
(1988) 09 RAJ CK 0070
In the Rajasthan High Court

State of Rajasthan and Others

APPELLANT

Vs

Kanta

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (1990) 1 ACC 181 : (1989) ACJ 615

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—This is a Misc. Appeal u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") filed by the State against the award passed by the Workmen's Compensation Commissioner, Jodhpur, in the compensation claim case No. 3 of 1985 awarding compensation to the extent of Rs. 67,676/-with costs of Rs. 250/-.

2. The brief facts giving rise to the Civil Misc. Appeal are that a claim was filed by Kanta wife of deceased Amar Singh, on the allegation that deceased Amar Singh was working under Assistant Engineer, Irrigation Survey Sub-Division, Balotra and Executive Engineer, Irrigation Field Investigation Division, Jodhpur. It is alleged that her husband deceased Amar Singh, when posted at Balotra was a driver in the Field Investigation and was drawing a sum of Rs. 780/- per month. The Executive Engineer, Field Investigation, Jodhpur, by his letter dated 14.12.1984, directed him to attend the 8th Lok Sabha elections along with vehicle No. RSN 1338 to Collector, Jodhpur. In pursuance of this direction the deceased on 14.12.1984 reported to the Collector, Jodhpur with the vehicle. On 17.12.1984, police and her relative informed her that deceased Amar Singh had died during the course of duty and his dead body has been sent for post-mortem to Mahatma Gandhi Hospital, Jodhpur. This was also informed by the Collector, Jodhpur to the Executive Engineer, Field Irrigation by his communication dated 21.12.1984. Hence, present claim was filed by deceased's widow under the Workmen's Compensation Act, that she may be awarded compensation on

account of death of her husband who had died in the employment of the respondent and in course of his duties. The claim was contested by the defendant State and they denied that the workman had died in course of his employment. The claim was initially filed for a sum of Rs. 24,000/-. Thereafter, an amendment application was moved and the amount was increased from Rs. 24,000/- to Rs. 67,676/- in accordance with the provisions of the Act. The claimant in support of her contention has produced a number of witnesses and got a large number of documents exhibited. The non-claimant has also examined the witnesses in support thereof and contended that the deceased had not died in course of employment.

3. The learned Commissioner after hearing, both the parties and recording necessary evidence came to the conclusion that the deceased died during the course of employment of the State. As such, the non-claimants are liable to compensate the dependants of the deceased.

4. The basic question which is involved in the present case is whether deceased died in course of employment of the State or not. It is not disputed that the deceased was in the service of the respondent and he was detained for duty at Jodhpur during the election. This is an admitted fact that the deceased was posted at Balotra and he was directed by the Executive Engineer, Field Irrigation, to report to Collector, Jodhpur for election duty. It is also admitted that he was supposed to stay in the office of the Collectorate for 24 hours. This is also an admitted fact that the deceased reported to the Collectorate and he remained in the charge of Collector, Jodhpur for election duty till he died on 17th.

5. Learned Deputy Government Advocate has strenuously urged that as per the medical report it is apparent that the deceased had not died out of the accident arising from the vehicle driven by him. Learned Counsel submits that his dead body was recovered 4 to 5 km. away from the place of his duty and if he had gone away from his duty and had met with the accident then it cannot be said that he had died during the course of employment. As such learned Counsel submits that in these circumstances the claimant is not entitled to compensation as the deceased had not died in the course of employment.

6. Mr. Lodha, learned Counsel for the respondent, strenuously urged that when the claimant has established that deceased was in the service of the appellant and he was detained on duty by the competent officer and he had died during that time then it shall be deemed that the deceased had died during the course of employment and unless it is proved otherwise.

7. I have heard both the learned Counsel for the parties at length and I have perused the record. The first premise is that deceased was in the service of the appellant. It is also not disputed that deceased was directed to report to Collector, Jodhpur on 14.12.1984 and he reported in pursuance of the direction on 14.12.1984 to Collector, Jodhpur. From this fact it is established that from 14th onwards he was on election duty and he was supposed to stay in the office

of the Collectorate, Jodhpur. From this fact it is established that from 14th onwards he was on election duty and he was supposed to stay in the office of the Collectorate, Jodhpur. There is no evidence from the side of the appellant that the deceased had left his job without permission or otherwise. No documentary or oral evidence has been produced to prove this negative factor.

8. As a matter of fact, in the scheme of the Act, if any incumbent died while serving his master then unless it is established by the cogent evidence from the employer that he had not died in discharge of his duty, it will be presumed that he had died in the course of employment. After initial burden discharged that the incumbent had died during the course of service of his master, then burden shifts on the employer to show that he had not died in the course of his employment. But there is no such evidence whatsoever. It is established from the record that incumbent was required to be on duty 24 hours and there is a certificate which was issued in Appendix 4 on record in which the election officer has clearly mentioned as under: (Omitted)

9. From this certificate, it is apparent that the incumbent was required to be present on election duty for all the 24 hours. In case the incumbent had left his place of posting and if any entry had been made to this effect, then perhaps, it could have been argued that the incumbent had left the post without permission, and he had died not in the course of his employment. But there is no evidence whatsoever.

10. Thus, in this view of the matter, when the incumbent was on 24 hours duty with the appellant and was found dead on 17.12.1984 it stands proved that the deceased had died in the course of employment of the appellant.

11. Learned Counsel for the State has invited my attention to Mst. Abida Khatun Vs. General Manager, Diesel Locomotive, . In this case it is found that the injuries which caused the death of deceased were not out of accident but it was a case of murder. Therefore, in these circumstances, no benefit under Workmen's Compensation Act was given.

12. Similarly, in Executive Engineer R.C.P. Central Workshop Division (State of Rajasthan) Vs. Smt. Veera, , it was pointed out that on the fatal date of death the workman-driver was not asked to drive the vehicle. He died at his house, therefore, in the facts and circumstances of this case it was found that there was no connection with the nature of duty and death.

13. Mr. Lodha, learned Counsel for the respondent, has invited my attention to Administrator, Municipal Council Vs. Uma Devi, . In this case it was found that deceased Mithalal, who was working as a Sub- Nakerdar in the Municipal Council, Udaipur, while he was going to join his duties on 10.6.1978 at about midnight, met with an accident and was run over by a scooter, as a result of which he died after two days. In these facts it was found that Mithalal died in course of employment and it was further found that there was no substantial question of law so as to warrant interference by this Court u/s 30 of the Workmen's

Compensation Act.

14, Learned Counsel also invited my attention to Trustees of The Port of Bombay Vs. Aljimulla Rathod, . It was held in this case that unless contrary is shown by the employer, it will have to be presumed that workman met with the accident during hours of employment. In this case the employee was a sweeper and , an accident took place during duty hours. There was no evidence whether accident occurred during the lunch recess or non-recess hours. In this view of the matter, his Lordship held that the deceased died in course of employment and benefit was given to the claimants.

15. In the present case as already pointed out above that from the facts it is clearly established that the incumbent was required to be on his post on election duty for 24 hours. Therefore, it would be deemed that he had died during the course of employment and the claimants are entitled to compensation under the Act. As such, I do not find any merit in this appeal and the same is dismissed. No order as to costs.