

(2009) 04 RAJ CK 0095
In the Rajasthan High Court

The State of Rajasthan

APPELLANT

Vs

Bhairun Singh

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Employees Compensation Act, 1923 — Section 3, 30

Citation : (2009) 04 RAJ CK 0095

Hon'ble Judges : Dalip Singh, J

Bench : Single Bench

Judgement

Dalip Singh, J.—Heard learned Additional Government Counsel.

2. This appeal has been preferred against the award dated 14.06.1995 passed in Claim Case No. 65/1993. The appellant is the employer and a claim was filed by the son on account of the death of his mother Smt. Kanku Bai, who allegedly died on 26.02.1993, as per the case of the claimant while in the employment of the appellant and as a result of the accident which occurred during the course of her employment.

3. The facts, in brief, are that on 26.02.1993 in the morning the deceased Smt. Kanku Bai who was employed as a labourer with the appellant at the Kota Barrage went on her duty and she was seen by the witnesses performing her duty at Kota Barrage. However, the deceased did not return home in the evening at the usual time and after having waited for some time an FIR was lodged with the police with regard to her being missing. The body of the deceased was discovered in the left main canal which was sent for post mortem. It appears that an inquiry u/s 174 Cr.P.C. was also conducted and later on it was discovered that the body was that of Smt. Kanku Bai.

4. A claim was filed by the claimant alleging that the deceased being a workman employed with the establishment of the appellant-State namely at the Kota Barrage of the Irrigation Department, had gone to perform her duties at the place of her work in the morning where she was seen performing her duties upto

the morning hours but in the afternoon she was not seen at the place of work. It is the case of the claimant supported by the evidence of one Madan Singh that the deceased was performing her duties in the compound as a labourer in the garden and was assigned the task of cutting the bushes near the canal and while performing the said duty she fell into the canal.

5. The appellant-State on their part denied their liability. Though the fact of the employment and the fact that the deceased had come in the morning hours at the Kota Barrage is not in dispute. The liability was denied on account of the fact that during the lunch hours the deceased might have left the place of work and, she did not return and on that account the employer cannot be said to be liable on account of the provisions of Section 3 of the Workmen's Compensation Act as the act of the deceased, drowning in the canal cannot be attributed to having occurred in the course of employment and the accident cannot be said to have arisen out of and in the course of employment.

6. Before the learned Commissioner, the parties led their evidence and the learned Commissioner relying upon the evidence led by the claimant held that the deceased was employed with the appellant at the Kota Barrage. It was also found that the deceased had gone to perform her duties at the Kota Barrage in the course of her employment and during the aforesaid act of performing her duties, if the accident has occurred the same shall be attributed and be deemed to have arisen in the course of employment.

7. Learned Counsel for the appellant-State firstly sought to contend that the deceased left the place of her employment during the lunch hours and did not return and the accident of her falling was not witnessed by any person at the place of work, otherwise, a report to that effect would have been lodged by the appellant-State itself and secondly that having left the place of work if the deceased has drowned by falling in the canal then the said cannot be said to be arisen out of and in the course of employment. He has relied upon two judgment of the Hon"ble Supreme Court in the case of Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another, and Malikarjuna G. Hiremath v. The Branch Manager, The Oriental Insurance Co. Ltd. and Anr. Civil Appeal No. 956 of 2009 : Arising out of SLP (C) 25750/2005 decided on 12.02.2009.

8. I have heard learned Additional Government Counsel appearing on behalf of the appellant-State though none has appeared on behalf of the claimant at the time of hearing despite service.

9. The learned Commissioner has given a categorical finding that the deceased reached her place of work as usual and was performing her duties assigned to her at the Kota Barrage in the compound where she was made to look after the open space and garden. The evidence on the part of the claimant is that the deceased was there at the place of work and cutting the shrubs and bushes, the job which was assigned to her, as is stated by the witness Madan Singh, co-worker.

10. It is also the part of record that the deceased was seen performing her duties up to the lunch hours i.e. during the morning hours but she was not seen thereafter. The evidence of last seen of Madan Singh is of her cutting shrubs and bushes, the job which was assigned to her at the place of work by the employer. She has not been seen admittedly thereafter by any other person. In the facts and circumstances, therefore, it can reasonably be presumed as was sought to be stated by the witness Madan Singh that she fell into the canal while performing her job which was assigned to her on the fateful day by the employer. The employer or any other witness on his part did not lead any counter evidence that she was last seen after having been noticed cutting the shrubs and bushes near the canal by any other person. Nor is there any evidence led by the appellant that she was seen leaving her place of work. In that view of the matter, it is reasonable to presume as alleged by the witness Madan Singh that she fell into the canal while performing the aforesaid job accidentally. There is no evidence to counter the fact that she was not assigned with the job of cutting shrubs and bushes.

11. The judgments which have been referred to by the learned Additional Government Counsel may also be noticed. So far as the Malikarjuna's case (supra) is concerned that was a case where a driver of the truck who proceeded from Siraguppa to Gurugunta, on reaching at Gurugunta, proceeded to a pond to take a bath and slipped there and fell and drowned. Their Lordships of the Hon'ble Supreme Court held that the deceased was the driver of the vehicle and on the directions of the insured went to Gurugunta and there he went to the temple and was sitting on the steps of the pond in the temple and he slipped into the water and died by drowning and that was not held to be an accident so as to give rise to the liability u/s 3 of the Workmen's Compensation Act. The facts of that case are totally distinguishable as in the instant case the deceased was last seen working and performing her duties for the employer at the place of her employment and as has been held above she met with an accident by falling into the canal while performing the job of cutting shrubs and bushes near the canal which was the work assigned to her. There is, therefore, a close proximity between the accident and her working and, therefore, the aforesaid accident in the instant case would fall within the definition of "an accident arising out of and in the course of employment" as required by Section 3 of the Act. The case of Malikarjuna (supra) is, therefore, totally distinguishable.

12. So far as the other case of Shakuntala Chandrakant Shreshti (supra) is concerned, the same is also distinguishable inasmuch as that was a case of natural death on account of heart failure and on that account the same has no application to the facts and circumstances of the present case.

13. Thus, the judgments cited by the learned Additional Government Counsel are clearly distinguishable on their own facts from those of the present case.

14. Though so far as an appeal u/s 30 of the Act is concerned, the proviso to Section 30 clearly provides that an appeal is maintainable only on the substantial

question of law but in spite of the above the learned Additional Government Counsel has been heard on the facts as well as the findings call for no interference.

15. In the facts and circumstances, I find no reason to interfere with the findings arrived at by the learned Workmen Compensation Commissioner. The submissions of the learned Additional Government Counsel based upon the interpretation of Section 3 of the Act, based upon the aforesaid judgments of the Hon'ble Supreme Court, have no application to the facts and circumstances of the present case and, therefore, the present case being clearly distinguishable, this appeal is accordingly dismissed.

16. As none has appeared for the respondent, there shall be no order as to costs.