

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.660 of 2007

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1. The Union of India through Chief Personnel Officer, East Central Railway, Hajipur.
 2. The Divisional Railway Manager, East Central Railway, Mugalsarai.
 3. The Senior Divisional Personnel Officer, East Central Railway, Mugalsarai.
 4. The Divisional Accounts Officer, East Central Railway, Mugalsarai.

.... Appellant/s

Versus

1. Sudhanshu Jyoti.
2. Himansu Jyoti
3. Shambhu Prasad.

All sons of Late Ram Dayal, Ex. Gang Man under section Engineer, P.Way, Bhabhua, resident of village-Ghattav under P.S. Kudra, District-Kaimur.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Bindhyachal Singh, Adv.
Mr. Smriti Singh, Adv.

For the Respondent/s : Mr. Ram Chandra Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 27-06-2016

This appeal has been filed against the order dated 25.06.2007 passed by the Deputy Labour Commissioner cum Workman Compensation Commissioner, Magadh Division, Gaya in CWC NO. 30 of 2004 directing the appellant/O.P. to pay Rs.2,63,000/- within a month to the respondent/applicants in lieu of compensation.

2. Ram Dayal Sharma, a Gangman while was on duty in between night of 21-22.10.2003 suffered heart attack at 03:00 AM whereupon the railway officials were informed and later on, aforesaid Ram Dayal Sharma was shifted to hospital where he died during course of treatment. Consequent thereupon, the respondent/ applicants filed petition before the learned Commissioner for grant of

compensation whereupon appellant/O.P. was noticed, appeared, filed W.S. and further, after concluding trial, by the order impugned allowed the petition, hence this appeal.

3. Instant appeal has been filed after period of limitation whereupon I.A. No.7011 of 2007 was filed. Vide order dated 05.02.2014, it has been directed that matter of limitation will be decided at the time of admission itself and for that respondents/applicants were noticed. Accordingly, with the consent of the parties, the matter has been heard in detail at the admission stage itself on merit as well as over limitation in the background of pendency of instant appeal since 2007. Taking into account the grounds, delay is condoned. Consequently, I.A. No.7011/2007 is allowed.

4. The learned counsel for the appellant has submitted that status of deceased Ram Dayal Sharma as a Gangman is not disputed. In likewise manner the cause of death while being on duty. The only question, which the learned Commissioner failed to consider is whether the deceased developed heart attack during course of his employment on account of stress and strain arising during course of employment. On this aspect, it has been submitted that absolutely no material has been brought up on record by the respondent/applicant as the onus lies upon them, to substantiate by cogent evidence nor there happens to be any kind of logical conclusive finding by the learned



Commissioner. Therefore, suffering from heart attack during course of employment was not on account of employment rather the deceased, who might have suffering therefrom since before and had concealed the same, unfortunately suffered from stroke at the time of performing duty and though, there was every sort of cooperation at the end of the appellant/ O.P.s by having him admitted to the hospital for providing proper medical facility, deceased died. As such, deceased happens to be victim of own fault by way of conceding the disease which he was suffering from since before and on account thereof, it could not be said that deceased sustained injury during course of his employment. Therefore, directing the appellant to pay compensation by the learned Commissioner happens to be bad, illegal and against the settled principle of law and is accordingly fit to be set aside. To substantiate such plea, also referred 1996(1) SCC 1, AIR 2007 SC 248.

5. On the other hand, the learned counsel for the respondent while controverting the submission made on behalf of appellant has submitted that status of deceased as well as death on account of heart attack during course of his employment has not been denied at the end of the appellant. In the aforesaid background it was incumbent upon the appellant to have substantially proved that heart attack was not on account of strenuous service condition whereupon, the appellant/opposite party failed and that being so, the learned

Commissioner rightly allowed the claim petition.

6. From the W.S. filed on behalf of appellant/opposite party before the learned lower court, it is evident from para-2 thereof, that status of deceased being an employee of the appellant/opposite party and further having suffered from heart stroke while was on duty at Kusauli store has been admitted. Furthermore, from para-4 thereof, it is evident that his duty commenced from 18 hours (6:00 PM) on 21.10.2003 to 06:00 AM on 22.12.2003 and so it was night duty covering twelve hours in its continuity. Appellant/ O.P. did not explain that deceased was to perform 12 hours duty as per service condition and further, the continuous discharging of duty for 12 hours was not at all strenuous one.

7. In the aforesaid background as well as taking into consideration the rival contention coupled with mandate of Section 30(1) of the Act the following points are being formulated for just decision of the appeal:-

(a) Whether deceased suffered from heart stroke and died on account of strenuous service condition during course of duty.

(b) Whether the appellant/opposite party is liable to pay compensation as claimed for.

8. As indicated above, there happens to be no controversy over status of the deceased, the working hour and further suffering of

heart attack during midst thereof ultimately leading to death. In *Param Pal Singh Vs. National Insurance Company & Another* reported in **(2013) 3 SCC 409**, the Hon’ble Apex Court had occasion to see all the previous judicial pronouncement and then laid down the principle in following way:

“**23.** The entitlement to claim compensation is, therefore, dependent on fulfilment of the stipulations contained in Section 3(1) of the Workmen’s Compensation Act, which read as under:

“**3. Employer’s liability for compensation.**—(1) If personal injury is caused to an employee 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)-(b) * * *
- (i)-(iii) * * *

24. However, there are decisions of the English Court as early as of the year 1903 onwards stating that an unlooked for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an “accident” and in the event of such “untoward” “unexpected” event resulting in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed by the provisions of Section 3 of the Workmen’s Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in *Ritta Farnandes 1969 ACJ 419 (SC)*. After referring to the decision of the House of Lords in *Clover, Clayton & Co. Ltd. v. Hughes 1910 AC 242* this Court in *Ritta Farnandes 1969 ACJ 419* referred to the relevant passage in the decision of the House of Lords in para 4, which reads as under:

“4. Even if a workman dies from a pre-existing disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in *Clover, Clayton & Co. Ltd. v. Hughes 1910 AC 242* where the deceased, whilst tightening a nut with a spanner, fell back on his hand and died. A post-mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary

work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords: (AC p. 246)

‘... No doubt the ordinary accident[, “said Lord Loreburn, L.C.”] is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man’s own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident.’

With regard to Lord MacNaughten’s definition of an accident being ‘an unlooked for mishap or untoward event which is not expected or designed’ it was said that an event was unexpected if it was not expected by the man who suffered it, even though every man of common sense who knew the circumstances would think it certain to happen.”

25. In a recent decision of this Court in *Shakuntala Chandrakant Shreshthi (2007) 11 SCC 668*, the factors to be established to prove that an accident has taken place have been culled out and stated as under in para 26: (SCC p. 677)

“26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:

- (1) stress and strain arising during the course of employment,
- (2) nature of employment,
- (3) injury aggravated due to stress and strain.”

26. In *Malikarjuna G. Hiremath v. Oriental Insurance Co. Ltd. (2009) 13 SCC 405* the principles to attract Section 3 of the Workmen’s Compensation Act have been stated as under in para 13: (SCC p. 410)

“13. ... ‘22. There are a large number of English and American decisions, some of which have been taken note of in *ESI Corpn. Case 1996 SCC (L&S) 1361* in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are:

- (1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.
- (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.
- (3) If the evidence brought on record establishes a greater probability which satisfies a reasonable man that

the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the facts of each case.’ (*Shakuntala Chandrakant Shreshti case*(2007) 11 SCC 668, SCC p. 676, para 22)”

27. The Madhya Pradesh High Court in *Sundarbai v. Ordnance Factory 1976 Lab IC 1163 (MP)* Lab IC in para 10 has culled out the principles as under: (Lab IC p. 1168)

“10. On a review of the authorities, the principles insofar as relevant for our purposes may be stated as follows:

(A) ‘Accident’ means an untoward mishap which is not expected or designed by the workman. ‘Injury’ means physiological injury.

(B) ‘Accident’ and ‘injury’ are distinct in cases where accident is an event happening externally to a man; e.g. when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases ‘accident’ and ‘injury’ coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.

(C) Physiological injury suffered by a workman due mainly to the progress of a disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

(D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.

(E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection.”

28. Again in yet another celebrated decision of this Court in *Ibrahim Mahmmmed Issak (1969) 2 SCC 607* this Court has set down the principles applied in such cases as under in para 5: (SCC p. 611)

“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 (HL.), Lord Summer laid down the following test for determining whether an accident ‘arose out of the employment’.”

(emphasis added)

29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was *causal connection* to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45-year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an “untoward mishap” can therefore be reasonably described as an “accident” as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer’s trade or business.”

9. The respondents/applicants fairly stated that during course of employment while discharging the duty, on account of stress and strain, deceased suffered from heart attack which lastly, cost his life. Aforesaid assertion has not been controverted at the end of appellant/ O.P. Furthermore, it is apparent that deceased was taken to hospital by the appellant/ O.P., and on account thereof, the appellant/ O.P., after death of deceased would have launched UD

case, conducted P.M. wherein they failed. The aforesaid exercise was expected at their end, as none of the family member of deceased was available at that very momemt. Moreover, conducting of PM is not a condition precedent to decide the issue as is evident from Param Pal Singh (Supra) case.

10. Not only this, as stated above the deceased was on night shift having working hour extending to 12 hours rigorously and on account thereof, it was incumbent upon the appellant/opposite party to have properly substantiated that constantly discharging duty for 12 hours was not at all strenuous one which could have resulted heart attack. Moreover, it was also expected at their end to place the duty card to suggest whether deceased was under obligation to discharge his daily for 12 hours continuously. Withholding those events from consideration by the court certainly lend impact of adverse inference against the appellant/ O.P.

11. That being so, instant appeal lacks merit and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

PN/-

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