

GAHC010182672012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MFA/63/2012

NATIONAL INSURANCE CO.LTD.
SUBSIDIARY OF GENERAL INSURANCE CORPORATION OF INDIA
REGISTERED HEAD OFFICE AT 3, MIDDLETON STREET, CALCUTTA-
700071, REPRESENTED BY THE DEPUTY MANAGER, GAUHATI REGIONAL
OFFICE, BHANGAGARH, GUWAHATI-781005

VERSUS

SMTI POMILA MIRDHA AND ANR
W/O LATE KARTIK MIRDHA, R/O BARBARI, KHAPORI CHUK GAON, P.O.
SITAL PATHAR, P.S. DERGAON, DIST. GOLAGHAT, ASSAM.

2:SMTI INU PHUKAN RAJKHOWA
D/O SRI TANKESWAR PHUKAN
R/O DULAKHORIA GAON
P.O. KAMARBANDHA
P.S. AND DIST. GOLAGAHT
ASSA

Advocate for the Petitioner : MS.R D MOZUMDAR

Advocate for the Respondent : MS. S KHANIKAR

Linked Case : MC/2002/2012

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ASSAM

Advocate for : MS.R D MOZUMDAR
Advocate for : appearing for SMTI POMILA MIRDHA AND ANR

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellant : Mrs. R.D. Mozumdar,
Advocate.

For the Respondents : Ms. S. Khanikar,
Advocate.

Date of Hearing : 04.06.2024.

Date of Judgment : 25.07.2024.

JUDGMENT AND ORDER (CAV)

Heard Mrs. R.D. Mozumdar, learned counsel representing the appellant. Also heard Ms. S. Khanikar, learned counsel representing the respondents.

2. This is an appeal under Section 30 of the Workmen's Compensation Act, 1923, against the judgment dated 10.08.2010 passed by the Chairman, W.C. Tribunal, Golaghat in W.C. Case No.38/2009 awarding compensation and holding that the Respondent No.1 is entitled to a compensation of ₹3,44,855/- only along with interest at the rate of 9% per annum from the date of filing of the petition, payable by the appellant Insurance Company.

3. On 06.05.2008, the deceased was working as a labourer doing loading and unloading of goods in the vehicle bearing Registration No.AS-01/N-6489 which was owned by the Respondent No.2. On that day, while the said truck was kept parked by the side of the National Highway No.37 under Dergaon P.S., an unknown vehicle hit the deceased and fled away. The deceased was immediately taken to AMCH at Dibrugarh. On the next day i.e. 07.05.2008 at about 5.50 P.M., he died in the hospital.

4. A claim petition was filed before the Tribunal. The Tribunal awarded a compensation of ₹3,44,855/- along with interest at the rate of 9% per annum to the claimant. The Tribunal held that since the said vehicle bearing Registration No.AS-01/N-6489 was admittedly covered by the insurance policy of the appellant company, therefore, the Tribunal directed the appellant insurance company to pay the said compensation.

5. Aggrieved by the aforesaid judgment, the insurance company filed this appeal on the ground that the deceased did not die in course of his employment.

6. Mrs. Mozumdar has pointed out that the witness Ganga Mirdha has stated in his evidence that the deceased Kartik Mirdha did not die in course of his employment. Referring to Section 3 of the Employee's Compensation Act, 1923, Mrs. Mozumdar has pointed out that it is required by law that the deceased should be employed and should die in course of his employment and then only he can get compensation.

7. Mr. Mozumdar further submitted that since it was a hit and run accident, the claimant should have filed a claim application under Section 161 of the Motor Vehicles Act, 1988 seeking compensation from the Government.

8. In order to buttress her point, Mrs. Mozumdar has relied upon the decision of the Hon'ble

Supreme Court that was delivered in Mackinnon *Mackenzie and Co. Pvt. Ltd., vs. Ibrahim Mohammed Issak*, reported in (1969) 2 SCC 607. Paragraph 5 of the judgment is quoted as under:

“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. In *Lancashire and Yorkshire Railway Co. v. Highley* [(1917) AC 352] Lord Sumner laid down the following test for determining whether an accident “arose out of the employment”:

“There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If nay, it did not, because, what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of the workman was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting, or should have been in the position in which he was, whereby in the course of that employment he sustained injury.”

9. I have decided to agree with Mrs. Mozumdar because there is no evidence in this case to prove that the deceased was an employee under the Respondent No.2 and he died in course of his employment.

10. For the aforesaid reasons, the three substantial questions are answered accordingly. The appeal is allowed. The impugned judgment dated 10.08.2010 passed by the Chairman/Commissioner, W.C. Tribunal, Golaghat in W.C. Case No.38/2009, is set aside.

Send back the LCR.

JUDGE

Comparing Assistant