

(2012) 03 CHH CK 0041
In the Chhattisgarh High Court
Case No : M.A. No. 282 of 1997

The Regional Director, Employees" State Insurance Corpn.	APPELLANT
Vs	
Derhin Bai and Another	RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(8), 75, 82, 82(2)
Workmens Compensation Act, 1923 — Section 3(1)

Citation : (2012) 135 FLR 1004 : (2012) 4 LLJ 324 : (2013) LLR 170 : (2012) LLR 886

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : S.P. Kale, for the Appellant; Vivek Verma and Mr. N.K. Vyas, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Agarwal, J.—This is non-applicant"s appeal filed u/s 82 of the Employees" State Insurance Act, 1948 (for brevity "the Act of 1948") against the order dated 17.1.1997 passed by the Court of Employees State Insurance, Labour Court. Rajnandgaon (for short "the ESI Court") in case No. 1/92 ESI Act (Civil). Brief facts of the case are as under:

(i) Respondent No. 1 filed an application u/s 75 of the Act of 1948 before the ESI Court, Rajnandgaon for grant of accidental benefits against respondent No. 2 and appellant due to death of her husband Ramruj on 13.6.1986. According to respondent No. 1, her husband Ramruj was working in the Department of Engine Mechanic with respondent No. 2 in the second shift as Fireman. The B.N.C. Mill was registered under the E.S.I. Scheme. On 13.6.1986, there was illegal strike in the factory and in spite of that, her husband went on duty, when he reached at the gate of factory, agitated employees murdered him.

(ii) As per the appellant, Ramruj did not die of the accident, which arose out of and in the course of his employment and respondent No. 1 is not entitled to any

benefit.

(iii) The ESI Court, on appreciation of the evidence led, decided the claim of respondent No. 1 in her favour by passing the order impugned directing the appellant to make payment within a period of one month. Hence, this appeal.

2. Shri S.P. Kale, learned counsel appearing for the appellant, would submit: the duty shift of late Ramruj was to commence at 9.30 p.m. whereas incident took place outside the Mill at 8.30 p.m., the time when he was not on duty and the ESI Court has legally erred in holding, deceased Ramruj sustained employment injury "within the meaning of section 2(8) of the Act of 1948 entitling respondent No. 1 to claim death benefit". Reliance has been placed on the judgment of Hon"ble Supreme Court in the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another,

3. Per contra, Shri Vivek Verma, learned counsel appearing for respondent 1 and Shri N.K. Vyas, learned counsel appearing for respondent No. 2, supported the order impugned and submitted: the ESI Court, on proper appreciation of the evidence, has held, Ramruj died of employment injury. u/s 82(2) of the Act of 1948, an appeal can" only be filed u/s 82 of the Act of 1948, if it involves a substantial question of law. In the instant case, no substantial question of law arises for determination of this Court and appeal is devoid of merit. It was further contended, when Ramruj reached to factory gate at 8.30 p.m. to join his shift duty, agitated employees murdered him, and therefore, by no stretch of imagination, it can be said, he did not die of employment injury.

4. I have heard the counsel appearing for the parties and perused the order impugned including record of the Court below.

5. The substantial question of law that involved in this case is "whether death of Ramruj amounted to employment injury within the meaning of section 2(8) of the Act of 1948 entitling respondent No. 1 to claim death benefit".

6. Section 2(8) of the Act of 1948 defines employment injury, which would mean to say, a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupation disease is contracted within or outside the territorial limits of India.

7. It is not in dispute, the B.N.C. Mill was registered under the E.S.I. Scheme and deceased Ramruj was at the gate of the factory premises at 8.30 a.m. to join his duty scheduled to commence at 9.30 p.m. when he was murdered by agitating employees.

8. The definition given to "employment injury" in sub-section (8) of Section 2 of the Act of 1948 envisages, a personal injury to an employee caused" by accident or an occupational disease "arising out of and in the course of his employment", therefore, respondent No. 1, in order to succeed in her case, will have to prove that her husband had died in the accident, which arose "out of and in the course

of his employment". Both the conditions will have to fulfil before she could claim any benefit under the Act of 1948.

9. In the context of Section 2(8), the words "out or indicate that injury must be caused by an accident which had its origin in the employment. A mere road accident, while an employee is on his, way to his place of employment cannot be said to have its origin in his employment in the factory.

10. Further, the words occurring in section 2(8) of the Act of 1948 "in the course of his employment indicate the accident must take place within or during the period of employment.

11. The Hon"ble Supreme Court, in the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, while dealing the provision of Section 2(8) of the Act of 1948) has observed in paras 13, 14, 19, 20 and 29 as under:

13. The meaning of the words "in the course of his employment appearing in section 3(1) of the Workmen's Compensation Act, 1923, was examined by the Supreme Court in the case of Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja and Others, There, the appellant, a salt manufacturing company, employed workmen both temporary and permanent. The saltworks was situated near a creek opposite to the town of Porbandar. The saltworks could be reached by at least two ways from the town, one an overland route nearly 6 to 7 miles long and the other via a creek which had to be crossed by a boat. In the evening of 12-6-1952, a boat carrying some of the workmen, capsized due to bad weather and overloading. As a result of this, some of the workmen were drowned. One of the questions that came up for consideration was whether the accident had taken place in the course of the employment of the workers. S. Jafer Imam, J., speaking for the Court, held:

As a rule, the 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.

After laying down the principle broadly, S. Jafer Imam, J" went on to observe that there might be some reasonable extension in both time and place to this principle. A workman might be regarded as in the course of his employment even though he had not reached or had left his employer"s premises in some special cases. The facts and circumstances of each case would 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. But examining the facts of the case, in particular, after noticing the fact that the workman used a boat, which was also used as public ferry for which they had to pay the boatman"s dues, S. Jafer Imam, J., observed:

It is well-settled that when a workman is on a public road or a public place or on

a public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. A workman is not in the course of his employment from the moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension, outside of which the employer is not liable to pay compensation for any accident happening to him. In the present case, even if it be assumed that the theory of notional extension extends upto point D, the theory cannot be extended beyond it. The moment a workman left point B in a boat or left point A but had not yet reached point B, he could not be said to be in the course of his employment and any accident happening to him on the journey between these two points could not be said to have arisen out of and in the course of his employment. Both the Commissioner for Workmen's Compensation and the High Court were in error in supposing that the deceased workmen in this case were still in the course of their employment when they were crossing the creek between points A and B. The accident which took place when the boat was almost at point A resulting in the death of so many workmen was unfortunate, but for that accident the appellant cannot be made liable.

14. The point raised before us can be answered on the basis of the principle laid down in the aforesaid two cases. But Mr. Chacko, appearing on behalf of the respondent has contended that proximity of time and place is a factor to be borne in mind. The employee was to report for duty at 4.30 p.m. The accident took place at 4.15 p.m. only one kilometre away from the factory. In our view this cannot be a ground for departing from the principle laid down by the aforementioned cases that the employment of the workman does not commence until he has reached the place of employment. What happens before that is not in course of employment. It was also pointed out by Lord Denning in the aforesaid case of *R v. National Insurance Commr. ex p Michael* (1977) 2 All ER 420, that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment, may be extended even to cases while an employee is sent on errand by the employer outside the factory premises. But in such cases it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his workplace in the usual course of his employment. Latham, G.J., in *South Maitland Railways Proprietary Limited v. James*, 67 CLR 496, observed that when the workmen on a hot day in course of their employment had to go for a short time to get some cool water to drink to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for S water. But the case before us does not fall within the exceptions mentioned by Lord Denning or Latham, C.J. The

case squarely comes within the proposition of law propounded by S. Jafar Imam.

19. In the case of *Bhagubai v. Central Railway, Bombay*, (1954) LLJ, a Division Bench of Bombay High Court dealt with a case where a workman on his way to work was murdered. There was no evidence to show that the murder was due to any motive against the deceased workman. It was held that the death took place because of an accident arising out of employment. Chagla, C.J., emphasised that there must be a causal connection between the accident and the death before it could be said that the accident arose out of employment of the concerned workman. In that case, the deceased was employed by Central Railway at Kurla Station and he lived in the railway quarters adjoining the station. It was found as a fact that the only access for the deceased from his quarters to the Kurla railway station was through the compound of the railway quarters. On 20.12.1952, the deceased left his quarter a few minutes before midnight in order to join duty. While on his way, he was stabbed by some unknown persons. It is not disputed by the railway company that the deceased died as a result of an accident nor was it disputed that the accident arose in the course of his employment. The dispute was limited to the question whether the accident arose out of the employment of the deceased.

20. It is of significance that the deceased used to live in the railway quarters adjoining the railway station and the compound through which he had to go the place of work belonged to the railway company. In other words he died on the premise belonging to the railways. It was found as a fact that the stabbing which led to the death was not due to any personal enmity. That means it was an occupational hazard of the employee who went to join work at midnight from the railway quarter to the railway station through the railway compound. The facts of the case before us are quite dissimilar to the facts on the basis of which the case of *Bhagubai* (supra) was decided.

29. Although the facts of this case are quite dissimilar, the principle laid down in this case, are instructive" and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident, (2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.

12. The Hon"ble Supreme Court in the case of *State of Rajasthan v. Ramprasad and another*, (2001) 9 SCO 395 has held in paras 2 and 3 of its judgment as under:

2. The accident, it is stated, took place on account of lightning. The contention put forth on behalf of the appellant is that the mishap of death of Smt. Gita due to lightning is an act of God and, therefore, it is not liable to pay compensation. This Workmen's Compensation but also by the learned "single Judge in appeal

and thereafter by a Division Bench in a further appeal. The view taken is that the concept of the liability under the Act is wide enough to cover a case of this nature inasmuch as death had taken place arising as a result of accident in the course of employment. It is, no doubt true that accident must have a causal connection with the employment and arise out of it. If the workman is injured as a result of natural force such as lightning though in itself has no connection with employment, she can recover compensation by showing that such employment exposed her to such injury. In this case the finding is that the said Smt. Gita was working on the site and would not have been exposed to such hazard of lightning striking her had she not been working so".

3. The learned counsel for the appellant relied upon a decision of this in *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak*, The view taken by the Courts below is not inconsistent with the view taken by this Court, The appeal is therefore dismissed.

13. In a case where the insured employee under the Act of 1948, who was an Assistant Electrical Foreman in the mills, in the course of the discharge of his duties, reprimanded one of the coolies working under him for not doing his work properly. A week thereafter the insured employee happened to leave the mills premises 45 minutes earlier to the close of the shift, as the foreman of the next shift came earlier to the mills. When the insured employee had gone out of the mills premises at a distance of about 25 or 30 paces from the mills he was beaten by the coolie whom he reprimanded a week before and other men with bamboo sticks. Consequently, the insured employee lost his left eye, the Division Bench of the Bombay High Court in the case of *Gajanan Bhan Magat v. Employees' State Insurance Corporation*, 1974 LLJ (II) 163 has held:

...that a person could be said to be in the course of his employment only if he was under an obligation, express or implied to his employer to do or something reasonably incidental thereto. The test in all such cases is whether the employee was exposed to the particular risk by reason of his employment or whether he took the same risks as those incurred by any member of the public using the road. In view of the clear finding of the Court that the insured employee was assaulted by the coolie and the cause of the assault was due to an earlier incident of reprimanding him, it was held that the assault that had resulted in an injury to the insured employee arose out of his employment. It was also further held that the injury was sustained by the insured employee in the course of his employment not only when the injury was caused to him while doing something which an employee was under an obligation express or implied to do but also when he was doing something reasonably incidental thereto. The test in the circumstances of the case is whether the employee was exposed to the particular risk by reason of his employment. The insured employee going away from the mill premises was actually reasonably incidental to the duty that he was called upon to discharge as an assistant electrical foreman in the mills. The time when and the place where, he was attacked clearly showed that they were

incidental to the course of his employment. The appellant would not have been at that time at that place when he was assaulted but for his employment. It was under such circumstances held that the injury sustained by the insured person was an "employment injury" as defined u/s 2(8) of the Employees' State Insurance Act and it was in the course of his employment. While setting aside the judgment of the single Judge the matter was remanded to the Insurance Court to determine the quantum of benefit in accordance with the provisions of Employees' State Insurance Act."

15. Position of law on the subject, therefore, can be summarized as under:--

(i) To come within the Act, the injury by accident must arise both out of and in the course of employment.

(ii) The words "in the course of employment" mean in the course of the work which the workman is employed to do and which is incidental to it.

(iii) The words "arising out of employment" are understood to mean "during the course of employment, injury has resulted from some risk incidental to the duties to 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 casual relationship between the accident and the employment.

(iv) Expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to (the employment as such to its nature, its conditions, its obligations and its incidents. If by any 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.

(v) The onus of proving that the injury by accident arose out of and in the course of employment rests upon the applicant but these essentials may be inferred when the proved facts justify the inference.

15. Coming to the facts of the present case, deceased was at the verge of entering into factory premises to attend his duties scheduled to commence at 9.30 p.m. when he was murdered by agitated employees. Certainly, late Ramruj would not have been murdered, had he not been trying to enter into factory premises to join his duties against the wishes of employees on strike. Injury will come within the definition of "employment injury" not only when an employee is doing something which an employee was under obligation to do but also when he was doing something (sic) incidental thereto. Therefore, casual relation between the incident and the employment exists in the instant case.

16. Further, during strike, employees on strike may not allow co-employees to join their duties. In order to eliminate such possibility, if an employee comes to his place of work sometime before commencement of his duty hours and incident takes place, then it cannot be said, incident did not arise out of and during the course of his employment, Hon'ble Supreme Court in the case of Regional

Director, E.S.I. Corporation and another Vs. Francis De Costa and another, has observed: "A workman might be regarded as in the course of his employment even though he had not reached or had left his employer's premises in some special cases. The facts and circumstances of each case would 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 workman is not in the course of his employment from moment he leaves his home and is on his way to his work. He certainly is in the course of his employment if he reaches the place of work or a point or an area which comes within the theory of notional extension."" In the instant case, deceased Ramruj reached to the place of his work on or about 8.30 p.m. Merely because he reached the place of work sometime earlier would not make the accident out of purview of "employment injury" within the meaning of section 2(8) of the Act of 1948.

17. In the above facts and circumstances of the case, the ratio of law laid down by the Hon'ble Supreme Court in the case of Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, and relied upon by the appellant's counsel, supports the case of respondent No. I/claimant and in my opinion, death of Ramruj amounted to employment injury, within the meaning of Section 2(8) of the Act of 1948 entitling respondent No. 1 to claim death benefit and the learned ESI Court has not committed any illegality in passing the order impugned.

18. For the foregoing, the appeal fails and is hereby-dismissed. No order as to costs.