the employer. Applying the aforesaid ratio to the factual matrix of the present case we are of the considered view that the judgment passed by the learned single Judge cannot be maintained, and accordingly we set it aside, we hold that the claimant- respondent is not entitled to get any compensation under the provisions of the Act from the appellant herein.

In course of hearing of this appeal we have been told at the Bar that Rs. 10,000/- (Rs. Ten thousand only) from the deposited amount before the Commissioner has already been withdrawn by the claimant-respondent. Mr. Sethi has submitted that the respondent had lost her husband while she was in her thirties, her financial condition is precarious and she is not in a position to sustain her family. He has submitted that direction may not be given for refund of the amount already withdrawn. On consideration of the aforesaid submission we direct that the amount already withdrawn should not be refunded.

In the result the appeal is allowed. However in the peculiar facts of the case there shall be no order as to cost.