

(2009) 03 UK CK 0035

In the Uttarakhand High Court

Case No : Appeal Against Order No. 566 of 2006

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Jasbeer Kaur and Another

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 3(1), 30

Citation : (2009) 3 UC 1455

Hon'ble Judges : B.C. Kandpal, Acting C.J.

Bench : Single Bench

Advocate : Pankaj Purohit, for the Appellant; Gopal Narain, for the Respondent

Final Decision : Allowed

Judgement

B.C. Kandpal, A.C.J.

1. This appeal u/s 30 of the Workmen's Compensation Act, 1923 arises out against the judgment and award dated 05-08-2006 passed by Deputy Labour Commissioner/Workmen Compensation Commissioner, Kumaon Region, Haldwani, District Nainital in W.C.A. Case No. 52 of 2004, Smt. Jasbeer Kaur v. Anil Kapoor and Anr.

2. Brief facts of the case are that deceased - Mahindra Singh was engaged in vehicle No. UP02/D1499 as a driver under the employment of Anil Kapoor. On 12-12-2003 at about 08:00 a.m., the deceased was going to join his duties as a driver from his residence, when he reached near Sishmehal, suddenly, fell unconscious due to chest pain. He was rushed to the hospital by his family members but he died in the way and doctors declared him dead. According to the claimant, the deceased was 43 years of age and used to earn Rs. 4,500/- per month as salary. Therefore, the claimant filed the claim petition before the Workmen Compensation Commissioner for a sum of Rs. 4,50,000/- as compensation.

3. The Workmen Compensation Commissioner after having considered the entire

material available on record and hearing learned Counsel for the parties decreed the claim petition for a sum of Rs. 2,22,772/- against the Appellant vide judgment and award dated 05-08-2006.

4. Feeling aggrieved by the aforesaid judgment and award, the insurer/Appellant preferred this appeal before this Court.

5. At the time of admission, following substantial questions of law was formulated:

1. Whether the deceased, who died of heart attack at/near his residence at about 8:00 a.m., while he was going to join his duties as a driver from his residence, can be said to have died in an accident arising out of and during the course of his employment?

2. Whether the learned Workmen Compensation Commissioner misinterpreted and wrongly appreciated the evidence on record?

6. Heard Sri Pankaj Purohit, Advocate for the Appellant, Sri Gopal Narayan, Advocate for the Respondent No. 1 and perused the record.

7. The only controversy in this case which is to be taken into consideration is whether the death of the deceased Mahendra Singh occurred "in the course of his employment" as appears in Section 3(1) of the Workmen's Compensation Act, 1923. It is not a disputed fact that the deceased on the date of the death i.e. 12-12-2003 was going to the place of his duty and while he was on his way, he suffered heart attack and when he was taken to the hospital, the doctor declared him dead. The contention of the claimant is that as soon as the deceased started from his house for the place of his work, he started discharging his duty and in case, in the way he suffered the heart attack that will be treated that he suffered the same in the course of his employment and on account of the death the employer would be liable to pay the amount of compensation.

8. Learned Counsel for the claimant/Respondent has invited my attention towards the judgment cited in National Insurance Company Ltd. v. Smt. Suman Devi and Anr. reported in 2008 (1) U.D. 577 and has submitted that it was enough that at the time of accident, the workman was in actual employment, although he might not be actually turning out the work, which was his duty to carry out. It has been further submitted that if any injury or death takes place during the course of journey from the residence to the place of employment and so also, from the place of his employment to his place of residence, it has to be construed in law as the accident has taken place during the course of employment. My attention has also been invited towards judgment of the Hon'ble Apex Court in General manager B.E.S.T. v. Mrs. Agnes reported in 1963 (7) F.L.R. (S.C.) 310.

9. Learned Counsel for the Appellant on the other hand has invited my attention towards another judgment which is of course later judgment of the Hon'ble Apex Court in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa

and another, and on the basis of the aforesaid judgment, he has submitted that the employment of 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.

10. Learned Counsel for the Appellant has also submitted that the decision of the General manager B.E.S.T. v. Mrs. Agnes (supra) is not applicable to the facts and circumstances of the present case, as in the facts in the cited judgment General manager, B.E.S.T. v. Mrs. Agnes (supra) are that the deceased was traveling in the bus belonging to the undertaking in which he was employed. Therefore, he was treated at the time of his death "in the course of his employment". While in the present case, the deceased was not going in any bus belonging to the employer and he, while on his way suffered the heart attack near his house before reaching to the place of work, therefore, by any stretch of imagination, it cannot be held that the deceased died during the course of the employment.

11. Having considered the arguments advanced by learned Counsel for the parties and after perusal of the judgment cited before me, I find force in the arguments raised by learned Counsel for the Appellant. It is true that in case, of General manager, B.E.S.T. v. Mrs. Agnes (supra) the workman was traveling in the bus belonging to the undertaking in which he was employed. Therefore, the Hon'ble Apex Court held u/s 3(1) of the Workmen's Compensation Act, 1923, the deceased was in the course of his employment at the time of his death.

12. The facts in the present case are different, as in the present case neither the deceased was traveling in the bus belonging to the employer nor had reached to the place of his work at the time of his death. The facts reveal that when the deceased started from his house to the place of his work then on the way he suffered heart attack and he died on the way while being taken to the hospital.

13. The observations given by the Hon'ble SC in Regional Director, ESI Corporation v. Francies De Costa (supra) in paragraph Nos. 13 and 14 with regard to the meaning of words "in the course of employment" appearing in Section 3(1) of the Workmen's Compensation Act, 1923 is, "As the 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." In the aforesaid judgment it has further been held in paragraph 14 that "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."

14. For the reasons stated above, I am of the view that the impugned judgment and award given by the Workmen Compensation Commissioner dated 05-08-2006 suffers with infirmity and is not liable to stand in the eye of law. It cannot be held that the death of the workman - Mahendra Singh caused during the course of his employment, keeping in view the facts and circumstances of the

present case.

15. Accordingly, the appeal is allowed. The impugned judgment and award dated 05-08-2006 is set aside. The claim petition stands dismissed.