
(2005) 03 OHC CK 0052

In the Orissa High Court

Case No : Miscellaneous Appeal No. 270 of 1993

The Managing Director, Badamba Co-operative Sugar
Industries Ltd.

APPELLANT

Vs

Smt. Bimala Routray and Others

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(8)

Citation : (2005) 03 OHC CK 0052

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : G.B. Jena, for the Appellant; M. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This appeal is directed against the judgment and order dated 22nd March, 1993 passed by the Assistant Labour Commissioner and Commissioner for Workmen's Compensation, Cuttack in W.C. Case No. 56-D/89 directing payment of compensation of Rs. 81,156.60 paise to the claimants-Respondents.

2. The claimants-Respondents are the legal heirs of the deceased Jayanta Routray. The case of the claimants is that the deceased Jayanta Routray was working as a security-in-charge under the Appellant. On 15.3.1987 at about 11.30 A.M. the deceased while moving towards the Sugar Factory of the Appellant in a motor-cycle at a moderate speed found a Tempo (two wheeler) parked on the road. While giving pass to the Tempo, he suddenly found a cyclist along with a pillion rider coming to this front and in order to save the cyclist he used the brake as a result of which he fell down and sustained injury on the head. Immediately after the accident, the deceased was carried to Badamba P.H.C. and there after to S.C.B. Medical College and Hospital, Cuttack and ultimately succumbed to the injury. The further case of the claimants-Respondents is that while working as Office Assistant and Security-in charge on

the date of accident, the deceased was receiving wages of Rs. 950/- per month and accordingly claimed compensation of Rs. 1,00,000/- (one lakh).

3. The Appellant who is the employer filed written statement denying its liability. The Commissioner for Workmen's Compensation on pleadings of the parties framed three issues and held that the deceased on the date of accident was serving as Office Assistant with additional duty of Security-in-charge and was a workman within the meaning of Workmen's Compensation Act. The Commissioner further held that the accident occurred out of and in the course of employment and considering the wages received at the time of accident allowed compensation of Rs. 81,156.60.

4. The learned Counsel appearing for the Appellant challenged the findings of the Commissioner basically on two grounds. The first ground of challenge is that the deceased was not a workman within the meaning of Workmen's Compensation Act and the accident did not take place in course of employment and, therefore, the claimants-Respondents are not entitled to any compensation.

5. In order to substantiate the argument advanced, the learned Counsel for the Appellant drew attention of the Court to the evidence and submitted that the deceased was working as Office Assistant on the date of accident and cannot be termed as a workman. In this connection, the evidence of P.W. 4 is material. This witness was working as a security guard. He has specifically stated in his evidence that on the date of accident he was working as security guard under Jayanta Babu and the deceased was working as security in-charge on the date of accident. Ext.8 also reveals that the deceased in addition to his own work had been given the duty of security-in-charge and the relevant portion of the said Exhibit is as follows:

Sri J.K. Routray, Office Assistant will remain in-charge of security arrangement at the site in addition to his own duty. He will engage the following persons for the purpose of security in three shifts until permanent arrangement is made....

In view of such evidence available on record, it is difficult to accept the contention of the learned Counsel for the Appellant that the deceased was not a workman. Accordingly, I do not find any force in the contention of the learned Counsel for the Appellant in this regard.

6. So far as second ground is concerned, it is stated by the learned Counsel for the Appellant that the evidence available on record clearly indicate that the deceased was coming to the factory to join duty when the accident took place outside the factory premises and in view of such evidence, it cannot be said that the accident took place out of or in the course of employment. P.W. 2 is an eyewitness to the occurrence. He has specifically stated that the deceased was coming in a motor-cycle at a moderate speed and while passing a Tempo parked on the middle of the road, a cyclist dashed against the motor-cycle and both fell down. The cyclist Nabakishore received minor injuries whereas the deceased received a head injury and was unconscious. P.W. 3 who was working as security

guard on the date of occurrence has stated that A shift started from 5 A.M. to 1 P.M. and on the date of occurrence the deceased came to office at 5 A.M. and distributed the duties to them and returned to his house at about 9 P.M. for meal and was again coming at about 11 A.M. to the duties. While he was again coming back, at about 11.30 A.M. he met with an accident. Similar is the evidence of P.W. 4 who was working as security guard on the relevant date. From the evidence of those two witnesses, it is clear that on the date of occurrence the deceased had come to office at 5 A.M. in the morning and worked in the office till 9 A.M. and left to his house for meal and while coming back the accident took place. The question that arises for consideration is whether the deceased met with an accident out of and in the course of his employment even though the accident took place outside the factory premises.

7. The learned Counsel for the Appellant relied upon a decision of the Apex Court in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, . The Apex Court in the aforesaid case held that employment of a workman does not commence until he has reached 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 being excluded. The Apex Court further held that the facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension. A similar view has also been taken by the Apex Court in the case of Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, . In the said decision the Apex Court held that in order to come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workmen is employed to do and which is incidental to it." In the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, it was held that unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words "accident arising out of his employment" indicate that any accident, which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no casual connection between the accident and the employment. In the said case the employee while on his way to the factory where he was employed met with an accident and the said accident took place one K.M. away from the place of employment. Under such facts and circumstances of the case, the Apex Court held that the said accident cannot be said to have been caused out of and in the course of his employment. However, while dealing with Section 2(8) of the Act the Apex Court held as follows:

The other words of limitation in Sub-section (8) of Section 2 is "in the course of his employment". The dictionary meaning of "in the course of" is "during (in the course of time, as time goes by), while doing" (The Concise Oxford Dictionary, New Seventh Edition). The dictionary meaning indicates that the accident must

take place within or during the period of employment. If the employee's work shift begins at 4.30 p.m., any accident before that time will not be "in the course of his employment". The journey to the factory may have been undertaken for working at the factory at 4.30 p.m. But this journey was certainly not in course of employment. If "employment" begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the door-step of his house, the accident will have to be treated to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided.

8. In the light of what has been decided by the Apex Court in the said decision, I may proceed to examine the facts of the case. Ext.8 reveals that the deceased in addition to his own work had been given the duty of security in-charge and the relevant portion of the office order has been quoted earlier. P.W. 3 who was working as security guard on the date of occurrence has stated that A shift started from 5 A.M. to 1 P.M. and on that date the deceased had come to office at 5 A.M. and distributed the duties to the security guard and returned to his house at about 9 A.M. for taking meal and while coming back, he met with an accident. Taking these facts into consideration in the light of the observation made by the Apex Court in the case of Regional Director, E.S.I. Corporation and Anr. v. Francis De Costa and Anr. (supra) it will be seen that the deceased had attended A shift at 5 A.M. and while in the course of employment he had gone to his house for taking meal. From the evidence of the witnesses examined, it appears that this is a regular practice adopted by the employees. In view of such evidence, I am of the considered opinion that the deceased having attended the office for the A shift at 5 A.M. which continued up to 1 P.M. and the accident having taken place at 11.30 A.M., the deceased died in course of his employment. The accident having occurred out of and in the course of his employment, the trial Court was justified in awarding compensation in favour of the claimants.

9. I do not find any merit in the appeal and the same is dismissed.