

(2006) 11 KAR CK 0031

In the Karnataka High Court

Case No : M.F.A. No. 8190 of 2004 & Miscellaneous First Appeal. No. 8190 of 2004

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Smt. Kaveri and Others

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Citation : (2008) ACJ 23

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : P.B. Raju, for the Appellant; P. Karunakara, for R1 and A.N. Krishnaswamy, for R4, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—The appellant herein is aggrieved by the compensation awarded by the commissioner for Workmen's Compensation, Dakshina Kannada, Mangalore, to the first respondent-claimant in a sum of Rs. 2,21,370/-.

2. The facts in brief are to the effect that the first respondent herein who is the mother of deceased Gopal filed an application before the commissioner for workmen's compensation, Dakshina Kannada, claiming compensation on the ground that her son deceased Gopal was working as a cleaner in a Tanker Lorry KA-20-5034 and on 7.2.2000, when the deceased was traveling in the Lorry, the vehicle was stopped near Koolur and the deceased got out of the vehicle to go to Kurikatte office to pay commission amount and thereafterwards, the deceased never returned back to the vehicle. On enquiry, the claimant came to know that the dead body of her son Gopal was found in the Panambur beach and it is her case that Gopal died while he was on duty and therefore, she sought for compensation. The Commissioner for Workmen's Compensation, after taking into account the material placed, allowed the application and awarded the compensation as mentioned above. Aggrieved by the said order, the Insurance company is in appeal.

3. The main contention put forward by the learned Counsel Shri P.B. Raju for the appellant is that the death of first respondent's son Gopal did not take place in the course of employment and as such, no liability could have been fastened on the appellant insurance company by the commissioner. It is further stated that even taking into account the facts of the case as they stood, yet it cannot be said that deceased Gopal died while he was on duty. The very fact that the dead body or Gopal was found in the sea near Panambur beach, itself is sufficient indication of the fact that deceased was not on duty at the time he made his falling, in to the sea. In this connection, he also referred to the evidence of R.W.1, the GPA holder for the vehicle owner, who has said in his evidence by way of affidavit, that the death of deceased Gopal was not in the course of his employment and further the deceased had gone to Penambur beach which is 3-4 Kms. away from Koolur and there was no connection between the nature of employment of the deceased and his death. Referring to the above evidence of R.W. 1, it is submitted that the Commissioner was totally in error in recording a finding that death of Gopal arisen while the deceased was on duty.

4. On the other hand, learned Counsel for the first respondent-claimant contended that by the application of theory of notional extension of employment premises, the place where the dead body of Gopal was found has to be treated as coming within the scope of the expression "in the course of employment". In support of his submission, the learned Counsel place reliance on number of decisions and they are reported in *The Branch Manager, New India Assurance Company Limited Vs. Siddappa and Others*, , *General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes*, , *The Divisional Controller, NEKRTC Vs. Sangamma and Others*, ILR 1981 KAR 323 (*Karnataka State Construction Corporation Ltd., Bangalore v. The United India Fire & General Insurance Co. Ltd.*), *United India Insurance Company Limited Vs. Smt. Susheela and Others*, , & AIR 2005 Kar 1610 (*Smt. Premila and Ors. v. Shaliwan and Anr.*). Placing reliance on the above decisions, it is submitted that the death of Gopal took place while he was on duty. Therefore, the impugned order does not call for any interference.

5. Having heard both sides, and after carefully going through all the decisions cited by the learned Counsel for the respondent-claimant, the point that requires consideration is "whether in the instant case, the death of Gopal could be said to have occurred while he was discharging his duty as a cleaner?"

6. The facts which are not in dispute are that on 7.2.2000, the deceased Gopal who was a cleaner under 5th respondent herein was travelling in the Tanker Lorry and the said tanker was stopped near Kurikatte closed to Koolur and it is also not in dispute that Gopal got down from the vehicle and went to Pay Commission at Kurikatte office. The fact that the dead body of Gopal was found in the sea near Panambur beach is also not in dispute but the crucial question is whether it can be said that deceased was found dead near Panambur beach when he was on duty at the relevant point of time and place. From the records

produced, it reveals that following the dead body of Gopal being recovered, post mortem examination was conducted and the history of death given in the P.M. report, Ex.P4 is as under:

7. Therefore, the possibility of Gopal having committed suicide cannot be ruled out from the above history mentioned in the P.M. report. No doubt, in the P.M. report, the cause of death is not stated. Nevertheless a close look at the P.M. report indicate that the deceased has suffered no injury whatsoever on any part of his body.

8. Keeping the above facts in view, if we take a re-look into the entire evidence on record, even assuming for argument sake that the deceased got down from Tanker Lorry and went to Kurikatte office to pay the Commission, there is no possibility of the deceased having gone to Panambur beach as part of his duty of his duty it is not possible to draw an inference from the material on record that the deceased was found near Panambur beach at the time when he was carrying out his duties. It cannot be said that the deceased was in the course of his employment when his dead body was found at Panambur beach.

9. In so far as rulings cited by the learned Counsel for the first respondent is concerned; all those decisions will have to be viewed from the angle of facts and circumstances which were peculiar to the particular case which was the subject matter of the decision in the above mentioned cases referred to by the learned Counsel for the first respondent. Therefore, I am of the considered opinion that the rulings cited by the learned Counsel for the first respondent have no application in so far as facts and circumstances of the case on hand are concerned. It is a settled law that by application of theory of notional extension of employment, even places which are outside the premises of the employment can be brought within the scope of notional extension of employer's premises. It is also a settled law that there is a limit to extend this theory of notional extension of employment premises and beyond that limit, if an accident occurs or if the workman is found to have been injured, the theory has no application. Further more, if the employees are picked up from their places and brought to the factory in the employer's vehicle and again after the work is over if they are dropped back at their respective places way back home, then, in such an event, the application of theory of notional extension of employment between the place from where the workman is picked up and dropped back can be inferred. If however, an accident occurs beyond the premises so extended, the question of liability on the part of the employer will not arise.

10. Having regard to the above position in law as has been laid down in the Apex court in number of decisions, in the instant case, it cannot be said that the employer's premises or course of employment gets extended even to the place where the dead body of Gopal was found, particularly having regard to the fact that the distance between the Koolur and panambur beach where dead body of Gopal was found is about 3-4 Kms. and it is impossible to take a view nor is it permissible to say that the course of employment of the deceased extended from

the place where he got down from the vehicle to the place which is more than 3-4 Kms. where the dead body was found near the panambur beach. Hence, this is not a case where it can be said that deceased was in the course of his employment when he met his death.

11. For the foregoing reasons, the Commissioner was totally erred in not appreciating the material placed before him and in particular to the evidence let in by R.W. 1. Hence, a perverse order has been passed by the Commissioner, by ignoring positive evidence on record. As such, the impugned order in so far as fastening the liability on the appellant/ insurance company will have to be set-aside.

In the result, the appeal is allowed and the impugned order of the commissioner for Workmen's Compensation, in so far as fastening the liability on the insurance company is concerned, is set-aside. The amount in deposit made by the appellant-insurance company shall be refunded to it.