

(2004) 02 DEL CK 0070
In the Delhi High Court
Case No : FAO 338 of 2001

United India Insurance Co. Ltd.

APPELLANT

Vs

Kanshi Ram and Others

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Citation : (2004) 1 ACC 527 : (2006) ACJ 492 : (2004) 110 DLT 130 : (2004) 73 DRJ 370 : (2006) 142 PLR 63

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Shantha Devi Raman, for the Appellant; Sanjay Gupta, for R-1 and 2 and Amarjeet Rai, for R-3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—This case brings into light the twin tragedies suffered by Respondent Nos.1 and 2. The first tragedy was the murder of their son, the driver of a truck, on 28th January 1993; the second tragedy is the gross delay that has occurred in settling their claim for compensation under the provisions of the Workmen's Compensation Act, 1923 (for short the Act). Nothing can be done to mitigate the first, but surely some thought needs to be given to speed up the disposal of cases involving compensation for death.

2. The Appellant, an insurance company, seeks to find fault with an order dated 15th May 2001 passed by the Commissioner under the Act awarding compensation to the parents of the deceased, Sohan Lal Verma.

3. Sohan Lal was working as a driver with M/s Manoj Roadlines. As a part of his duties, he was taking a truck from Delhi to Hyderabad Along with a second driver Jeet Singh. It appears that somewhere in Rajasthan, he was murdered. The truck was missing for a few days and when the police located it during investigations, it was revealed that some of the goods that were being transported in the truck were stolen. Investigations also revealed that Jeet Singh had committed the

murder.

4. Respondent Nos.1 and 2 filed a claim for compensation before the Commissioner in Rajasthan but on their request the application was later transferred to Delhi. The owner of the truck (Manoj Roadlines) raised an objection that even though the truck was insured with the Appellant, it was not made a party to the proceedings. Accordingly, the claimants moved an application and the Appellant was impleaded as one of the Respondents to the claim and an amended memo of parties was filed on 28th December 1995. The Appellant did not deny that the truck was insured with it, or that it was a necessary party to the proceedings.

5. On these broad facts, the Commissioner framed the following issues:-

"1. Whether the suit is maintainable in view of preliminary objections?

2. Whether the accident occurred out of and in the course of employment?

3. Amount of compensation payable?

4. Any other relief."

6. The facts of the case are not disputed by anybody, but there are two contentions raised by learned counsel for the Appellant. It is firstly contended that because the deceased was murdered, the Appellant has no liability to pay any compensation, the argument being that the death was not an accident. The second contention of learned counsel is that the Appellant is not liable to pay any interest on the compensation awarded, assuming that compensation is due and payable to the parents of the deceased. The amount of compensation is itself not in dispute.

7. What is an accident, and when can it be said that a murder is an accident?

8. *Nisbet v. Rayne and Burn* [1910] 2 KBD 689 is a leading case on this subject. A cashier was traveling in a train with a large sum of money intended for payment to his employer's workmen. He was robbed and murdered and the Court of Appeal held the murder was an accident from the point of view of the cashier and, Therefore, it was an accident within the meaning of that term in the Workmen's Compensation Act, 1906.

9. Similarly, in *Board of Management of Trim Joint District School v. Kelly* [1914] A.C. 667, an assistant master at an industrial school was assaulted and killed by two pupils while he was performing his duties. The House of Lords held that for the purpose of the same statute, his death was caused by an accident. Viscount Haldane, L.C. pointed out that the meaning of the term "accident" would vary according as the context varies, and as instances mentioned criminal jurisprudence where crime and accident are sharply divided by the presence or absence of means read and the law of marine insurance where the maxim: *In jure non remote cause sed proximal spectator* (In law the proximate, and not the remote, cause is to be regarded) applies.

10. In *Clover, Clayton & Co., Ltd. v. Hughes* [1910] A.C. 242, Lord Loreburn, L.C. said:-

"What, then, is an "accident"? It has been defined in this House as "an unlooked for mishap or an untoward event, which is not expected or designed..."

11. Our Supreme Court in *Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another*, dealt with a case in which the driver of an auto rickshaw was murdered by his fare-paying passengers. The passengers intended to steal the auto rickshaw, for which they had to eliminate the driver. On these facts, the Supreme Court held that the death of the driver was caused accidentally in the process of committing theft of the auto rickshaw.

12. In the leading case of *Bhagubai v. Central Railway* 1954 II LLJ 403 (Bom), the deceased was stabbed to death while he was on his way to join duty. It was not disputed that the death was a result of an accident or that it arose in the course of his employment. The dispute was whether it arose out of the employment of the deceased. The Division Bench held at page 404 as follows:

"Now, it is clear that there must be a causal connexion between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down 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 connexion is established between the accident and the employment. 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 connexion is established between the employment and the accident. In this particular case what is established is that the employee while in the course of his employment found himself in a spot where he was assaulted and stabbed to death. He was in the place where he was murdered by reason of his employment. He would have been safely in his bed but for the fact that he had to join duty, and he had to pass this spot in order to join his duty. Therefore, the connexion between the employment and accident is established. There is no evidence in this case that the employee in any way added to the peril. There is no evidence that he was stabbed because the assailant wanted to stab him and not anybody else."

Thereafter, at page 405-406, it was held as under:-

"Once the peril is established, it is for the employer then to establish either that

the peril was brought about by the employee himself, or that the peril was not a general peril but a peril personal to the employee. It is because of this that the authorities have made it clear that the causal connexion between the accident and the employment which the applicant has to establish is not a remote or ultimate connexion but a connexion which is only proximate. Once that proximate connexion is established the applicant has discharged the burden, and in this case the proximate connexion between the employment and the injury is the fact that the deceased was at a particular spot in the course of his employment and it was at that spot that he was assaulted and done to death."

13. In *Smt. Satiya and Others Vs. Sub-Divisional Officer, P.W.D. (Buildings and Roads) and Others*, a chowkidar in the Public Works Department was murdered while on duty. One of the questions that arose was whether his murder could be said to be an accident. Relying upon *Nisbet*, it was held that the murder was an unlooked for mishap or untoward event which was not expected or designed. The learned Judge held that word "accident" excludes the idea of willful and intentional act but as explained in *Nisbet*, "the phrase ought to be held to include murder as it was an accidental happening so far as the workman was concerned."

14. *Varkeyachan Vs. Thomman*, was a case in which an employee engaged to do odd jobs died as a result of stab injuries received while on duty. The Division Bench held the injury to be an accident sustained by the deceased in the course of his employment.

15. The question that arose for consideration in *United India Insurance Co. Ltd. Vs. Philo and Others*, was: whether the killing of a workman while he was in the course of his employment, by an unknown person, can be considered as death caused as a result of an accident arising out of his employment? In this case the deceased was the driver of a taxi. He had taken some tourists out of town. He did not return from the tour and it was reported that he was killed and somebody stole the taxi. The Division Bench answered the question in the affirmative and held in paragraph 7 and 8 of the Report:-

"But for the engagement as the driver of the taxi, the deceased would not have been in the place and in the situation where he was at the time when he was killed. The causal connection is complete and we have no doubt in our mind to hold that the accident which has resulted in the death of the workman has arisen out of the employment.

The contention that the claimants have failed to discharge their burden to prove the causal relationship between the accident and the employment is only to be rejected in the light of the observations contained in *Bhagubai v. General Manager, Central Rly.* AIR (Supra) with which we respectfully agree."

16. *Parle Products Limited Vs. Subir Mukherjee*, was a case in which an employee was traveling from Calcutta to Puri by train to attend an official conference. On the way, he was assaulted and thrown out of the Railway compartment. He sustained multiple injuries including a head injury and became permanently

physically disabled. The Division Bench held that there had been an accident, and that the accident had a causal connection with the employment inasmuch as the workman was traveling in the train to attend a conference organized by the employer in terms of a direction issued in that regard to him. Thus, it was held that the accident occurred in the course of his employment.

17. Learned counsel for the Appellant relied upon *Mewar Textile Mills and Another Vs. Kushali Bai and Another*, to contend that an employer cannot be held responsible only because one employee happens to assault another employee, unless it is proved that the incident had something to do with the employment of the person in respect of whom the compensation is claimed. I'm afraid this decision does not help learned counsel because in *Mewar Textile Mills* there was no evidence whatsoever that the death of the workman had any relation to his employment. It was only a chance that his assailants found occasion to murder him in the premises of the employer during the recess, though they could as well have assaulted him outside the premises or at some other time.

18. On facts, the present case is completely different. As the driver of the truck, Sohan Lal was under an obligation to look after the truck and the goods that he was transporting. Nevertheless, the truck was taken away, some goods therein were stolen and Sohan Lal was murdered. All this clearly suggests that these events were not unrelated, unlike the facts in *Mewar Textile Mills*.

19. Reliance has also placed by learned counsel for the Appellant on *Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak*, but that case related to the interpretation of the expressions "in the course of employment" and "arising out of employment" occurring in Section 3 of the Act. That question does not arise in the present case because there is no dispute that the murder of Sohan Lal took place during the course of his employment.

20. Finally, learned counsel for the Appellant relied upon the following passage in *Rita Devi*:

"The question, Therefore is, can a murder be an accident in any given case? There is no doubt that "murder", as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder."

21. No evidence was led by the Appellant to suggest that the dominant purpose of Jeet Singh was to kill Sohan Lal and not to commit theft. Under the

circumstances, this argument is not at all available to learned counsel for the Appellant.

22. The final contention of learned counsel for the Appellant was that interest ought not to have been charged on the amount of compensation. In this regard, learned counsel is partly right in as much as the Commissioner has awarded interest from the date of death of Sohan Lal. I think that in accordance with the principle relating to compensation in respect of motor accident claim cases, interest should have been awarded from the date of the claim, and not from an earlier date. It was also contended by learned counsel that there was an enormous delay on the part of the claimants in impleading the Appellant. This does not appear to be so because as soon as the claimants came to know that the truck was insured with the Appellant, immediate steps were taken to implead the Appellant as a party to the proceedings. Thereafter, steps were taken by the claimants to effect service on the Appellant, who was in fact served, but the Appellant chose not to participate in the proceedings, until a much later date. This is quite clear from the records of the case and when this was pointed out to learned counsel, she did not, in all fairness, press this point any further.

23. Under the circumstances, the appeal preferred by the Appellant is liable to be dismissed, except to the extent that the award of interest at 6% per annum will be not from the date of death of Sohan Lal, but from the date on which the claim was made by Respondent Nos. 1 and 2. Subject to this modification, the appeal is dismissed. Respondent Nos. 1 and 2 will be entitled to costs of Rs.5000.