

(1989) 07 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 124 of 1986

State of Rajasthan

APPELLANT

Vs

Man Kanwar and Others

RESPONDENT

Date of Decision : 07-07-1989

Acts Referred:

Employees Compensation Act, 1923 — Section 30, 4A

Citation : (1990) 2 ACC 482 : (1991) ACJ 446

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Advocate : Kamlesh Joshi, for the Appellant; N.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Milap Chandra, J.—This appeal has been filed u/s 30, Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"), against the order of the Commissioner for Workmen's Compensation, Udaipur (hereinafter to be called "the Commissioner") dated January 31, 1986 awarding Rs. 21,600/- as compensation, Rs. 2,160/- as penalty and interest and Rs. 140/- as costs, total Rs. 23,900/-. The facts of the case giving rise to this appeal may be summarised thus.

2. The deceased Lal Singh was posted as Forest Guard in January, 1983 at Lifafa Forest Outpost. During the night intervening 24th and 25th January, 1983, he had a heart attack while he was on duty. Post-mortem examination on his dead body was performed and the cause of his death was found to be shock due to acute myocardial infarction. A claim petition was filed before the Commissioner by the respondents, No. 1 being widow of the deceased and Nos. 2 and 3 being sons of the deceased Lal Singh. The appellant filed its reply contesting the claim. After framing necessary issues and recording the evidence of the parties, the Commissioner held that the deceased Lal Singh was on duty during the said night, due to overwork he was greatly exhausted and the death was the result of the over-exhaustion and awarded the amounts as said above.

3. It is contended by the learned Deputy Government Advocate that the Commissioner has seriously erred to hold that the heart attack was the result of over-exhaustion and the deceased Lal Singh died while on duty. She contended that he had heart attack while he was taking rest after doing his duty. She further contended that hard cases cannot be allowed to make bad laws and the State had every sympathy for the deceased and the respondents have already been paid their dues. She also contended that the deceased Lal Singh did not die as a result of an accident. She lastly contended that the learned Commissioner seriously erred in awarding penalty and interest.

4. The learned counsel for the respondents duly supported the order under appeal. In support of the cross-objection, he contended that the Commissioner should have awarded penalty at the rate of 50 per cent and interest as the appellant had the audacity to completely deny its liability.

5. It is not in dispute in between the parties that the deceased Lal Singh was in the service of the appellant at the relevant time, his monthly salary was Rs. 595/- and he died in the night intervening 24th and 25th January, 1983 at the Lifafa Forest Outpost as a result of heart attack.

6. The question for consideration in this appeal is whether the heart attack was caused to the deceased Lal Singh by accident arising out of and in the course of his employment. There is nothing on the record to indicate that Lal Singh was a heart patient or he had any such ailment prior to 24th January, 1983. The relevant portions of para Nos. 4 and 5 of the claim petition which read:

(Omitted as in vernacular)

The averment that he had twenty-four hours duty at Lifafa Forest Outpost had not been denied. It had also not been denied that a large number of cattle trespassed in the forest during that night and the deceased had to run fast to turn them out. It had also not been denied that the truck drivers and owners pressed him for early checking and passing of their vehicles. The Forest Guard Pooranmal Chaudhary lodged report, Exh. 2, in the Police Station Lasariya regarding the sudden death of Lal Singh. In it, it has clearly been stated that Lal Singh has died while he was discharging his duty at Forest Outpost, Lifafa. Man Kanwar, PW 1, widow of the deceased Lal Singh, had deposed that her husband died while he was on duty. Cattle Guard Birdaram, PW 2, has deposed that he was posted at Forest Outpost, Lifafa as a Cattle Guard and deceased Lal Singh was posted as a Forest Guard, their duty was for twenty-four hours, the work at Lifafa Forest Outpost was of 3-4 Forest Guards but the deceased Lal Singh was the only Forest Guard there. He has further deposed that both of them took two rounds of the area on that day for four hours each, they got tired by the evening, 50-60 cattle had trespassed into the forest and the deceased chased them 2-3 miles to turn them out from the forest. As the Forester was not there, the vehicle drivers and owners were also asking him for promptly checking their vehicles and issuing passes and he checked many vehicles and issued passes on that day, the

work was many times more than the other days. He lastly deposed that while working, he went to the quarter, put off his clothes, started sweating and said that he had great pain in his chest and after some time, he breathed his last. Similar is the statement of Udai Singh who had gone to take dry wood from the Lifafa Forest Outpost. Dr. Kailash Chand has deposed that he conducted the post-mortem examination on the dead body of the deceased Lal Singh on January 25, 1983, prepared the post-mortem report, Exh. 1 and the cause of his death was shock due to acute myocardial infarction. He has further deposed that deceased might have got exhausted before his death. The Assistant Forest Conservator, Hari Singh, was produced by the appellant. In the cross-examination, he has admitted that he was not present at the Lifafa Forest Outpost on the day of the occurrence and he has given his statement on the basis of the report of the Forester Pooranmal Chaudhary. It maybe mentioned here that no witness of the respondents was cross-examined by the appellant. It is well proved from their statements that the deceased Lal Singh had heart attack on January 24, 1983 while discharging his duties at Lifafa Forest Outpost and as a result thereof, he died during that night. Their statements find corroboration from the post-mortem report, Exh. 1 and the report, Exh. 2, of the Forester Pooranmal Chaudhary. Practically, there is no evidence in rebuttal. The statement of the Assistant Conservator of Forest Hari Singh is of no value as, admittedly, he was not present on the day of the occurrence at Lifafa Forest Outpost and he gave statement on the basis of the report of the Forester Pooranmal Chaudhary. At the risk of repetition, it maybe mentioned here that Pooranmal Chaudhary clearly stated in his report, Exh. 2, that the deceased Lal Singh died at the Lifafa Forest Outpost while discharging his duty. The Commissioner has rightly held that the heart attack was caused to the deceased Lal Singh by excessive work which he did while discharging his duty and as a result thereof, he died and the respondents are entitled to get compensation under the Act.

7. The amount of compensation of Rs. 21,600/- has not been challenged. Cross-objection has been filed for the enhancement of the amount of penalty and interest. The Commissioner has awarded penalty and interest to the extent of Rs. 2,160/- at the rate of 10 per cent. The respondents claimed interest at the rate of 6 per cent besides penalty to the tune of 50 per cent of the amount awarded as compensation. This is the maximum limit permissible u/s 4A of the Act. Having regard to the facts and circumstances of the case, the amount of penalty awarded at the rate of 10 per cent is inadequate. It should be at least to the extent of 25 per cent of the amount awarded and the interest should have been awarded separately at the rate of 6 per cent as provided u/s 4A(3) of the Act. It is clear from the certificate of the Commissioner that the amount of Rs. 23,900/- has been deposited by the appellant before filing this appeal.

8. Consequently, the appeal is dismissed with costs and the cross-objection is partly allowed. The amount of penalty is increased from Rs. 2,160/- to Rs. 5,400/-. The respondents will also get interest at the rate of 6 per cent per annum on Rs. 21,600/- from 1st March, 1983 to the date of its actual payment.

To this extent, the order of the Commissioner for Workmen's Compensation, Udaipur dated January 31, 1986 is modified. The Commissioner for Workmen's Compensation, Udaipur will make payment of Rs. 23,900/- which has already been deposited with him by the appellant within a month from the date of receipt of the copy of this order to the respondents.