

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 458 of 2011**

1. Navdeep Gupta S/o Shri Jhunjhun Gupta, aged about 28 years, Proprietor, Hindustan Floor Mill, Gupta Pashu Ahar Kendra, New Market, Gupta Chowk, Dallirajhara, Post, Police Station and Tahsil Dallirajhara, District Durg (CG).
2. Jhunjhun Gupta S/o Late Ramganj Gupta, aged about 50 years, R/o New Market, Dallirajhara, Dist Durg (CG).

---- Appellants**Versus**

1. Rampyare Gupta S/o late Jageshwar Gupta R/o In front of New Aasha Talkies, Dallirajhara, Post, Police Station and Tehsil, Dallirajhara, District Durg (CG).
2. Smt. Naresh Kumari Gupta W/o Rampyare Gupta, R/o in front of New Aasha Talkies, Dallirajhara Police Station and Tehsil Dallirajhara, Distt. Durg (CG).

---- Respondents

For Appellant	:	Shri Tridibh Bhattacharya on behalf of Shri Prateek Sharma, Advocate.
For respondents	:	Shri Hemant Kesharwani and Shri Suresh Tandon, Advocates.

SB: Hon'ble Shri Justice P. Sam Koshy**ORDER ON BOARD****31/08/2017**

1. The present is an appeal under Section 30 of the Employee's Compensation Act, 1923 (for short, the Act, 1923) filed by the employer against the award dated 18.03.2011 passed by the Commissioner for Workmen Compensation, Labour Court, Durg, in case No.183/2007/WC Act (Fatal). Vide the said impugned award, the Commissioner in a claim case filed by the parents of deceased has awarded compensation of Rs.2,77,855/- along with interest @ 12 percent per annum.

2. The facts of the case is that, Sunil Kumar Gupta was said to be indirectly engaged by the appellant-employer under one of its employee who were entrusted with the work of collecting money from the market owed upon the appellant-employer. On 28.09.2007, said Sunil Kumar Gupta was found dead on the road with accidental injuries over his body. The contention of the claimant is that the deceased had gone along with the driver of the Matador engaged by the appellant for his business purpose and in the course the deceased met with an accident resulting in his death. The claim of the claimant was that since the accident arose in the course of his employment and the deceased also working under the appellant, he should be suitably compensated under the provisions of the Act, 1923.
3. The appellant herein entered appearance before the Labour court denying entitlement of the claim and took a objection so far as the deceased being employee of the appellant. It was also the contention raised by the employer that there was no direct nexus between the nature of employment and the accident which occurred resulting into death of deceased. It was also contended that the accident did not arose in the course of and arising out of the employment. Therefore, the appellant could not be fastened with the liability of payment of compensation. Thus, prayed for quashing of the award impugned.
4. Counsel for the respondents-claimants contended that the claim application of the claimants on an earlier occasion i.e. vide order dated 11.12.2009 had been rejected on the ground that the accident

had no nexus with the nature of employment. This award dated 11.12.2009 was put to challenge by the claimants before the High Court vide MAC No.138 of 2010 and the Division Bench of this High Court vide order dated 11.11.2010 held that the nature of employment and the contention of the appellant-employer proves the factum so far as employment as well as accident arising in the course of employment, however, the court remitted the matter back to the Labour court i.e. Commissioner for Employee's Compensation to decide whether the case of the deceased would fall within the category of workmen or not under the provisions of the Act, 1923, and thereafter to decide the matter afresh.

5. The contention of the claimant is that since the Division Bench of this High Court in MAC No.138 of 2010 vide order 11.11.2010 has held that deceased was an employee and the accident arose in the course of employment, the claimants would be fully entitled for compensation under the Act, 1923, and there is no scope of reconsideration of the same. Thus, prayed for rejection of the appeal.
6. Considering the submissions put forth on either side and on perusal of records, we cannot ignore the findings of Division Bench of this court in MAC No.138 of 2010, decided on 11.11.2010. In para-6, the Division Bench held as under :

“6. In view of the above, it cannot be said that the death of the deceased was not occurred in an accident, while he was on a visit in the course of employment. It cannot also be said that the deceased was not died during the course of employment.”
7. Thus, the findings of Division Bench clearly forces us to reach to the conclusion of the deceased being an employee under the appellant

and that the accident occurred in the course of employment. This finding of the High Court has not been challenged by the appellant before any of the superior court. Therefore, the finding so arrived at by the Division Bench attains finality. After conclusion of the aforesaid two factors, the Division Bench had remitted back the matter to the Commissioner for adjudicating upon the remaining issues in respect of the claim under the Act, 1923. While remitting back the matter, it has been held as under :

“7. Now the question for consideration is that when the deceased had gone to recover the amount, whether he could come into the category of workmen or not within the meaning of Workmen's Compensation Act, 1923. This point has not been dealt with by the learned Commissioner. Therefore, we think it appropriate that the matter be remanded back to the Commissioner for a fresh consideration. The Commissioner may try the question whether the deceased was a workmen or not and as to what relief can be granted to the claimants under the facts and circumstances of the case.

8. In view of the above, we allow this appeal in part, set aside the impugned order dated 11.12.2009 and remit the matter Commissioner concerned to consider and decide the claim petition afresh. The Commissioner shall provide opportunity to the parties to adduce additional evidence or amend the pleadings or file the documents. The matter shall be decided afresh in the light of the observations made above.”

8. In the light of the aforesaid observations made by the Division Bench, what remains to be adjudicated upon in the present case is as to even though the High Court has declared the deceased to be an employee and that the accident arose in the course of employment, what would yet have to be decided so as to make the employer liable to pay compensation under the Act, 1923, is to establish the fact that accident not only occurred in the course of his employment but also arose out of employment.
9. Section 3 of the Act, 1923 envisages the employer's liability for

compensation. For ready reference, the relevant portion is quoted as under :

“3(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...”

10. This provision has been dealt with elaborately by the Supreme Court in the landmark decision in case of Regional Director ESI Corporation and Another Vs. Francis De Costa and Another, 1996 (6) SCC-1. In the said case, the employee met with an accident while he was on his way to his place of employment. The Employees State Insurance court allowed his claim application for grant of disablement benefit which was also affirmed by the High Court. After considering the decisions rendered by the different courts in respect of employment injury, the Supreme Court finally in paragraphs 7 and 29 has held as under :

“7 Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on Section 2(8) of the Act. The words "accident . . . arising out of . . . his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

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29. Although the facts of this case are quite dissimilar, the principle laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident,(2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.”

11. The finding so arrived at was based upon the decision reported in

1939 (4) All ER 558 in case of Dover Navigation Co. Ltd. Vs. Isabella

Craig, wherein it was held as under:

"Nothing could be simpler than the words" arising out of and in the course of the employment." It is clear that there are two conditions to be fulfilled. What arises "in the course of" the employment is to be distinguished from what arises "out of the employment." The former words relate to time conditioned by reference to the man's service, the latter to causality. Not every accident which occurs to a man during the time when he is on his employment - that is directly or indirectly engaged on what he is employed to do - gives a claim to compensation unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

12. The High Court of Madras in 2004(1)LLJ 49 in case of Kalyani P. Vs.

Divisional Manager, Southern Railway (Personal Branch), relying upon the aforesaid judgments of Supreme Court has held that in order to enable a person to get compensation under the Act, 1923, three conditions must be fulfilled (a) personal injury (b) injury resultant of an accident and (c) the injury arose out of and in the course of employment.

13. The issue of deceased being in the course of employment has already been decided by the Division Bench of this court. Now we have only to check whether the accident also did arise out of his employment. The expression "arising out of employment" means that there must be a causal connection between the accident and the employment. If the accident had occurred on account of risk which is an incident of employment, it would be held to be an accident arising out of employment. This view stands fortified from the decision of Orissa High Court in 1995 LLJ 298 in the case of Oriental Insurance Co. Ltd. Vs. Nanguli Singh.

14. Thus, it is clear that it is not just an accident which arose in the course of employment alone which would enable the compensation under the Act, 1923. The three ingredients referred to in the preceding paragraph has to be made and even if one among the three ingredients is missing, the claim would not be sustainable under the provisions of the Act, 1923.
15. What is more important is that it must be proved and established that the accident arose out of employment which means the nature of work being performed by the deceased or injured, as the case may be, at the time of the accident is more crucial. Only because the accident arose in the course of employment but the accident was not directly or indirectly related to the employer's business activity, Section 3 of the Act, 1923 would not come into play. A plain reading of sub-section 1 of Section 3 of the Act, 1923, clearly reflects that it is not just an accident that occurred in the course of employment, but it should also occur out of his nature of duties which is otherwise required to be performed.
16. The Supreme Court in AIR 2009 SC 2019, Mallikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd. & Another has while reiterating the proposition of law laid down in the case of Francis De Costa (Supra) in paragraph-9 held as under:

“9. Under Section 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural death because of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then

it can be said that the death arose out of the employment and the employer would be liable.”

17. If we take into consideration the aforesaid ratio of the legal precedents and peruse the facts of the instant case, it would reveal that the deceased was engaged by the appellant; the deceased had gone on a vehicle engaged by the appellant for some official work, but the road accident resulting into death of the deceased had nothing to do with the nature of employment of the deceased. It has also not been proved or established by any evidence which would show that the deceased had died on account of accident which arose out of his employment and applying the analogy laid down by the Supreme Court in the two judgments referred to in the preceding paragraph i.e. Francis De Costa (Supra) and also in case of Mallikarjuna (Supra), this court has no hesitation in reaching to the conclusion that death of the deceased cannot be attributed to be one arising out of employment though it may be a case of an accident which occurred in the course of his employment but in absence of meeting both preconditions required for entitlement of compensation i.e. the accident to have arisen out of and in the course of employment, it is difficult to sustain the award passed by the Labour Court.
18. For the aforesaid reasons, this court is inclined to allow the appeal. The appeal is accordingly allowed. The award impugned dated 18.03.2011 is set aside/quashed. Sd/-

Sd/-
(P. Sam Koshy)
Judge