
(2009) 09 DEL CK 0141
In the Delhi High Court
Case No : F.A.O. No. 346 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Dariyao Kanwar and Others

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 3, 3(1)

Citation : (2009) ILR Delhi 288 Supp

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

V.B. Gupta, J.—United India Insurance Company-appellant, has filed this appeal against order dated 22nd March, 2007 of Commissioner Workmen Compensation (for short as "Commissioner"). Vide impugned order, Commissioner passed an award for Rs. 3,26,140/- along with interest @ 12% p.a., w.e.f. 15th September, 2003 till realization, in favour of respondents/claimants.

2. Brief facts are that, deceased-Sumer Singh was employed as driver with respondent No. 6. On 15th September, 2003, deceased was on his professional visit and was driving the vehicle. When he reached Udaipur in Rajasthan, his condition deteriorated due to strenuous and continuous driving. He parked his vehicle and thereafter, expired due to failure of his bodily organ due to stress and strain of driving. His post-mortem was conducted and a case was registered. Respondents No. 1 to 5 are legal heirs/claimants of the deceased.

3. Appellant in its written statement denied that deceased was employed as a driver, as no driving license or other documentary evidence has been placed on record. It was also denied that any such incident as alleged, took place during course of his employment. As per claimants case, deceased died due to failure of bodily organ, while post mortem report states that all organs of deceased were

healthy at that time. Thus, petition is not maintainable.

4. Notice was issued to respondents No. 1 to 5, who were duly served for 26th September, 2008. Since, there was no appearance on their behalf, appeal was admitted for hearing. On 7th September, 2009, none appeared for them.

5. Arguments advanced by learned Counsel for appellant have been heard.

6. It is contended by learned Counsel for appellant that claim of respondents, u/s 3 of Workmen Compensation Act (for short as "Act"), is not maintainable, since death of deceased was not caused by accident, during the course of employment.

7. Another submission is that there is no medical evidence on record to show that death occurred due to heart attack or organ failure was the consequence of mental strain or stress, due to employment as alleged.

8. Learned Counsel in support referred to *Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Anr.* IV (2006) ACC 769 (SC), in which Supreme Court observed;

Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question.

9. Widow of deceased, in her statement stated that deceased was going in his truck from Delhi to Baroda. On way, his condition deteriorated and he died due to failure of his bodily organ, due to stress and strain of continuous driving.

10. There is no evidence on record to show that deceased died as a result of organ failure, as alleged by claimants. Post mortem report Exb. AW1/3, does not show that there was any organ failure. Opinion of Doctor who conducted post mortem examination, is as under:

Regarding cause of death will be given after receiving chemical and histopathological examination report.

11. This clearly shows that cause of death has not been given in post mortem report. Moreover, Post Mortem report states; "Organ generation ; external and internal-Healthy".

12. Under such circumstances, it cannot simply be assumed that death occurred due to stress and strain, of continuous driving, which resulted in organ failure. There has to be sufficient proof to support that claim.

13. Section 3(1) of the Act, which is relevant for the purpose of this case reads as follows:

3. Employer's Liability For Compensation. - (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable ?

(a) in respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding [three] days;

(b) in respect of any [injury], not resulting in death, [or permanent total disablement], caused by] an accident which is directly attributable to ?

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or discharged by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

14. As per this Section, it has to be established that there was some casual connection between the death of workman and his employment. If, workman dies as a result of disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of employment, no liability would be fixed upon employer.

15. In Mackinnon Mackenzie and Co. (P) Ltd. Vs. Ibrahim Mahmmmed Issak, Supreme Court held;

5. To come within the Act the injury by accident must arise both out of and in the course of employment. The "words in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it". The words "arising out of employment" are understood to mean that during the course of the employment, injury has resulted from some risk incidental to the duties of 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 causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by 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. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of

course the workman has exposed himself to an added peril by his own imprudent act.

16. Similarly, in *The Municipal Corporation Vs. Smt. Sulochanabai Sadashiv Joil*, it was observed;

Three factors must be established to attract the liability u/s 3 of the Act. Firstly, there must be an injury. Secondly, it should be caused in an accident. Thirdly, it should be caused in the course of the employment. Mere death in ordinary course by some bodily ailment or even in the course of employment cannot attract liability of employer u/s 3. The words "injury" and "accident" in Section 3 of the Act imply the existence of some external factor to cause death apart from internal ailment of the body.

17. In *Sakinabibi and Another Vs. Gujarat State Road Transport Corporation*, , Gujarat High Court held;

In order to earn an award for compensation u/s 3 of the Act, it is necessary to prove that the personal injury or the resultant death (as the case may be) is caused to a workman by accident arising out of and in the course of his employment with the employer. The words "out of employment" emphasise a casual connection between the employment and the accidental injury. Though the word "accident" occurred in Section 3 of the Act, is not defined in the Act, the said expression has been subjected to number of judicial decisions, as a result of which, it has come to acquire a settled meaning. It is a well-settled position of law that u/s 3 of the Act, it must be shown that there was a proximate cause and nexus between the personal injury or the accident and the work or employment. Therefore, it is incumbent upon the applicants to prove that there was a causal relationship between the injuries and the work in question. Section 3 of the Act clearly prescribes that the personal injury or the accident must be proved to have arisen out of and in the course of employment. If it is successfully proved or shown that the injury sustained by the workman had arisen out of and in the course of his employment, then the workman or the dependent of the deceased workman would be qualified and eligible for compensation u/s 3 of the Act.

18. In the present case, Commissioner did not go into jurisdictional facts nor arrived at any finding based on any legal evidence, as there is no casual relationship between the injuries and the work in question.

19. The impugned order under these circumstances cannot be sustained. The same is set aside and present appeal stands allowed.

20. At the time of admission of appeal, it was ordered that attached amount shall not be disbursed to the respondents. As appeal has been allowed, attached amount be released to appellant, only after expiry of period of limitation for filing appeal.

21. Parties shall bear their own costs.

22. Trial court record be sent back.