

(1953) 04 CAL CK 0006
In the Calcutta High Court

The Calcutta Electric Supply Corporation, Ltd.

APPELLANT

Vs

Rampati Debi

RESPONDENT

Date of Decision : 29-04-1953

Acts Referred:

Citation : (1953) 1 LLJ 227

Hon'ble Judges : P.B. Chakravarti, C.J.;A.K. Sarkar, J

Bench : Division Bench

Judgement

P.B. Chakravarthi, C.J.—This is an appeal from a decision of the Commissioner for Workmen's Compensation, dated 2 January 1952, by which he awarded a sum of Rs. 3,500 as compensation to the respondent, Rampati Debi, for the death of her son, Bindeswari Ojha, while in the employment of the appellant, the Calcutta Electric Supply Corporation Ltd. The facts of the case are slightly out of the ordinary.

2. The deceased Bindeswari Ojah was a workman employed at the test house maintained by the Electric Supply Corporation at 96, Prinsep Street, Calcutta, He has been described as a durwan, but it appears that his duty was to keep watch over the properties of the appellant at the premises of the test house and he was one of the four persons in the same kind of employment. On 5 May 1950, the deceased was admittedly on duty from 7 p.m. to 11 p.m. He had his quarters within the premises of the test house, and it would appear that two of his colleagues, namely, Nagina and Kanglu, also used to live inside the premises. At 2 a.m. on 6 May one Mr. Bowker received a telephonic message from Abdul who was one of the other durwans to the effect that "something very serious" had happened to Bindeswari Ojha. On receipt of that information Mr. Bowker went to the test house and found the deceased seated on a charpoy with a deep cut wound on his head and neck. The place where he was found was described by Mr. Bowker as "the small courtyard inside the main gate and close to the room which was his quarters." No one could say how the deceased had come by his injuries and met his death.

3. There was a coroner's enquiry which resulted in a verdict of murder by a person or persons unknown. There was a police enquiry also which resulted in nothing, because the police were unable to trace the author or authors of the crime and to submit any charge-sheet against anyone.

4. The respondent who is the mother of the deceased then made the present application for compensation on the ground that her son had died by an accident which had happened to him while he was in the employment of the appellant and in the course of such employment. Necessarily, it was pleaded that the accident had arisen out of the employment. No details were given in the petition itself, But a brother of the deceased made the case in the course of his evidence before the Commissioner that on the day in question the deceased had been on double duty, in other words, the hours of his duty had not terminated at 11 p.m., but the first shift had been followed by another which would take it to 3 a. m. It was said that the witness had been given this information by the deceased himself when he had gone to see him at the test house on 5 May at about 8 p.m..

5. The appellant admitted that the deceased had been a workman under it and also that he had been on duty from 7 a.m. to 11 a.m. on 5 May 1950, and again from 7 p.m. to 11 p.m. on that day. It was then pleaded that at 11 p.m. the deceased had been relieved and that the incident which had happened to him was not an accident at all, arising out of and in the course of his employment, but was a case of murder which was in no way connected with the employment of the deceased under the appellant. On that basis liability for compensation was denied.

6. In the course of the proceedings before the Commissioner the respondent examined only the brother of the deceased, as I have already said. The appellant examined one Kanglu who was one of the other durwans and a colleague of the deceased as also Mr. Bowker to whom reference has already been made and one Mr. Toster who, it was said, was in charge of the durwans. The actual post held by him was that of a store-keeper in the testing department. Neither Abdul, the durwan who was alleged to have sent the telephonic message to Mr. Bowker nor Nagina, the fourth durwan, who, according to the appellant, was present at the premises at the time, was examined.

7. It was the case of both parties, as would appear from the evidence of Sidheswar Ojha, the witness for the respondent, and Kanglu, one of the witnesses for the appellant, that the duty of the durwans was to protect the properties of the appellant from theft and to "guard them. It was further said on behalf of the respondent that the deceased resided in the test house in his quarters" there for twenty-four hours in connection with his employment. Mr. Bowker's evidence was that the durwans lived in the premises or outside and that in the absence of anyone of them or in case of an emergency, they arranged the hours of duty among themselves for carrying on at night. It was not disputed that the deceased had his quarters inside the premises of the test house and used to live there, but it was said on behalf of the appellant that when Mr.

Bowker went to the premises at 2 a. m. on May 6, he saw all the other three durwans there. That evidence was probably intended to make out that in the night in question, there was no necessity for the durwans to arrange the hours of work between themselves, as no one was absent.

8. The Commissioner proceeded on the footing that although an applicant for compensation had to prove his case and could not succeed if he left his case in doubt, there were degrees of that onus and that in the circumstances of the present case, such onus as lay on the respondent had been satisfactorily discharged. The Commissioner made a pointed reference to the fact that to no one of the witnesses had the suggestion been made on behalf of the appellant that the murder of the deceased had been committed or had occurred for reasons unconnected with his employment. It was also pointed out that the appellant had not examined the other two durwans, namely, Abdul and Nagina, who were the only persons who were present in the premises when the murder was discovered or perhaps even when the murder was committed. In those circumstances, the Commissioner thought that since the duty of the deceased was to guard the properties of the appellant situated within the premises of the test house and since he had been on duty till at least 11 p.m. in the night of the occurrence and since a theft had admittedly occurred in the premises some months ago and since an attack by a thief was a natural or likely incident of the employment of a night watchman, it could reasonably be held that the deceased had been murdered in the course of his employment in such manner that the accident had arisen out of it and that consequently a case for compensation had been established. On that basis the Commissioner made the award to which I have already referred.

9. It was contended on behalf of the appellant before us that the finding of the Commissioner was unwarranted by law as well as by facts. It was admitted that if the deceased had actually been on duty at the time he met his death, there could be no answer to a claim for compensation. It was also admitted that even if the deceased had been off duty at the time the assault was made upon him, but it was proved that the assault was committed by a thief or some intruder, when resisted by the deceased in his attempt to remove some property of the appellant even then a claim for compensation could not be resisted. But the case, it was contended, was entirely different here. All that had been proved was that the deceased had been on duty till 11 p.m. in the night in question and that at 2 a.m. he had been discovered dead in his quarters inside the premises with a cut on his throat. It was submitted that simply on those bare facts it was impossible to find that the injuries on the person of the deceased and the death caused thereby had been the effect of an accident and that that accident had arisen out of the employment of the deceased under the appellant.

10. The argument is a, plausible one and cases of this kind are always cases of difficulty. As far as I can understand the decisions that were cited to us, it has never been possible to decide such cases purely on principle, but some fact or

other has always been relied on as turning the scale either in favour of the employer or in favour of the workman. The primary matter for enquiry undoubtedly is whether the deceased had met his death by an accident occurring to him in the course of his employment and arising out of it and a subsidiary question is whether the claimant had proved that case by her own evidence or had left that case in doubt. I should think, however, that when one has to judge whether the claimant has proved his or her case, it is not required to insist that the whole of the case must be proved by direct evidence. As in any other case presumption has its place in cases under the Workmen's Compensation Act as well and there are numerous cases to be found in the books where courts have acted on presumptions. The duty of the Appellate Court again is only to see whether in dealing with a case, as he did, the Commissioner had misdirected himself and had materials before him to justify the decision he had taken.

11. Certain facts in the present case appear to me to be clear. That the deceased was a workman in the employment of the appellant is not denied. The evidence certainly carries the actual hours of his duty in the night in question up to 11 p.m. The evidence also establishes that within three hours of the time up to which he was admittedly on duty, he was found dead in the premises where he was employed and where he either was required to live or used to live. The evidence further is that it was the duty of the deceased to protect the properties of the appellant from theft and to that end to keep a watch over the premises. I should think that when a person is employed on a duty of that kind, his actual employment does not cease with the specified hours of duty, but he is in a way in constant employment, since it can by no means be said that if a watchman detected a thief at a time when he was actually not on duty, he would not be required to resist and obstruct the thief and that it would be no part of his duty to do so. I mention this in order to point out that even if the actual hours of the duty of the deceased terminated at 11 p.m. in the night in question, that by itself is by no means decisive that he was not on duty at the time when the injuries which caused his death were inflicted on him, That the injuries could have been caused by a thief seeking to remove the property of the appellant and intruding into the premises is a likely possibility and the only persons who could perhaps have proved in what circumstances the injuries had been inflicted or at least in what condition the deceased was found at the time when he was first discovered in a wounded condition, were not produced by the appellant. As I have already said, the sole witness for the respondent made the case that the deceased had been on double duty in the night in question. Witness for the appellant sought to exclude that case by saying that in fact, all the four durwans were attending in that night so that there could be no question of any double duty; but with regard to that matter it is impossible not to observe that although one of the witnesses for the appellant, Kanglu, stated that not only a duty register, showing the hour of duty, was kept in the office but an attendance register showing the actual attendance of the durwans was also kept. That attendance register was not produced. That register, if produced, would have finally decided the question as

to whether all the four durwans had actually been attending on the day or in the night in question, so that there could be no occasion for the deceased performing any double duty. It would thus appear that evidence which was in the possession of the appellant and which, if produced, could have conclusively established whether the deceased had been actually on duty at the time the injuries were inflicted upon him and in what circumstances the injuries were inflicted was withheld from the Commissioner.

12. To the above I would add certain facts appearing from the evidence adduced by the appellant itself. The witness Kanglu said that it was he who had relieved the deceased at 11 p.m. but he added that at 11-30 p.m. he had himself gone to sleep and admitted that he had returned from the village home on that very day. It does not seem to be very natural for a night watchman to go to sleep at 11-30 p.m. after taking over from a colleague at 11 p.m. and when it is remembered that the witness had returned from home leave on that very day, it no longer seems unlikely that the case of the deceased having been placed on double duty was true. Next there is the fact that when telephoning Mr. Bowker, Abdul did not mention murder at all but only "something serious" ; and lastly that when Bowker arrived, a dead man, with deep cuts on his head and throat, was found in a sitting posture on a charpoy. These are facts which strike one in the eye and were not explained.

13. In these circumstances, the question which the court of appeal had to ask itself appears to me to be this ; given that the deceased was a workman under the appellant; given that his duty was that of a watchman and to guard the properties of the appellant situated within the premises of the test house; given that the deceased had his quarters inside the premises and lived there; given that he had actually been on duty till 11 p.m. and within three hours of the time when he was found murdered; given that he was found murdered near his quarters inside the premises ; given that there had been a theft in the premises some months before; given that the two durwans who were admittedly in the premises and with the deceased or near about him at the time the incident had happened, were not examined by the appellant; given that no suggestion was ever made to any of the witnesses that there was some reason totally unconnected with the employment of the deceased under the appellant; and given that an attack by a nocturnal intruder upon a night watchman is by no means an unnatural or unexpected incident of the employment of such a watchman was the Commissioner wrong in holding that an accident arising out of arid in the course of the employment of the deceased under the appellant could reasonably be inferred? I find no reason to answer that question in the affirmative.

14. As I have said, it will not be helpful to discuss the principles. It is quite true that although a person may be under the employment of another, an accident occurring to him for reasons totally unconnected with the employment will not make the employer liable for compensation. But the facts in the present case are

such that the effect of the evidence is to bring the accident within the natural ambit of the employment of the deceased under the appellant and that such counter evidence by which the accident could be placed outside the ambit was not produced by the appellant, although it could have produced it, if it wished to. I am not, how ever, holding that the respondent was entitled to succeed, because the appellant did not disprove her case. What I am holding is that the positive evidence led by the respondent and the circumstances appearing from the evidence led by the appellant itself, taken together, made out a case which, if not rebutted by the appellant, stood. It was not rebutted and therefore it stands, as the Commissioner, in my view rightly held.

15. That being so, I can see no reason to interfere with the decision of the Commissioner. The appeal is accordingly dismissed with costs the hearing fee being assessed at three gold hours.

16. The interim injunction will stand automatically vacated.

Sarkar, J.

17. I agree.