

---

**(2009) 08 OHC CK 0048**  
**In the Orissa High Court**

The New India Assurance Co. Ltd.

APPELLANT

Vs

Surendra Patra and Others

RESPONDENT

---

**Date of Decision :** 21-08-2009

**Acts Referred:**

Evidence Act, 1872 — Section 108

Workmens Compensation Act, 1923 — Section 3, 3(1)

**Citation :** (2010) 109 CLT 194 : (2009) 2 OLR 400 Supp

**Hon'ble Judges :** S.C. Parija, J

**Bench :** Single Bench

---

**Judgement**

S.C. Parija, J.—This appeal by the Insurance Company is directed against the Judgment/Order Dated 16.08.2002 passed by the Commissioner for Workmen's Compensation, Cuttack, in W.C. Case No. 180-D of 1996, awarding an amount of Rs. 51,236 as compensation along with interest " 6% per annum from the date of filing of the claim application, till payment.

2. The brief facts of the case is that on 05.04.1987 Raghunath Sahoo, the driver of the taxi bearing No. OAC-4999 was waiting at the College Square taxi stand of Cuttack Town for passengers, when four persons, who were staying at Ambika Hotel, came to the taxi stand & hired the taxi to visit Puri & Konark on 5.4.1987. When the driver Raghunath Sahoo along with the taxi did not return till 10.4.1987, the owner of the taxi lodged an FIR at Malgodown Police Station, Cuttack, with regard to his missing taxi & the driver. As the whereabouts of the taxi & its driver could not be traced for two years, the police submitted final report in G.R. Case No. 845 of 1987 in the Court of S.D.J.M.(S), Cuttack. The investigation was reopened on 6.9.1989 in the said G.R. Case No. 845 of 1987, when the hijackers of the taxi were arrested by the Hyderabad Police in Andhra Pradesh & during investigation police seized the taxi. Subsequently in course of investigation, the documents of the taxi No. OAC-4999 were seized from the accused hijackers, from which the original number of the taxi could be confirmed, on the basis of its engine number & chasis number. On the basis of which such information from the Hyderabad Police, the case was reopened by the

local police in Cuttack & after completion of investigation, charge sheet was submitted against the hijackers, who faced trial in the Court of Sessions Judge, Cuttack, in S.T. Case No. 143 of 1990.

3. The wife & children of the driver Raghunath Sahoo having not heard of him since he went missing on 05.04.1987 & after waiting for about 9 years, filed the claim application for award of compensation under the W.C. Act, claiming that the death of the driver Raghunath Sahoo occurred in the hijacking incident on 5.4.1987, arising out of & in course of his employment.

4. The owner of the taxi OAC-4999, pursuant to notice, appeared before the Commissioner & filed written statement admitting the employment of the driver Raghunath Sahoo & also the fact that both the driver & the taxi went missing since 5.4.1987 & though the taxi was subsequently found in Andhra Pradesh, the driver could not be traced.

5. On the pleadings of the parties, the Commissioner framed the following issues:

(i) Whether, Raghunath Sahoo was a workman under the O.P. No. 1 & whether the claim application is barred by limitation.

(ii) Whether Raghunath Sahoo, expired by an accident arising out of & in course of his employment?

(iii) Whether the compensation claimed by the applicants is just & proper or any part of its?

(iv) Whether the O.Ps. are liable to pay compensation as is due? If so by whom payable?

6. On the basis of the evidence on record, both oral & documentary & the admission by the owner of the vehicle (taxi) No. OAC-4999 & the Judgment of the Sessions Judge, Cuttack, passed in S.T. Case No. 143 of 1990, the Commissioner came to the conclusion that the deceased Raghunath Sahoo was working as a driver in the taxi No. OAC-4999 & died in course of hijacking of the taxi on 05.04.1987. Coming to the question of limitation with regard to belated filing of the claim application, the Commissioner found that as the deceased driver went missing along with the taxi since 5.4.1987 & remained untraced for more than seven years & though the vehicle (taxi) was subsequently traced by the Hyderabad Police, whereabouts of the driver Raghunath Sahoo could not be traced, the filing of the claim application by the dependants of deceased Raghunath Sahoo, after 9 years, is reasonable & the delay in filing the claim application was condoned.

7. Coming to the wages of the deceased driver of the taxi, the claimants had claimed that deceased Raghunath Sahoo was getting Rs. 2,000 per month as a driver & that he was aged about 35 years at the time of his accidental death. The owner of the vehicle admitted in his written statement, as well as in his deposition, that the deceased driver Raghunath Sahoo was getting Rs. 650 per

month. In view of such admission with regard to the wages of the deceased driver by the owner of the taxi, as the employer, the Commissioner proceeded to hold that the deceased driver was getting Rs. 650 per month as wages. Taking the age of the deceased Raghunath Sahoo to be 35 years at the time he went missing along with the taxi on 5.4.1987, the Commissioner has calculated the compensation amount payable to the claimants.

8. Learned Counsel for the Appellant-Insurance Company assails the impugned award on the ground that the claim application is barred by time, having been filed more than 9 years, after the date of the alleged incident, which took place on 5.4.1987 & therefore the Commissioner erred in ignoring the inordinate delay in filing the claim application & condoning the same. It is further submitted that as the accused hijackers, who stood trial in the Court of the Sessions Judge, Cuttack, in S.T. Case No. 143 of 1990 having not been convicted for murder, the Commissioner erred in presuming the death of the deceased driver, merely because his whereabouts is not known since the date of alleged incident, i.e., 5.4.1987 till date. It is further submitted that the award of interest " 6% per annum, on the principal compensation amount, is improper & illegal, inasmuch as, no such interest could have been awarded from the date of filing of the claim application & in any case, such interest is not payable by the insurer.of the vehicle (taxi).

9. Learned Counsel for the Appellant has relied upon a decision of the Apex Court in the case of Oriental Insurance Company Ltd. Vs. Sorumai Gogoi and Others, , in support of his contention that merely because the driver Raghunath Sahoo went missing along with the taxi on 5.4.1987 & has not been heard of thereafter there can be no presumption of his death, for the purpose of grant of compensation under the W.C. Act. In the said case, the driver Bipul Gogoi was the paid driver of the vehicle (Maruti Van) bearing No. AS-09/2289 & went missing along with the vehicle since 9.10.1996. On facts, the Hon"ble Court came to find as under:

The employer lodged a first information report against Bipul Gogoi. A charge sheet was also filed. There is nothing on record to show that the death had occurred to Bipul Gogoi in an accident arising out of or in course of employment. If some miscreants have taken away the driver along with the vehicle or has murdered him, it is an offence. It, except in certain situations, does not give rise to a presumption that the death had . occurred arising out of or in the course of an employment. Some evidence should have been adduced in that behalf. If the version brought on records by the police was correct, namely, he had himself ran away with the vehicle & had not been heard for a period of seven years, particularly, when he had been declared a proclaimed offender by a Court of law, presumption u/s 108 of the Evidence Act could have been invoked by the criminal Court for dropping the criminal case that he is dead. In our opinion, in a case of this nature, the said provisions could not have been invoked for the purpose of grant of compensation under the 1923 Act without any other evidence

having been brought on records.

10. On the basis of such finding of fact, the Hon''ble Court proceeded to observe that Sections 108 & 109 of the Evidence Act are founded on the presumption that things once proved to have existed in a particular state are to be understood as continuing in that state until contrary is established by evidence, either direct or circumstantial. However, the said provision shall not apply in respect of a person who absconds from justice or evade a trial or is otherwise charged for commission of a grave offence, as in such a situation, he may not communicate with his relations. The Hon''ble Court on the facts of that case, came to observe that it is difficult to rely upon a self-serving statement made by the claimants that they had not heard about their son for a period of seven years.

11. Learned Counsel for the Appellant has also relied upon a decision in the case of Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, , in support of his contention that unless conclusively proved, the death of a person cannot be presumed, merely because he his missing for more than seven years & has not been heard of by his relations. In that case, the deceased Shaikh Hassan Ibrahim, who was employed as a seaman in the ship "Dwarka", was found missing in the high sea & a search was undertaken but he was not traceable nor his body was found. The Commissioner for Workmen's Compensation while considering the claim application by the dependants of the workman Shaikh Hassan made a local inspection of the ship & saw the position of the bridge & deck & found that there was a bulwark more than 3 1/2 feet. Nobody saw the missing seaman at the so-called place of accident. The Commissioner accordingly held that there was no material for holding that the death of the seaman took place on account of an accident which arose out of his employment.

12. In view of the facts of the aforesaid two decisions of the Supreme Court as discussed above, the same have no application to the facts of the present case.

13. The principal question that arises in this appeal for consideration is whether the accident arose in the course of employment of the driver Raghunath Sahoo, within the meaning of Section 3 of the W.C. Act, which reads as under:

(1) If personal injury is caused to a workman by accident arising out of & in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable-

a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

14. In the cited case of Mackinnon Mackenzie & Co. Private Ltd. (Supra), the Supreme Court came to observe as follows:

To come within the Act the injury by accident must arise both out of & in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do & which is incidental to it". The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered". In other words, there must be a causal relationship between the accident & the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its, nature, its conditions, its obligations & its incidents. If by reason of any of those factors the workman is brought within the zone of special danger, the injury would be one which arises out of employment. To put it differently, if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. xx xx.

15. In case of death caused by accident, the burden of proof rests upon the workman to prove that the accident arose out of his employment as well as in the course of such employment. But this does not mean that a workman who comes to Court for relief must prove it by direct evidence. Although the onus of proving that death or injury by accident arose both out of & in course of employment rests upon the applicants, these essentials may be inferred when the facts proved justify such inference. Where the facts which are proved give rise to conflicting inferences of equal degree or probability & there is ground for comparing & balancing the probabilities as to their respective value, & the contention raised by the applicant appears to be the more probable conclusion, the Commissioner would be entitled to draw an inference in favour of the applicant.

16. The next question is whether in the context of the present facts it can be said that the missing of the driver along with the taxi due to hijacking by some miscreants will amount to an accident, within the meaning of Section 3(1) of the W.C. Act. The word "accident" has been described in Halsbury's Laws of England as:

The term "accident" generally means some unexpected event happening without

design, but perhaps no general definition can be given of the word to cover all cases falling within the Act. To decide whether an occurrence is an accident, it must be regarded from the point of view of the workman who suffers from it, & if it is unexpected & without design on his part it may be an accidental though intentionally caused by the author of it, or caused by some act committed willfully by him. ...

17. The word "accident" in Section 3(1) of the W.C. Act has been used in the popular & ordinary sense & means "mishap" or "untoward event not expected or designed". The basic ingredient of the word "accident" is unexpectedness & the second ingredient is that the death or injury must be traceable, within reasonable limits, to a definite time, place & occasion or cause.

18. The W.C. Act undoubtedly is a welfare legislation aimed to soothe the agony of a workman or his dependants who become incapacitated or dead on account of the injuries sustained by them during the course of the employment. The social measure to care for his welfare finds emphatic expression in this welfare legislation. Therefore, an interpretation which would advance that salutary object & intendment has to be adopted. A strict & ritualistic adherence to the procedural formalities of a trial is neither necessary nor desirable in deciding the question of entitlement of the injured employees for compensation. A more realistic & less formal approach is called for from authorities functioning under this beneficial enactment. The Courts are not to defeat the very purpose of the enactment by adopting a totally negative approach to the claim which the claimants advance before them.

19. In the present case, the missing taxi No. OAC-4999 having been seized by the Hyderabad Police & hijackers having been arrested & put to trial & there being no information with regard to the missing driver of the taxi, the fact situation justifies the inference that the driver must have been killed by the hijackers, before forcibly taking away the taxi from him & therefore his death arose out of & in course of his employment as a driver of the said taxi. In the peculiar facts & exceptional circumstances of the present case, the presumption in terms of Section 108 of the Evidence Act can be extended to the date of the incident, i.e. 05.04.1987 to give benefit to the poor claimants.

20. Coming to the question of award of interest by the Commissioner in the impugned award, from the date of filing of the claim application, the same is neither proper nor justified. Section 4-A(3) of the W.C. Act provides for payment of interest on the compensation amount from the date it fell due. Undoubtedly the compensation amount would fall due only when the same is adjudicated & determined by the Commissioner. Hence the interest on the awarded compensation amount shall only be payable from the date of award & not from the date of the application.

21. Keeping in view the principles of law as discussed above & applying the same to the facts of the present case, no impropriety or illegality can be said to have

been committed by the Commissioner, so as to warrant any interference. However the award of interest " 6% per annum from the date of filing of the claim application is not proper & justified & the same is accordingly set aside. The claimants are therefore entitled to the awarded compensation amount of Rs. 51,236 only. The impugned award is modified to the said extent.

22. The entire awarded amount of Rs. 51,236 having been deposited by the Appellant-Insurance Company in the Registry of this Court, the Registry is directed to disburse the awarded compensation amount of Rs. 51,236 along with accrued Bank interest thereon to the claimants, on proper identification & realization of Court fee, if not already paid.

The appeal is disposed of accordingly.