

(2007) 01 KAR CK 0009
In the Karnataka High Court
Case No : M.F.A. No. 4609 of 2006

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Channamma and Others

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Workmens Compensation Act, 1923 — Section 3

Citation : (2007) ACJ 2318 : (2007) 2 KCCR 1493

Hon'ble Judges : V. Jagannathan, J;S.R. Bannurmah, J

Bench : Division Bench

Advocate : C.R. Ravishankar, for the Appellant; Lawyers Net, R. Chandrashekar, Girish and S.J. Krishnaji Rao for C/R No. 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

1. When the matter is posted for admission, since respondents are served and the question to be decided is in narrow compass, with the consent of the learned Counsel for the appellant, the matter is taken for consideration.

2. The deceased Hanumanthaiah was working as a loader in a lorry. On 24.2.2004, in the afternoon, while he was loading sand in the lorry from sand pit, suddenly the sand collapsed and the deceased was buried in the sand. On rescuing, he was found dead. Since he was working with respondent No.6, the legal representatives of the deceased Hanumanthaiah (respondent Nos. 1 to 5 herein) have filed the claim petition for compensation before the Workmen's Commissioner. The owner of the Lorry and the Insurance Company, the appellant herein contested the claim on the ground that since the vehicle was stationary at the time of the incident, no liability arises against for the owner or the Insurance Company to pay the compensation. The Workmen's Commissioner declined to accept this contention relying upon the pronouncement of this Court in Smt. Premila and Ors. v. Shaliwan and Anr. reported in AIR 2005 KANT 1610. After declining this preliminary objection, he proceeded to consider the claim. Depending upon the postmortem report, the Commissioner took the age of the

deceased as 35 years and considering the fact that as admitted by the owner himself that he was earning around Rs. 5,000/- per month, held that his earning was 3,500/- per month, deducting 50% towards his expenses, taking Rs. 1,750/- as the income, applying the relevant factor 189.56, awarded compensation of Rs. 3,31,730/- by the impugned award dated 30.8.2005. It is this award which is challenged before this Court in the present appeal by the Insurance Company.

3. The contention of the learned Counsel for the Insurance Company is that as the lorry in question in which the deceased Hanumanthaiah was working was stationary and since said Hanumanthaiah died when he was outside the lorry and because of coming under the sand which was being excavated, the claim does not fall within the purview of Workmen's Compensation Act as the death did not occur arising out of and in the course of employment. The learned Counsel also challenged the correctness or otherwise of the earnings of the deceased at Rs. 3,500/- as held by the Workmen's Commissioner.

4. It is to be noted that the Workmen's Compensation Act has been passed by the Legislature keeping in view the workmen meeting with an injury or death arising out of and during the course of employment. Section 3 of the Act states that if personal injury (or death) is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of the Act. The meaning of the words "Arising out of and in the course of employment" has been considered by this Court as well as the Apex Court in number of judgments. It is now well settled that if there is a nexus to the resultant death or injury and the employment of the deceased or injured as the case may be and if such death takes place while the deceased or injured was on duty, even if not doing actually the work assigned to him at that time, the injury or death would be in the "course of and during the employment".

5. The words "arising out of and in the course of employment" comprise two different phases. The phrase "in the course of employment" suggests the point of time i.e., the injury must be caused during the course of the employment, whereas the expression "out of employment" conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of accident. It is to be noted that the words "out of and "in the course of employment" have been used conjunctively and as such these twin conditions must both exist before it can be said that employer has incurred a liability under this provision.

6. Various pronouncements of the Apex Court and many High Courts indicate that the accident which resulted in the injury or death, must be connected with the employment and must arise out of it; thus there must be a casual connection or association between the employment and the accidental injury or death.

7. Considering these aspects, in our view, to find out whether a given accident arose out of the employment, it is necessary to apply formula that - if a

particular accident, would not have happened to a workman, had he not been employed to work in a particular place and condition, then it would be an accident arising out of employment.

8. In the present case, it is not much in dispute that Hanumanthaiah was working as a loader in the truck in question. The said lorry was used for loading the sand, dug from the pit and transported to the destination. There is no much dispute that at the relevant point of time i.e., on 24.2.2004 the lorry was stopped near Nagini river, Kaggere village for the purpose of loading the sand from the sand pit and the deceased 1 Hanumanthaiah was engaged both in digging out the sand and load the same in the lorry. It is at that point of time, when he was taking the sand from the pit, the sand collapsed on him resulting in his death. Since there is clear nexus of the deceased Hanumanthaiah meeting with the death in the course of and arising out of his employment, namely, digging the sand from pit and loading in the truck, in our view, the Commissioner was justified in holding that the accident arose out of and in the course of employment. In this regard, it is to be noted that the judgment of this Court in Premila's case, though of the learned single Judge was a case of extreme nature. It was a case where the deceased driver of a Taxi-Tempo who was on duty had stopped the vehicle to answer nature's call and had got down from the vehicle and when he was crossing the road, he was hit by another motor vehicle and died on the spot. This Court has held that such death was directly attributable to the employment. If the workman was plying a vehicle and in the course of driving the same or even when it is stopped and then the driver meets with an accident, it clearly falls within the definition of "arising out of and in the course of employment". Hence looking at the case from any angle, we see no reason to defer with the view taken by the Commissioner.

9. So far as the quantum is concerned, learned Counsel for the Insurance Company submits that as there is no documentary evidence as to the salary of the deceased, the Commissioner has erroneously taken higher salary at Rs.3,500/- per month.

10. It is to be noted that the accident has taken place in the year 2004. This Court in number of cases has held that in the absence of any documentary evidence, if the deceased or injured is working as unskilled labour, minimum wages payable during this period has to be taken into consideration. The Court has taken judicial notice that between 2000 and 2005, the minimum wages for an unskilled labourer was around Rs. 100/- to Rs. 150/-. The Commissioner has taken the wages slightly less than Rs. 120/-. Hence on this ground also, we do not see any merits. There is no dispute as to the age as well as relevant factor is concerned. As such, we see no merits in the appeal and it is accordingly rejected.

11. The amount in deposit before this Court shall be transferred to the Commissioner for its disbursement.