

(1984) 01 GUJ CK 0001
In the Gujarat High Court
Case No : First Appeal No. 158 of 1981

Union of India (UOI) and Another

APPELLANT

Vs

Shantaben and Others

RESPONDENT

Date of Decision : 23-01-1984

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 4A, 4A(3)

Citation : (1984) 01 GUJ CK 0001

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : S.D. Shah, for the Appellant; A.K. Shah, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Shah, J.—The Respondents had filed Workmen's Compensation Case No. 12 of 1978 before the Commissioner for Workmen's Compensation and Civil Judge (S.D.), Mehsana, stating that Vithaldas Gobardas Patel, husband of Respondent No. 1 and father of Respondent Nos. 2 to 4, was serving at Vijapur Post Office as Sub-postmaster. In the course of his employment when he was working at the post office at Vijapur on 1.4.1978 he was murdered by somebody at about 8.00 to 8.30 p.m. The deceased was getting Rs. 750/- per month by way of his salary. The notice of the accident and for compensation was served by them to the Appellants on 26.7.1978. The Appellants have neither complied with, nor replied to, the said notice. Therefore, they have claimed Rs. 24,000/- by way of compensation.

2. This application was resisted by the Appellants and before the Commissioner it was vehemently contended by them that the deceased Vithaldas Patel cannot be said to be a "workman" within the meaning of Section 2(1)(n) of the Workmen's Compensation Act, 1923. It was further contended that as the deceased was murdered by some unknown persons, it cannot be said that the deceased died by accident arising out of and in course of his employment. After considering the contentions raised by the Appellants in detail, the learned Commissioner held

that the Respondents were entitled to have compensation of Rs. 24,000/- . He has not awarded penalty and interest u/s 4-A of the Act.

3. Against the said judgment and order the Appellants have preferred this appeal and the Respondents have also filed cross-objections wherein they have prayed that the learned Judge ought to have awarded penalty and interest as provided u/s 4-A of the Act.

4. At the time of hearing of this appeal, the learned standing counsel appearing on behalf of the Appellants raised the following contentions:

(1) As the deceased Vithaldas was murdered and as there is no evidence on record that the said murder was caused because of duties which were required to be performed by the deceased, the Workmen's Compensation Act would not be applicable and the Respondents are not entitled to have any compensation under the Act.

(2) He further submitted that as the Petitioner was a Sub-postmaster and as Schedule II of the Act does not include the Sub-postmaster, therefore also he cannot be termed to be a "workman" within the definition of Section 2(1)(n) of the Act.

5. With regard to the first contention that as the deceased was murdered and as there is no evidence on record to show that cause of murder arose out of the employment or the work which was required to be performed by the deceased, it would be proper to consider few admitted facts on record before discussing the said contention. It is an admitted fact that the Petitioner was working as a Sub-postmaster at Vijapur Post Office where postal and telegraphic work is being done. It is further admitted that the deceased was at 8.00 p.m. in Telegraph Room of Vijapur Post Office and that he was allowed rent-free quarter on upstairs by the Appellants. It is further a proved fact that in the said room one telegram was lying on the table. The Log Book and the spectacle were found in reverse position. As per the evidence of Dr. Bhanukumar Shivilal Patel Exh. 21, two horizontal ligature marks on the neck were found along with other injuries and cause of death was due to asphyxia following strangulation with ligature around the neck. As per the evidence of Gokalbhai Mohanlal Patel Exh. 36, as a Sub-postmaster a person is required to work on signalling. He has also referred to certain rules provided in Post and Telegraph Manual. It is his say that Post and Telegraph office at Vijapur is joint. The Sub-postmaster is provided a residential accommodation on the first floor of the post office. If some person wants to send a telegram after office hours, then the said work is required to be performed by the Sub-postmaster to whom free quarter is allotted. If the Postmaster performs the said duties, then he is termed as Signaller. After duty hours the Sub-postmaster is not required to do any postal work but is required to attend to the work for telegram or telephone. In cross-examination it was suggested to him that this work which is carried out by the Sub-postmaster would be voluntary work as per the rules. It was further suggested to him that if a person from the

public comes for sending telegram, he is not required to enter the post office.

6. In view of the aforesaid facts it is established that the deceased was performing the work of a Sub-postmaster in the office in Telegraph Room at about 8.00 p.m. At that time while in the course of employment he found himself in a spot where he was assaulted and strangulated. He was in the place where he was murdered by reason of his employment. But for the fact that he had to perform the said duty, he would have been safely either at his residential place or gone outside. Therefore, the connection between the employment and accident is established. There is no evidence on record in this case that the deceased in any way added to the peril. There is not an iota of evidence in this case that the deceased was done to death because someone was interested in murdering him. Nor is there any evidence that the employee was bound to be murdered whether he was on the spot in the course of his employment or anywhere else.

7. The learned advocate for the Appellant submitted that there is no evidence on record that injury to the deceased was caused by accident arising out of and in course of his employment. He submitted that there was no evidence to connect the death of the workman with his employment. He might have been killed by a person out of personal animosity wholly unconnected with his employment. In support of this submission he relied upon the Full Bench decision of Allahabad High Court in the case of *Abida Khatun v. General Manager, Diesel Locomotive, Varanasi* 1972 ACJ 489 (Allahabad). In the aforesaid case *Mohammad Ayub Khan*, the deceased, was employed as Works Supervisor in the Diesel Locomotive Works Project, Varanasi. On 4th June, 1967 it was his rest day but owing to some work the Senior Civil Engineer ordered him to report for duty on that day. In pursuance of this order he started from his house at about 6.30 in the morning. On the way, he was assaulted by some unknown persons and he died due to the injuries. His widow had instituted an application for compensation under the Act. The two learned Judges in the said case arrived at the conclusion that where the workman was murdered, no liability for compensation can be fastened on the employer unless some nexus can be established between the employment as such and the act of murder. It was further observed that there was no evidence on record to show who caused the murder and what was the motive behind it. It was also not known that there was any risk which was ordinarily inherent in the discharge of the duties of the deceased. It was also not established that the workman was exposed to some special risk at the place where the accident took place. Two learned Judges held that it was not possible to attribute the accident to any such risk and to hold that the accident arose out of the employment. In fact there was no evidence to connect the death of the workman with his employment. This view of the court was dissented by learned third Judge and the learned Judge relied on and followed the judgment in the case of *Bhagubai Vs. General Manager, Central Railway, V.T., Bombay*, . The learned Judge in his differing judgment has held in paragraph 41 as under:

In my opinion, the phrase "in the course of and arising out of" denotes an integrated idea involving the concept of time, place as well as purpose. As explained above, if these factors are established, i.e., the workman is at the place of the occurrence during his employment and for the purpose of his employment, the employer can get out of the Act only if it is proved that the occurrence was designed by the workman (as in the case of a suicide) or was due to his wilful misconduct (as in a case of personal enmity). If these facts are proved, the case, in my opinion, goes outside the Act because then it ceases to be an "accident" as known to the section. An event proved to be designed or expected by the workman is not an "accident". In the present case, there is no evidence of suicide or personal enmity. The employer remains liable.

The Division Bench of the Bombay High Court in the case of *Bhagubai v. General Manager, Central Railway* AIR 1955 Bombay 105, has in terms held that if the employee in the course of his employment has to be in a particular place and by reason of his being in that particular place he has to face a peril and the accident is caused by reason of that peril which he has to face, then a causal connection is established between the accident and the employment. The court further held as under:

It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril or extend the peril. But if the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident.

(Emphasis added).

Thereafter the court has relied upon the judgment in the case of *Trustees of the Port of Bombay Vs. Yamunabai*, . In that case a workman was employed as a carpenter in a workshop along with other workmen and he was killed as a result of injuries received by him by the explosion of a bomb which was placed by an unknown person near the place where the workman was doing his work. There the Division Bench had held that the workman had received personal injury as a result of an accident arising out of his employment. The court has further relied upon an unreported decision of a Division Bench in *General Manager, G.I.P. Rly. V.T. Bombay v. Godrej Navroji Unwala* F.A. No. 527 of 1948, where it was held that the workman who was serving as an Assistant Engine Driver in the G.I.P. Railway Company and who was returning after completing his duty at Kalyan by the Kalyan Local Railway and was set upon by some soldiers and thrown on the railway lines and received injuries, that the injuries arose out of the employment and he was entitled to compensation. The Division Bench further relied upon the following paragraph from the leading English case reported in *Thorn or Simpson*

v. Sinclair 1917 AC 127:

... In short, my view of the statute is that the expression "arising out of the employment" is not confined to the mere "nature of the employment". The expression, in my opinion, applies to the employment as such--to its nature, its conditions, its obligations and its incidents. If by reason of any of these the workman is brought within the zone of special danger and so injured or killed, it appears to me that the broad words of the statute "arising out of the employment" apply. If the peril which he encountered was not an added peril produced by the workman himself, as in the cases of *Plumb v. Coliden Flour Mills Company* 1914 AC 62 and *Barnes v. Nunnery Colliery Company* 1912 AC 44 in this House, then a case for compensation under the statute appears to arise.

In paragraph 5 of the judgment, the court negatived the contention raised by the Appellant that there is always a motive for murder and therefore it could not be said that the risk which the employee ran was a risk which would have been run by any other employee or a member of the public. The court held as under:

According to Mr. Desai, in the case of a murder the person murdered alone runs the risk because the murder is motivated by a particular person being done to death. In our opinion there is not an iota of evidence in this case that the employee was done to death because some one was interested in murdering him. Nor is there any evidence that the employee was bound to be murdered, whether he was on the spot in the course of his employment or anywhere else.

The court has further held:

In our opinion, once the Applicant has established that the deceased was at a particular place and he was there because he had to be there by reason of his employment and he further establishes that because he was there he met with an accident, he has discharged the burden which the law places upon him. The law does not place an additional burden upon the Applicant to prove that the peril which the employee faced and the accident which arose because of that peril was not personal to him but was shared by all the employees or the members of the public.

8. In view of this clear binding decision of the Division Bench of the Bombay High Court, the submission made by the learned advocate that in view of the majority judgment of the Allahabad High Court I should arrive at a conclusion that as the Applicants have failed to prove the nexus between the employment and the act of murder I should dismiss the application filed by the heirs of the deceased is of no substance. As stated above, it is a proved fact that the deceased who was a Sub-postmaster was performing his duties in a Telegraph Room at about 8.00 p.m. The telegram was lying on the table and there is no other evidence on record in this case to establish that the deceased was done to death because someone was interested in murdering him. In view of the settled law it is not open to me to take any contrary view.

9. The Madhya Pradesh High Court in the case of Satiya v. Sub-Divisional Officer Public Works Department 1974 ACJ 431 (MP), has held that murder of a chowkidar in the office of Public Works Department could be construed as an accident from the point of view of the Workmen's Compensation Act by relying upon Nisbet v. Rayne and Burn (1910) 2 KB 689. There a cashier, while travelling in a railway carriage to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held that the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of an employment which involved more than the ordinary risk and consequently that the widow was entitled to compensation under the Workmen's Compensation Act. The court negatived the contention that there was no "accident" at all because death resulted from the intentional act of the murderer and intention excludes any idea of accident. Hence there cannot be any doubt that the murder of the deceased was an "accident" arising out of and in course of his employment within the meaning of the Workmen's Compensation Act.

10. With regard to the second contention of the learned advocate for the Appellant that the deceased cannot be termed as a "workman" within the meaning of the Act as Sub-postmaster is not included in Schedule 11 u/s 2(1)(n) of the Act, in my opinion the learned Judge has rightly held that under Schedule 11 (xiii).as the deceased was working as a Telegraphist or as a Postal Signaller, he would be covered under the said clause. This view of the learned Judge is also supported by the evidence of Gokalbhai Mohanlal Patel who was working as a Sub-postmaster at Vijapur at the relevant time. It is his say that Sub-postmaster is required to perform duties as a Signaller after office hours. For this purpose the Postal Department is giving free quarters to the concerned officer. In view of this evidence, by no stretch of imagination it can be said that the deceased cannot be said to be a "workman". The appeal, therefore, deserves to be dismissed.

11. The Respondents have filed cross-objections contending that the learned Commissioner ought to have awarded penalty as well as interest u/s 4-A(3) of the Act because the employer has failed to deposit the compensation due under the Act within one month from the date it fell due. At the time of hearing, the learned advocate for the Respondents had not pressed his contention for payment of penalty u/s 4-A(3). He submitted that u/s 4-A(3) simple interest at the rate of 6 per cent per annum ought to have been granted by the learned Commissioner as the amount was not deposited by the employer. The learned advocate for the Appellants submitted that whether the workman was entitled to claim compensation under the Act was a disputed question. Therefore, the learned Commissioner was right in not awarding penalty and also simple interest at the rate of 6 per cent per annum. In my opinion, the contention of the learned advocate for the Respondents is well-founded because u/s 4-A(3) the learned Commissioner was bound to direct that as the employer has defaulted in paying the compensation due under the Act within one month from the date it fell due,

the employer in addition to the amount of arrears was required to pay the said amount with simple interest at the rate of 6 per cent per annum. There is no justification for not granting the simple interest at the rate of 6 per cent per annum. The cross-objections, therefore, deserve to be partly allowed.

12. In the result, the appeal is dismissed with costs.

13. The cross-objections are partly allowed. The Appellants are directed to pay simple interest at the rate of 6 per cent per annum on the amount of compensation from the date of the application till the date of the deposit. There will be no order as to costs.