

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

C.M.A No.3470 of 2003

ORDER:

The miscellaneous appeal is directed against the orders of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour III, at T.Anjaiah Karmika Sankshema Bhavan, RTC Cross Roads, Hyderabad, dated 07.07.2003 made in W.C.No.107 of 2002.

2. The respondents herein who are the legal representatives of one Sangamnath Joshi (hereinafter referred to as "the deceased") claimed compensation of Rs.4 lakh in view of the death of the deceased in his work place, namely, the State Bank of Hyderabad, Zaheerabad Branch, where the deceased was working as Security Guard. The learned Assistant Commissioner has quantified the compensation at Rs.3,63,956/- and awarded the same. Aggrieved by the said award, the Bank preferred the present appeal contending that the award is illegal, contrary to law, that the petition is not maintainable since the deceased was not authorized to work beyond duty hours and hence the same is liable to be set aside.

3. The facts in brief are as under:

The deceased was an Ex-serviceman, having put in 18 years of service in armed forces. He retired there from in the year 1995. His date of birth is 20.04.1959. He was appointed as Security Guard on the rolls of the State Bank of Hyderabad and had been in service for about 5 years. On 07.12.2001 the deceased was on duty as an armed security guard from 2 p.m to 10 p.m. Thereafter, one Prabhu has to attend and relieve him, however, the said reliever did not report to duty and therefore, the

deceased continued to be on duty throughout the night. However, at about 2 a.m. in the midnight, he got a massive heart attack and died. When the head security guard came to duty at 6 a.m on 08.12.2001, he noticed the doors bolted from inside and there was no response. When ultimately the doors were opened, they found the deceased was lying on the ground. The matter was informed to RW 1-the Branch Manager. The deceased was shifted to the hospital, but he was declared dead.

4. The contention of the respondents, who are wife and the children of the deceased, is that because of the stress and strain, due to continuous duty from 2 p.m. on 07.12.2001, the deceased died, and that he had no past history of any ailments.

5. On the other hand, the contention of the Bank is that after 10 p.m the deceased was not supposed to be on duty and was relieved on the reliever being reported to duty. Since the reliever Mr.Prabhu did not report to duty, the deceased continued to do his duty and that it is not with the permission of the Branch Manager, and hence, the duty beyond 10 p.m is unauthorized, and it is therefore contended that the respondents/claimants are not entitled for any compensation.

6. Having heard the learned counsel and perused the oral and documentary evidence, which comprises of AW 1, RW 1, Exs.A1 to A.7 and Ex.D1, what is noticed is that substantial aspects of the matter are not in dispute. Except for saying that the deceased security guard was not supposed to be on duty beyond 10 p.m on 07.12.2001, no substantial defence is taken by the Bank for denying the claim of the respondents/claimants and its liability.

7. Security Guard is a person, who is custodian of the property of the Bank. When nobody is there in the Bank, it is he who keeps the

guard thereof. He is not supposed to leave the premises unattended and unguarded, if there is no substitute mechanism available. Each Security Guard will have duty for 8 hours. Even though, the deceased had to work for 8 hours, but for certain reasons, as the reliever has not reported to duty, the deceased had no option, except to continue his duty in the place of his reliever Prabhu. For that, he cannot be branded as a person being on unauthorized duty beyond 10 p.m on 07.12.2001. Had the deceased left the Bank at 10 p.m. in the absence of any alternative arrangements, he would have been held responsible for negligence and dereliction of duty for having left the Bank unguarded, even though the reliever has not come. Therefore, what the deceased did was in the interests of the management, but not in his own interest.

8. The deceased being an ex-serviceman, appears to be an obedient servant who did not leave the premises till his substitute came, and unfortunately, due to stress of continuous duty for more than 12 hours, the deceased had cordiatic arrest and died. It is on record that in the night of 07.12.2001, the son of the deceased took dinner and the deceased had his dinner and the son returned home. Next day morning, the family of the deceased was informed about the tragedy.

9. In view of the above facts and circumstances, I feel that it is not only the legal obligation of the Bank to pay compensation, but they are also morally bound to provide some support and financial assistance to the family of the deceased, who had shown his sense of dedication towards duty. It is unfair on the part of the management to say that beyond 10 p.m of 07.12.2001 the presence of the deceased at Bank on duty is unauthorized.

10. The learned Assistant Commissioner has taken into consideration all the aspects and after thorough discussion arrived at a finding that the Bank is liable to pay the compensation, and taking into consideration the proper multiplier, in accordance with law, determined the compensation of Rs.3,63,956/- (Rupees three lakh sixty three thousand nine hundred fifty six only). I see no reason to interfere with the said finding and also I see no merit in the present appeal and hence, the same is liable to be dismissed.

11. Accordingly, the CMA is dismissed. The amount of compensation lying in deposit together with accrued interest shall be disbursed to the respondents/claimants. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 04.11.2016
Dsr

M.S.K.JAI SWAL,J

