

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 1011 of 2009**

1. Chairman, Chhattisgarh State Electricity Board (Now Chhattisgarh State Power Distribution Company Ltd.), Danganiya, Raipur, Chhattisgarh
2. Chief Engineer, Chhattisgarh State Electricity Board (Now Chhattisgarh State Power Distribution Company Ltd.) Bilaspur, Chhattisgarh
3. Executive Engineer, Chhattisgarh State Electricity Board (Chhattisgarh State Power Distribution Company Ltd.), Raigarh, Chhattisgarh

---- Appellants**Versus**

Vaasu Gupta, S/o. Shri Ram Gupta, Linemen, R/o. Village Patelipali,
Tahsil and District Raigarh, Chhattisgarh

----Respondent

For Appellants	:	Mr. Sunil Otwani, Advocate
For Respondent	:	Mr. P. Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****25/09/2017**

1. Present is an appeal under Section 30 of the Workmen's Compensation Act assailing the award dated 06.04.2009, passed by the Commissioner for Workmen's Compensation, Labour Court, Raigarh. Vide the said impugned award the Tribunal in a claim case under the provisions of Workmen's Compensation Act has awarded an amount of Rs.1,34,676/- as compensation.
2. The appeal was admitted for hearing on 03.09.2012 on the following substantial question of law:

"Whether the employer can be held liable for paying compensation for an accident under the provisions of Workmen's Compensation Act, 1923 when the accident was not arising out of and in the course of his employment?"

3. The counsel for the appellant submits that he intends to challenge the impugned award on the solitary ground that that the claim

petition of the claimant was not maintainable under the provisions of the Employees Compensation Act as the injury suffered by the claimant would not fall within the ambit of Section 3 of the Workmen's Compensation Act.

4. According to Mr. Otwani, it is a case where the claimant suffered injury in a road accident involving two vehicles, one the motorcycle in which the claimant was travelling and the other being the Truck coming from the opposite direction. He submits that there was no direct or indirect connection of the nature of employment with the accident, in which the injury has been caused and in view of the same the provisions of the Workmen's Compensation Act would not be applicable and the claim ought to have been rejected by the Commissioner for Workmen's Compensation.
5. So far as the contentions raised by the counsel for the appellant is concerned, the issue by now has been well settled in a catena of decisions starting from the landmark decisions of the Hon'ble Supreme Court in case of ***"Regional Director, E.S.I. Corporation and another v. Francis De Costa and another"* 1996 (6) SCC 1.**
6. 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..."
7. 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 (supra). 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."

8. 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 condition to be fulfilled. What arise "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 occur 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."

9. 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.
10. 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.***

11. 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.
12. 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.
13. 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.”

14. In view of the aforesaid admitted factual matrix where the injury has occurred by a road accident and where the accident occurred because of a clash of two vehicles, this Court has no hesitation in reaching to the conclusion that it is a case where the appellant ought to have filed a claim case under the provisions of Motor Vehicles Act, instead of a claim case under the provisions of the Workmen's Compensation Act.
15. Reserving the liberty to the claimant for filing a claim case under the Motor Vehicles Act, if he so desires, this Court is of the opinion that the impugned award passed by the Commissioner for Workmen's Compensation, Labour Court, Raigarh in Claim Case No. 62/W.C. Act/2006 (Non-Fatal) is not sustainable and the same deserves to be and is accordingly set-aside.
16. The appeal thus is allowed reserving the liberty as granted in the aforesaid paragraph.

Sd/-
(P. Sam Koshy)
Judge