

NAFR

**HIGH COURT of CHHATTISGARH, BILASPUR****MAC No.1006 of 2017**

Naresh Kumar Khande S/o Shri Manohar Khande Aged About 40 Years Caste Satnami, R/o Village Umarpoti, Post Officer Sundarkera, Tahsil Abhanpur, Police Station Navapara (Gobara), District- Raipur, Chhattisgarh...(Applicant).

**----Appellant****Versus**

1. M/s State Ware Housing Corporation Through : The Branch Manager, R/o Near Railway Station Abhanpur, Tahsil Abhanpur, District Raiiur, Chhattisgarh.
2. Abdul Hakim Khan, S/o A.Khan, Aged About 60 Years H.N.T. Contractor, State Ware Housing Corporation, Abhanpur, Tahsil Abhanpur, District Raipur, Chhattisgarh.

**---- Respondents**


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| For Appellant | : | Shri Govind Ram Miri and Shri Badal Lal Bhardwaj, Advocates. |
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**SB: Hon'ble Shri Justice P. Sam Koshy****Order On Board****31/07/2017**

1. The present appeal under section 30 of the Employee's compensation Act, 1923 (for short, the Act, 1923) has been filed assailing the award dated 17/05/2017 passed by the Commissioner, Employees Compensation, Labour Court No.2, Raipur in Case No.14/ECAct/2015/Non-fatal.
2. The brief facts of the case is that the appellant herein met with an road accident on 14/02/2015 at around 7.30 p.m. As a result of the said accident, there was amputation on his right leg. His right hand also got permanently disabled. The appellant preferred claim application under the provision of the Act, 1923. The claim application

was rejected vide impugned order. While rejecting the claim application, the Commissioner reached to the conclusion that the appellant has failed to establish that he was employed with the Respondents on the date of accident. The claim was rejected in the absence of any proof of employment or the accident arising out of and in the course of accident.

3. From the nature of facts as has been submitted by the appellant himself, undisputedly the accident took place at around 7.30 p.m., the place of accident was a public road and the offending vehicle was an unknown vehicle. Thus, from the narration of the facts as has been stated by the appellant himself it is a clear case of hit and run on public road where the accident did not arise out of and in the course of employment. It is a case where the nature of accident cannot be brought within the ambit of theory of "Notional Extension". Even if the contentions of the appellant, though not proved, is accepted that it is while he was returning home when the accident arose, even then, the same would not fall within the definition of accident as is required under Section 3 of the Act, 1923, where necessary ingredients for an accident to come within the ambit of the Act, 1923, is of an accident which should arise out of and in the course of employment.
4. The law in this regard has been well settled by the Supreme Court in case of Regional Director, ESI Corporation and Another Vs. Francis De Costa and Another, 1996(6)SCC-1, wherein it has been held as under:

"27. We are of the view that in the facts of this case, it cannot be said that the injury suffered by the workman one kilometer

away from the factory while he was on his way to the factory was caused by an accident arising out of and in the course of his employment.

28. In the case of *Dover Navigation Company Limited v. Isabella Craig* (1940 A.C 190), it was observed by Lord Wright that-

"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."

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."

5. In case of *Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti*

*Garvali and Another*, 2007 (11) SCC 668, the Supreme Court has

held as under :

"15. The said Act was enacted to provide for payment by certain classes of employers to workmen for compensation against injury by accident. The term 'accidental injury' has not been defined under the Act. The liability of the employer for payment of compensation, however, would arise if a personal injury is caused to a workman by accident arising out of and in the course of his employment. What is necessary for attracting the charging provision contained in Section 3 of the Act is that (i) an injury must be caused to a workman; (ii) such injury must have been caused by an accident; and (iii) it arose out of or in the course of his employment.

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23. Injury suffered should be a physiological injury. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A

finding of fact, thus, has to be arrived at, inter alia, having regard to the nature of the work and the situation in which the deceased was placed.

24. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction."

6. Dealing with same issue, in case of Rashida Haroon Kupurade Vs. Divisional Manager, Oriental Insurance Co. Ltd. & Others, 2010

(3)SCC-271, the Supreme Court has further re-iterated as under:

"8. Having considered the submissions made on behalf of the respective parties, we are inclined to agree with the submissions made on behalf of the appellant that the High Court has committed an error in holding that notwithstanding the fact that there was no connection with the accident and the death of the workman, the owner of the vehicle in question was still liable to pay compensation under the provisions of the Act.

9. In order to better appreciate the submissions made on behalf of the parties, Section 3(1) of the above Act is extracted hereinbelow:-

*"3.Employer's liability for compensation.-(1)...If personal injury is caused to a workman 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."*

It will be clear from the wording of the above Section that compensation would be payable only if the injury is caused to a workman by accident arising out of and in the course of his employment. There has to be an accident in order to attract the provisions of Section 3 and such accident must have occurred in the course of the workman's employment.

10. As indicated hereinabove, in the instant case, there is no nexus between the accident and the death of the workman ...."

7. In view of the same, the court below has not committed any error of law while rejecting the application under the Act, 1923. Rejection of application would not preclude the appellant from seeking compensation under the appropriate provisions of law pertaining to

road accident.

8. Accordingly, the appeal fails and is accordingly rejected with liberty to the appellant to avail other remedies available to him under the appropriate provisions of law.

**Sd/-**  
(P. Sam Koshy)  
**Judge**

inder