

(2002) 02 JH CK 0014

In the Jharkhand High Court

Case No : Appeal from Original Order No. 51 of 2001

Steel Authority of India Ltd.

APPELLANT

Vs

Smt. Nirmala Devi

RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 3

Citation : (2004) ACJ 1314 : (2003) 1 ACC 355 : (2002) 98 FLR 616

Hon'ble Judges : H.S. Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : R.K. Mehrotra, for the Appellant; B.V. Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. Rajeshwar Choud-hary. Staff No. 018227 was employed as driver in Bokaro Steel Plant. On 4.12.1995, while coming from his residence to join his duty in general shift from 8 a.m., on way at 7.30 a.m., he was shot at by some miscreants and died.

2. His widow, Nirmala Devi, filed an application for compensation under the provisions of Workmen's Compensation Act, 1923 (hereinafter referred to as the Act'). Presiding Officer, Labour Court, Bokaro Steel City, by impugned judgment and award dated 20.12.2000 granted a sum of Rs. 1,28,330/- with interest at the rate of 12% per annum payable to her as compensation under the Act.

3. Steel Authority of India, the employer challenged maintainability of the proceeding under the Act and contested on the ground that it was a case of murder and not of an accident. In the criminal case filed for his murder, his wife, Nirmala Devi, the claimant herein, was also made an accused. Besides this, the incident did not take place In course of employment and at the relevant time deceased was not on duty.

4. The court below held that deceased workman was shot dead, while he was going to attend his duty. Applying ratio of a decision of Madhya Pradesh High

Court in *Western Railway Vs. Chandrabai and Another*, it was held that place of accident i.e. the place of occurrence where the deceased workman was shot at, has to be considered as employer's premises on the basis of theory of notional extension of employer's premises. It was observed that the deceased workman received personal injury by accident arising out of and in the course of his employment, which resulted in his death, hence, the employer M/s. Bokaro Steel Plant is liable to pay compensation under the Act to his widow.

5. The apex Court in *General Manager, B.E.S.T. Undertaking, Bombay v. Agnes* 1958 ACJ 473, while considering construction of Section 3(1) of the Act regarding accident arising out of and in course of employment held that as drivers of B.E.S.T. Undertaking were given free transport facility in buses belonging to the Undertaking from depot to his house and vice versa, and so the right to travel in another bus in order to discharge his duties punctually and efficiently was a condition of his service. Hence, if such driver while using the bus either going home from depot or coming to the depot met an accident, It was an accident during the course of his employment and his wife was entitled to compensation under the Act. Paragraph 14 of the said judgment is quoted below :

"14. Bombay is a city of distance. The transport service practically covers the entire area of Greater Bombay. Without the said right, it would be very difficult for a driver to sign on and sign off at the depots at the schedule timing, for he has to traverse a long distance. But for this right, not only punctuality and timings cannot be maintained, but his efficiency will also suffer. DW 1, a Traffic Inspector of B.E.S.T. Undertaking, says that instructions are given to all the drivers and conductors that they can travel in other buses. This supports the practice of the drivers using the buses for their travel from home to the depot and vice versa. Having regard to the class of employees it would be futile to suggest that they could as well go by local suburban trains or walking. The former, they could not afford, and the latter, having regard to the long distance involved, would not be practicable. As the free transport is provided in the interest of service, having regard to the long distance a driver has to traverse to go to the depot from his house and vice versa, the user of the said buses is a proved necessity giving rise to an implied obligation on his part to travel in the said buses as part of his duty. He is not exercising the right as a member of the public, but only as one belonging to a service. The entire Greater Bombay is the field or area of the service and every bus is an integrated part of the service. The decision relating to accidents occurring to an employee in a Factory or in premises belonging to the employer providing ingress or egress to the factory are not of much relevance to a case where an employee has to operate over a larger area in a bus which is in itself an integrated part of a fleet of buses operating in the entire area. Though the doctrine of reasonable or notional extension of employment developed in the context of specific workshop factories or harbour equally applies to such a bus service, the doctrine necessarily will have to be adopted to meet its peculiar requirements. While in a case of factory, the premises of the employer which gives ingress or egress to the factory is a

limited one, in the case of a city transport service, by analogy, the entire fleet of buses forming the service would be the "premises". An illustration may make our point clear. Suppose, in view of the long distance to be covered by the employees the corporation, as a condition of service, provides a bus for collecting all the drivers from their houses that they may reach their depots in time and to take them back after the day's work so that after the heavy work till about 7 p.m. they may reach their homes without further strain on their health. Can it be said that the said facility is not one given in the course of employment? It can even be said that it is the duty of the employees in the interest of service to utilise the said bus both for coming to the depot and going back to their homes. If that be so, what difference would it make if the employer instead of providing a separate bus. throws open his entire fleet of buses for giving the employees the said facility? They are given that facility not as members of the public but as employees; not as a grace but as of right because efficiency of the service demands it. We would, therefore, hold that when a driver when going home from the depot or coming to the depot uses the bus, any accident that happens to him is an accident in the course of his employment."

6. As a rule employment of a workman does not commence until he has reached to the place of employment and does not continue when he has left the place of employment. The journey to and from the place of employment is not included within the expression "in course of employment". However, as per the theory of notional extension of the employer's premises there may be some reasonable extension in both time and place and workman may be regarded as in the course of his employment even though he had not reached or had left the employer's premises. Such area which the workman passes or re-passes in going to and leaving the actual place of work does not mean the route covered necessarily in this trip from his house to the place of employment or in his way back from his place of employment to his house. Such area, in our opinion, is confined to the distance between the place of employment and the public place or the public road up to which any member of the public can reach or use at any time he likes and the employee as a matter of necessity has to pass and re-pass on his way to and from the place of employment. This area may either belong to the employer or to third persons from whom employer had obtained permission for use by his employees and without passing over such land or such area, the employees could not have reached the place of his employment. It is in that context that area of the place of employment is extended to include such areas over which the employee has a matter of necessity has to pass and re-pass.

7. It is well settled that when workman is on public road, he is there as any other member of the public and is not there in the course of this employment unless the very nature of employment makes it necessary for him to be there. The workman is not in the course of his employment from the moment he leaves his home and is on way of work. He certainly is in the course of his employment if he reaches his place of work or the area which comes within the theory of notional extension, out side of which the employer is not liable to pay compensation for

any accident happens to him.

8. In *General Manager, Western Railway, (supra)* the learned Single Judge of Madhya Pradesh High Court, Indore Bench, was considering a case, where the deceased, a railway employee while going from his house to attend to his duty in the Railway Colony met with an accident and died. It was observed that since railway administration had not provided any residential facility to the workman in the railway premises, he had to live outside the railway area in a privately rented house and from there he was actually going to attend his duty, when he met with an accident. Therefore, the act of the deceased of going from his house for attending to his duty would be included in the term "employment" and on applying principle of notional extension of employer's premises in the case, his widow was entitled to compensation under the Act. It was further observed that ratio of *General Manager, B.E.S.T. Undertaking, Bombay, (supra)* was applicable in the case.

9. In our view ratio of the apex Court decision in *General Manager, B.E.S.T. Undertaking, Bombay, (supra)* is not applicable in the present case, wherein it was made clear that in a case of a factory, the premises of employer, which gives ingress or egress to the factory is a limited one, but in the case of a city transport service, by analogy the entire fleet of buses forming the service was held to be the premises.

10. In the present case, we find that the workman concerned was murdered on the way while he was coming to join his duty from his residence and, therefore, it cannot be said that he was in the course of his employment from the moment he left his house and was on way to the place of his work. The employer was, therefore, not liable to pay compensation for the accident happened to the husband of the claimant-respondent.

11. We, therefore, allow this appeal and set aside the impugned judgment and award. No costs.