

(2008) 09 KAR CK 0059
In the Karnataka High Court
Case No : MFA No. 2994 of 2005

The New India Assurance Co. Ltd.

APPELLANT

Vs

Naseembanu and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Citation : (2011) 129 FLR 289 : (2011) 1 KCCR 310

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : V.R. Datar, for the Appellant; Manjunath Meled, for R-1 to 3 and Sanjay S Katageri, for R-5, for the Respondent

Judgement

K. Ramanna, J.—This appeal filed by the insurer of the vehicle bearing registration No. KA-22 7485 challenging the correctness, legality and propriety of the judgment and award passed by the Workmen's Compensation Commissioner, Sub Division-II, Belgaum, in WCA SR No. 147 of 2003 dated 18-01-2005 directing to pay the compensation of Rs. 1,74,206/- together with interest at 12% from 17/03/2003, hence this appeal.

2. The case of the R-1 to 3/ (sic) claimants, is that the late Gousab@Gousmoddin Patel was working as a cleaner under R-5 Pundalik Basavanth Khangaonkar, as cleaner in truck bearing No. KA.22 7485, he was getting salary of Rs. 2,000/- with batta of Rs. 50 per day, on the fateful day i.e., 17-02-2003, while he was on duty, when the said vehicle was proceeding from Khanapura to Belgaum, when it was so proceeding near forest check post, the driver of the said lorry drew it in a rash and negligent manner, suddenly applied the break, consequently he fell down and sustained injuries, immediately he was shifted to district hospital Belgaum, but succumbed to the injuries while undergoing treatment, therefore initially a UD No. 8/2003 of Khanapur Police came to be registered, body was subjected to Post Mortem and dead body was handed over to the Respondents, R-1 to 3 who performed final rituals, thereafter tiled the claim petition against Appellant, R-5 and R-4 to award compensation of Rs. 5,00,000/-. The Appellant

as well as R-4 and 5 appeared and contested the claim petition before the commissioner, after considering the evidence placed on record by both parties award came to be passed which is under challenge.

3. Heard the arguments for the counsel for the Appellant and Respondents.

4. It is argued by the learned Counsel for the Appellant that the death of late Gousab@Gousmoddin Patel, was not due to any accident, he died on account of ORGO CHLORO insecticide poisoning, therefore the liability fastened on it by the W.C. Commissioner is totally incorrect and perverse. It is argued that no external or internal injuries noticed by doctor Vidya Venkatesh Hoovilagodu who conducted Autopsy over the dead body of the deceased. The Chemical examination report reveals that he died due to ORGO CHLORO insecticide poison, death might have been caused on administration of poison or the deceased himself consumed the poison and committed suicide for which the Appellant cannot be made liable to indemnify the R-5/employer. The police record clearly indicates it is only unnatural death, Therefore it is prayed that the appeal be allowed.

5. On the other hand the learned Counsel for the Respondents 1 to 3 submitted that the death occurred during the course of employment, injuries may not be the root cause for death during the course for employment while the vehicle was in motion, if the employee dies during the employment and out of employment the owner is liable to pay the compensation either to the injured/claimant or to the L Rs of the deceased. it is further argued that the death may be suicide on account of consumption of poison by the deceased or the poison might have been administered by 3rd party or on account of drinking of contaminated water or taking poisonous food, for which the employer is liable to pay the compensation. It is further argued that since the deceased was working under R-5 in a lorry, died during the course of employment and out of employment, R-5 is liable to pay compensation to the claimants/R-1 to 3 and as the vehicle was duly insured with the Appellant the commissioner for workmen's compensation rightly fastened the liability on the Appellant, hence the appeal be dismissed with cost.

6. In support of his contentions the counsel for the Respondent has relied on the decision reported in case of S. Suppiah Chettiar Vs. V. Chinnathurai and Another, , wherein, it has been held that the W.C. Act is a social welfare legislation and beneficial interpretation would be taken. That apart he refers to another decision of Maharashtra high court in case of Ibrahim v. Mackenzie and CO., reported in AIR 1966 MH 220, he also relied on another decision reported in case of Director Soil Conservation Dept. v. Sudhan Sao 2003[1] TAC 174 Jarkhand, wherein it has been held that both employer and the insurer are liable to pay compensation in case of death or serious permanent disablement due to a serious or willful misconduct on the part of workmen, hence it is prayed to dismiss the appeal with cost,

7. Having heard the counsel for both parties, after examining the materials placed on record as well as the copies of the PM report, chemical examination report and other police papers, the substantial question of law that arise for consideration in this appeal is, Whether the death of Goussab (a) Gousmoddin Patel had occurred in the accident that arise out of and during the course of employment?

8. It is pertinent to note that the Respondent No. 1 to 3 were the (sic)L Rs of the deceased Goussab@Gousmoddin Patel, who was working as a cleaner under R-5 in fact the R-5 has not disputed about the deceased working under him as a cleaner in the said truck who died while on duty, it is not in dispute as to the salary and the batta paid by the R-5, the age of the deceased at the time of his death is also not in dispute. The only point involved in the case is whether the employee died due to self consumption of poison and committed suicide or any third party administered the poison or whether there is any food poisoning or whether the death was due to drinking of contaminated water during the course of employment and out of employment. The post mortem report as well as the evidence of Dr. Vidya Venkatesh Hoovilagodu and chemical reports discloses that there were no external or internal injuries found by her, chemical examination report reveals that the death was due to ORGO CHLORO insecticide poisoning, the police records indicates that initially a case in UD No. 8/2003 came to be registered, dead body was subjected to post mortem which discloses the cause of death and Vishra was sent for report of chemical examination. Thus it is clear that the death was due to ORGO CHLORO insecticide poisoning, but now the question arises whether the claimants are entitled to get compensation under the W.C. Act for such a death met by the deceased during the course of his employment.

9. The main object of the enactment of W.C. Act, is a social welfare legislation and beneficial interpretation should be taken for allowing compensation, where a workman dies in harness by accident may be by scarping bit or any mechanical injury, in case of doubt as to whether the death was due to accident or not, the benefit of doubt should be given to the employee. Therefore in the instant case as there is doubt as to the cause for the death and as it is not made clear whether the deceased committed suicide or whether the death was on account of drinking of contaminated water or taking poisonous food or whether any third party administered the poison, therefore the benefit of doubt should be given to the employee/claimants, as such the Respondent/employer cannot escape his liability to pay compensation to the Respondents 1 to 3 who filed the claim petition, death should be treated as occurred during the course of employment and arise out of employment. That apart it could be said that even if the death was due to serious or willful misconduct on the part of workmen, compensation should not be denied to him. The compensation provided under the W.C. Act, was in the nature of insurance but damage for loss. Under the Act the widow of the deceased employee and the dependants are entitled to get the compensation for the death of deceased during employment. The contention of the learned

Counsel for the Appellant that death was not due to any accident during the course of employment cannot be accepted, as it does not hold water. R-1 to 3 being the LRs and dependants are entitled to get the compensation with interest from its employer and since the vehicle was duly insured Appellant is liable to indemnify R-5 as such the Appellant cannot escape the liability.

10. There is no incorrectness or illegality in quantifying the compensation by the W. C. Commissioner by taking into consideration various aspects. However the W. C. Commissioner erred in awarding interest on the compensation amount from 17-03-2003 i.e., from 30 after the date of accident. The compensation ought to have been awarded on the compensation amount from 30 days after the date of passing of the award by the W. C. Commissioner.

11. Therefore this appeal is partly allowed, the compensation awarded by the Workmen's Compensation Commissioner at Rs. 1,74,206/- is hereby confirmed. However the interest awarded on the said compensation amount is hereby modified, the claimants/R-1 to 3 are entitled to the interest on the said compensation amount at 12% p.a. from 18-02-2005 till the date of payment.

The amount in deposit before this Court if any shall be transferred to the W. C. Commissioner concerned for payment.

The claimants are entitled to withdrawn the entire compensation amount

The Appellant is entitled to refund of excess amount if any deposited by it.

No order as to costs.