
(1988) 09 RAJ CK 0039
In the Rajasthan High Court

State of Rajasthan and Others

APPELLANT

Vs

Smt. Kanta

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (1989) 1 ACC 211 : (1989) 2 LLJ 135

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 Workmen's Compensation Commissioner, Jodhpur, in the compensation claim case No. 3-1985 awarding the compensation to the extent of Rs. 67,676 with the cost of Rs. 250.

2. The brief facts giving rise to this civil misc. appeal are that a claim was filed by Smt. 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 he was posted at Balotra as a driver in the Field Investigation, was drawing a sum of Rs. 780/- one month. The Executive Engineer, Field Investigation, Jodhpur, by his letter dated 14th December, 1984 directed him to attend the 8th Lok Sabha election along with vehicle No. RSN 1338 to Collector, Jodhpur. In pursuance of this direction the deceased on 14th December 1984 reported to the Collector, Jodhpur with the vehicle. On 17th December 1984 police and her relation 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 21st December, 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 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 has 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 number of witnesses and got the large number of documents exhibited. The non-claimant has also] examined the witnesses in support thereof and contended that the deceased has not died in course of the employment.

3. The learned Tribunal after hearing both the parties and recording necessary evidence 1 came to the conclusion that the deceased died during the course of the employment of the State. As such, the non-claimants are liable to compensate the deceased"s-dependent.

4. The basic question which is involved in ." the present case is whether deceased died in course of employment of 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. It 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. It is also an admitted fact that the deceased claimant reported to the Collectorate and he remained in the charge of the 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 deceased has not died out of the accident arising from vehicle, driven by him. Learned Counsel submits that his dead body was recovered 4 to 5 Kilometres away from the place of his duty and if he has gone away from his duty and has met with the accident, then it cannot be said that he has died during the course of the employment. As such learned Counsel submits that in these circumstances the claimant is not entitled to compensation as the deceased has not died in 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 in duty by the competent officer and he has died during that time then it shall be deemed that the deceased has died during the course of the 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 14th of December, 1984 and he reported in pursuance of the direction on 14th December, 1984 to Collector, Jodhpur. From this fact it is

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

8. As a matter of fact in the scheme of the Act if any incumbent had died while serving his master then unless it is established by the cogent evidence from the employer that he has not died in discharge of his duty, it will be presumed that he has died in the course of the employment. After initial burden is discharged that the incumbent has died during the course of service of his master, then burden shifts on employer to show that he has not died in 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:-- (omission)

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

10. Thus, in this view of the matter that when the incumbent was in 24 hours duty with the appellant and he has been found dead on the 17th December, 1984 it stands proved that the deceased has died in course of employment of the appellant.

11. Learned Counsel for the State has invited my attention to *Abida Khatun v. The General Manager, Diesel Locomotive, Varanasi* 1973 1 LLJ 387. In this case it was found that the injuries which caused the death of deceased was not out of accident but it was 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 Working Division, Suratgarh v. Veera A.C.J.* 1975-243 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 the 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-Nakadar in the Municipal Council, Udaipur, while he was going to join his duties on 10th June 1978 at about mid-night, 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 the 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 v. Ajit Mulla Rathod A.C.J. 1984-331. 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 the employment and a benefit was given to the claimants.

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