

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A.(C) No. 1408 of 2007

1. Smt. Taramati, Wd/o. Late Hiranand Verma, aged about 25 years, Occupation- Housewife.
2. Chirag, S/o. Late Hiranand Verma, (minor son), aged about 2 years, through guardian mother Taramati Verma.
3. Kheduram, aged about 60 years,
4. Vimla Bai, W/o. Kheduram Verma, aged about 55 years, Occupation- Housewife,

All R/o Vill - Singhola, Post Nevra Tilda, Distt Raipur C.G.

----Appellants

Versus

1. Managing Director, Kamal Solvent Extraction Pvt. Ltd., Somni, District Rajnandgaon (C.G.).
2. Branch Manager, The New India Insurance Com Ltd., Branch Rajanadgoan (C.G.)
3. Commissioner, Workmen Compensation, Rajnandgoan C.G.

---- Respondents

For Appellants	:	Mr. Anup Mazumdar, Advocate.
For Respondent No.1.	:	Mr. H.B. Agrawal, Sr. Advocate with Ms. Preeti Yadav, Advocate
For Respondent No.2	:	Mr. Shree Kumar Agrawal, Sr. Advocate with Mr. Anand Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri

C A V Order

05/08/2015

1. Challenge in this appeal is to the award dated 13.02.2007, passed in Claim Case No.271/W.C. Fatal/2003, by the Commissioner, Workmen Compensation, Rajnandgaon, whereby the learned Commissioner, Workmen Compensation has dismissed the claim petition filed by the appellants.
2. Briefly stated facts in this case are that the deceased Hiranand Verma was working as Chemist in the factory of non-applicant No.1 from 01.03.1993 with a monthly wages @ Rs.2800/- besides other emoluments. On 13.12.2001 at about 2.30 o'clock, the deceased was going on his Scooter bearing No. M.P.-24-ED-6594 to his house, at that time a Metador coming from opposite side, dashed the deceased near a place known as Sukhchain Dhaba, whereby the deceased sustained injuries. It was pleaded that the said Scooter was given by the non-applicant No.1 so as to commute the deceased from his house to place of working. It was stated that on the date of accident, the said vehicle, wherein the deceased was traveling was given on loan by the employer with an understanding that till the amount is repaid, the owner of the Scooter would be non-applicant No.1, the employer. After incident, the deceased, Hiranand Verma was referred to the Rajnandgaon hospital, wherein he was declared dead. At the time of the accident, the age of the deceased was 31 years. It was stated that the deceased met with an accident during the course of employment as such legal heirs

were entitled for compensation. It was stated that legal heirs of the deceased had served the non-applicants with notices, but no amount of claim was paid ultimately claim petition before the Commissioner, Workmen Compensation, Rajnandgaon was filed claiming the compensation alongwith penalty.

3. The non-applicant, the employer refuted the claim and stated that on 13.12.2001, the deceased after completion of his duties at 2.00 o'clock came out of the institution on way back, fatal motor accident took place. It is stated that the institution is situated at 11 km. away from Rajnandgaon, which nearly takes 15 to 20 minutes from the house of deceased. It was further stated according to the morgue intimation, the time of the accident was 3.00 o'clock and the place of the incident was 1.5 km away from the factory premises. It was stated that the deceased was also an insurance agent and after completion of his work at 2.00 o'clock, he had been to different places on account of work other than that of factory. It was contended that deceased went to Somni and nearby place and while was coming back, he met with an road accident. Consequently, the accident did not happen during the course of employment. It was further stated that the vehicle, wherein, the deceased met with an accident was that of the deceased himself as it was purchased after taking amount from the employer in the name of the deceased. It was further stated that group insurance were made in respect of the employees of the institution and the claimants are only entitled for such amount, which is payable to them under the policy of group insurance. The employer is not liable

to pay any amount since the accident did not occur during the course of employment.

4. The insurance company also contested the claim. However, during the course of arguments, before this Court, it was stated that the insurance company has discharged the liability which was due on account of the group insurance to the heirs of deceased and the insurance company is not liable to pay further amount as it has discharged its obligation of payment. It was further contended that the policy being a limited liability, the same has been discharged.
5. Before the Commissioner, Workmen Compensation, the wife of the deceased Smt. Taramati Verma and one Naresh Kumar Baghel were examined on behalf of the claimants. On behalf of the non-applicant No.1, Damodar Das Mundara, the owner/partner of the institution and one witness Omprakash Dwivedi were examined. The non-applicant No.2, the insurance company on its behalf has also examined one witness.
6. The Commissioner, Workmen Compensation initially passed an award of Rs.2,88,330/- on 29.04.2005 alongwith interest. The said award was subject of challenge before this Court in M.A. No.1065/2005 and M.A. No.793/2005. The Division Bench of this Court by its order dated 31.07.2006 remanded the case back to the Commissioner, Workmen Compensation with an observation to decide the question whether the accident had taken place in the course of and out of employment within the means of Sub-section (1) of Section 3 of the Workmen's Compensation Act in order to

fasten the liability on the employer or the insurer of the employer to pay compensation.

7. By such order, the said award dated 29.05.2004 was set-aside and the case was remanded back. After the remand, certain amendments were incorporated in the body of the claim petition, wherein, it was urged that the deceased while coming back on a vehicle, which was given by the employer met with an accident therefore, it would be deemed that accident occurred during the course of employment as the mode of travel was provided by the employer itself. The contents of the said amendment was refuted and eventually, the Commissioner, Workmen Compensation finally by the impugned award dated 13.02.2007, dismissed the claim petition filed by the appellants. Hence this appeal.

8. The appeal was admitted on the following substantial question of law :-

“Whether the Tribunal has erred in law in dismissing the claim case of the claimants holding that deceased did not die during the course of employment?”

9. Mr. Anup Mazumdar, Advocate appearing on behalf of the appellants vehemently contended that the death of Hiranand Verma occurred while he was coming back after discharging his job on scooter, which was provided by the employer. He further submits that taking into account the time of the accident, which occurred immediately after deceased left the premises it would be within the ambit and course of employment. He placed his reliance in the case

law reported in 1990 *JLJ 467 Suraj Bai (Smt.) V. Cement Corporation of India and another* and would submit that the workman on duty not necessarily means actual working on the place of duty. He would further submit that the principle of notional extension of employer's premises' would take within its ambit, the workman when he start from home to work and *vice versa*. Therefore, under the circumstances when the deceased was coming back from his factory after duty hours to his home, he met with an accident as such, there would be a notional extension of premises and the accident would be deemed to be in the course of employment. He further made a reference to the case decided in between *The New India Assurance Company Limited Vs. Tmt. S. Jayanthi, Tmt. E. Kuppu, Elumalai and National Asphalt Products and Constructions Company Ltd., decided on 28.06.2011 in Civil Miscellaneous Appeal No.2405/2010 by the High Court of Madras*. He further made a reference to the case law reported in 2010 ACJ 1093, *National Insurance Co. Ltd. Vs. Suman Devi and Another* and placing the analogy would submit that expression 'employment' in section 3 of the Workmen's Compensation Act is wider than the actual work or duty which the workman had to do. He would further submit that the accident occurring when the workman is proceeding from place of employment to his residence is regarded as arising out of and in the course of employment. He would further submit that the theory of notional extension of the premises has to be applied in the instant case.

10. Per contra, Mr. H.B. Agrawal, Sr. Advocate appearing on behalf of the respondent No.1, supports the award of dismissal and would submit that the order passed by the Commissioner Workmen Compensation is well merited which do not call for any interference.
11. Mr. Shree Kumar Agrawal, Sr. Advocate appearing on behalf of the insurance company would submit that the insurance company has already discharged the liability which was due on account of the group insurance to the deceased therefore, the insurance company can not held liable further to pay compensation.
12. I have heard the learned counsel for the parties at length, perused the documents and the evidence on record.
13. The facts in this case are not in dispute that the deceased Hiranand Verma, who was working as Chemist with respondent No.1 while going back from his duties to his house on 13.12.2001 met with an accident and was dashed by unknown Metador, whereby he died.
14. The core question, which arises for consideration as to whether the deceased while returning to his house met with an accident can be termed as “accident arose out of and in course of his employment.”
15. The claimant wife in her statement had stated that her husband while was returning from duty met with an accident as was hit by unknown Metador. In the case, initially award was passed and subsequently, on appeal having been filed, the case was remanded back for adjudication afresh by this Court. By an order dated 31.07.2006 and the parties were permitted to place additional better

pleadings and the documents. It was further observed that the Commissioner to decide the case in view of the law laid down by the Hon'ble Supreme Court in case of *General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes*, reported in AIR 1964 SC 193 and in *Regional Director, E.S.I. Corporation and Another Vs. Francis De Costa and another*, reported in AIR 1997 SC 432. In such order liberty was given to the parties further to make amendment and adduce evidence and decide the case afresh. After the case was remanded to the Commissioner, Workmen Compensation, further amendment was made in the claim petition, wherein it was stated that the deceased was provided with a scooter bearing No. M.P.24-ED-6594 which was financed by the non-applicant, wherein while coming back from duty the accident occurred.

16. After such amendment, the wife was again examined. She has stated that the vehicle in which her husband was traveling at the time of the accident was provided by the employer, with a condition that the scooter would be in the name of the company until and unless the repayment of the loan is paid to the company. As such scooter i.e. vehicle was in the name of the company and deceased was directed to travel in the said scooter to come to the company.
17. The interpretation of Section 3 (1) of the Workmen Compensation Act, would mean that employer would be liable to pay the compensation, if the accident arises out of and in course of employment. Therefore, the question arises as to whether the accident can be said to be caused in the course of employment

when it happened on public road while deceased was coming back from factory.

18. Admittedly, the accident had happened while the deceased had left the factory premises and was going to his home. Therefore, can there be a theory of notional extension of factory premises ? Similar proposition came up for consideration before the Hon'ble Supreme Court in case of ***Regional Director, E.S.I. Corporation and Another Vs. Francies De Costa and another, reported in A.I.R. 1997 SC 432***, wherein the the Hon'ble Supreme Court has held that a road accident may happen any where at any time and a mere road accident, while an employee is on his way to his place of employment can not be said to have its origin in his employment in the factory. Out of the employment, therefore, would mean and required the injury had its origin in the employment. The origin in the employment, can not be therefore said when the persons has left the premises. The word of limitation in Section 3 (1) of Workman Compensation in course of employment according to dictionary meaning of "in course off" is during (in course of time as time goes by). The dictionary means indicate accident must take place within or during period of employment.
19. The Hon'ble Supreme Court in another case law reported in ***AIR 1964 SC 193, General Manager, B.E.S.T. Undertaking, Bombay Vs. Mrs. Agnes*** has held that the accident can be said to be happened during the course of employment when the employee was obliged to travel in a particular way, under the terms of employment and if such accident happened out side the premises, it

can be said to happen during the course of employment. In that case of General Manager, B.E.S.T. Undertaking, Bombay (supra), the driver was was a employee of B.E.S.T., which is a transport company and the driver was directed to travel in the buses of B.E.S.T. to discharge the duty punctually and efficiently. Therefore, the transport, he was traveling was provided by the employer itself and was one of the conditions of service.

20. In the instant case, the wife in her evidence has stated that the vehicle, by which the accident happened is in the name of wife. The owner in this case had denied that he had provided the vehicle to the deceased to travel. Therefore, reading the statement of wife do not establish the fact that the deceased was obliged to travel in a particular vehicle given by the employer. Consequently, the theory of notional extension can not be applied in the instant case so as to hold that the accident has happened during the course of employment. Constructing the meaning of phrase in the course of employment was widened over 30 years to include doing something which was reasonable incidental. Taking the facts in this case and the evidence, it can not be stated that deceased was doing something reasonably incidental to the job when he met with the accident. In the given facts, the principle laid down in case of ***Regional Director, E.S.I. Corporation and Another Vs. Francies De Costa and another*** (supra) would be applicable and it can not be said that the accident had happened during the course of employment.

21. In a result, the question of law is answered in negative and it is held that the Commissioner, Workmen Compensation has not committed any error in law in dismissing the claim case of the claimants by holding that the deceased did not dye during the course of employment.
22. Consequently, the appeal is dismissed.

Sd/-
(Goutam Bhaduri)
Judge