NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL NO. 675 OF 2001

1. Dilaram Dewangan, aged 34 years, S/o Phool Singh
2. Chhaganlal Dewangan, aged 14 years, S/o Dilaram Dewangan
3. Janki Bai, aged 12 years, D/o Dilaram Dewangan
(both the minors are represented by their father Dilaram Dewangan)
All R/o Village- Dundera, P.S. Arjunda, Tah.- Gunderdehi, Dist.Durg (C.G.)

... Appellants

versus

1. The Managing Director, Steel Authority of India Ltd., Bhilai Steel Plant, Bhilai, District Durg (C.G.)
2. M/s K.R. Constructions, Mr. K. Mishra, C/o Industrial Relations Dept., Bhilai Steel Plant, Bhilai, District Durg (C.G.)
3. Commissioner under Workmen's Compensation Act, Labour Court, Durg (C.G.)

... Respondents

For Appellants	:	Mr. P.K. Moitra, Advocate.
For Respondent No.1	:	Mr. P.R. Patankar and Mr. Utsav Mahishwar, Advocates.

Hon'ble Shri Justice P.Sam Koshy

C A V ORDER

Reserved on : 25/09/2017

Delivered on : 01/11/2017

1. The present is an appeal under Section 30 of the Workmen's Compensation Act, 1923, by the claimants. Challenge is to the award dated 9.7.2001 passed by the Commissioner for Workmen's Compensation Act, Labour Court, Durg, in Case No. 10/W.C.Fatal/98.

2. Vide the impugned award, the learned Commissioner has rejected the claim application of the claimants holding that the death of deceased-Bijhwarin Bai in the instant case was outside the limits of her place of employment and that the alleged accident if any was also beyond the duty hours. The learned Commissioner therefore held that it was not an accident which arose out of and in the course of employment and thus rejected the claim application of the claimants under the provisions of the Workmen's Compensation Act.

3. While admitting the present appeal on 18.11.2013, this Court has framed the following substantial question of law:

> **"**Whether the learned Commissioner for Employee's Compensation was justified in holding that the death of deceased-Bijhawarinbai has not arisen out of and during the course of employment?**"**

4. Brief facts of the case relevant for the adjudication of the appeal are that the deceased-Bijhwarin Bai, aged around 30 years, was working as an employee under the respondent no.2-M/s K.R. Constructions. The said M/s K.R. Constructions was given a contract wherein the deceased was working for them under the establishment of respondent no.1-Bhilai Steel Plant. That on 8.7.1997 the deceased was found murdered. It is a case where the deceased went missing after the duty hours of 7.7.1997 and was found murdered on the next day.

5. The legal representatives of the deceased, i.e., the appellants-claimants, filed a claim case under the provisions of the Workmen's Compensation Act before the learned Commissioner seeking for compensation stating that the accident arose out of and in the course of employment, on which the impugned award has been passed rejecting their claim.

6. Contention of the claimants before the learned Commissioner was that the deceased in the course of her employment on 7.7.1997 was found dead near the pump house of the water supply department and since her death was in the course of employment it was stated that the accident arose out of and in the course of employment and therefore they had moved the claim application seeking for compensation under the Workmen's Compensation Act.

7. During the course of recording of evidence, three witnesses were examined on behalf of the claimants and on behalf of respondent no.2-M/s K.R. Constructions one witness namely Vidhyanand Bharti, a Supervisor of M/s K.R. Constructions, was examined.

8. The learned Commissioner vide the impugned award reached to the conclusion that since it was a case of murder after rape and the cause of death being strangulation after rape, there was no connection between the nature of employment and the cause of death. Further, it was also concluded by the learned Commissioner that the time of accident was after the duty hours while the deceased was returning home and taking into consideration the facts and circumstances of the case, the learned Commissioner rejected the claim application holding that it was not a case which would fall under Section 3 of the Workmen's Compensation Act.

9. Learned counsel for the appellants-claimants assailing the impugned award submits that the evidence which had come before the criminal Court and the statement of AW-3 Anjali Bai proves that the deceased was within the premises of the employer. There was evidence which shows that the deceased, who was working under (the accused in the criminal case) Sarveshwar Kaushik, was called by him for some cleaning work at the pump house no.47, which would establish that in the course of employment that the deceased was murdered and therefore Section 3 of the Workmen's Compensation Act would become applicable. According to the learned counsel for the appellants, once when it is established that the deceased was working as a cleaner in the water supply department under respondent no.2 and that the murder having occurred in the course of employment and that the accused in the criminal case had called the deceased on the pretext of some cleaning job, the same should have been appreciated by the Commissioner applying the principles of 'notional extension theory' and should have allowed the claim application by awarding suitable compensation. Having not done so, the impugned award deserves to be set aside.

10. Learned counsel for the appellants has relied upon the following decisions in support of their claim:

(i) Smt. Satiya & Ors. *Vs.* Sub-Divisional Officer, P.W.D. (Buildings and Roads), Narsimhapur & Ors., reported in 1974 LLJ 394.
(ii) Salamabegum & Ors. *Vs.* District Branch Manager, Maharashtra State Cooperative Land Development Bank, Beed & Anr., reported in 1989 ACJ 1104.
(iii) Koli Mansukh Rana *Vs.* Patel Natha Ramji, reported in 1992 ACJ 772.
(iv) Rita Devi & Ors. *Vs.* New India Assurance Co. Ltd. & Ors., reported in 2000 (5) SCC 113.

11. Per contra, learned counsel for respondent no.1-Bhilai Steel Plant opposing the appeal submitted that it is a case where the death had no causal connection whatsoever with the nature of employment for which the deceased was engaged. It was also the contention that the facts itself reveal that the incident had occurred after the duty hours and that the cause of death as per the post-mortem report also would suggest that it was not an accidental death but was a clear case of murder after rape. Further contention raised is that the fact that it was a murder and not an accidental death also stands established from the conviction which was given to the two accused persons, namely, Sarveshwar Kaushik and Gendlal, who were convicted for the offence punishable under Sections 376, 302 and 201/34 of IPC. Thus, for the reason that it was not an accidental death, the finding of the Court below is proper, legal and justified and the same does not warrant any interference.

12. In support of their contentions, learned counsel for respondent no.1 has relied upon the following authorities:

(i) Shakuntala Chandrakant Shreshti *Vs.* Prabhakar Maruti Garvali & Anr., reported in 2006 AIR SCW 6009.
(ii) Mallikarjuna G. Hiremath *Vs.* Branch Manager, Oriental Insurance Co. Ltd. & Anr., reported in 2009 AIR SCW 1688.
(iii) Rashida Haroon Kupurade *Vs.* Div. Manager, Oriental Ins. Co. Ltd. & Ors., reported in 2010 AIR SCW 1434.

13. Having considered the contentions put forth on either side and on perusal of the record, what is undisputed which has come up from the record as well as from the submissions made by the learned counsel for the parties is that the respondent no.2-M/s K.R. Constructions had a contract with respondent no.1-Bhilai Steel Plant. The further admitted position is that the deceased after completing her duty hours on 7.7.1997 while returning home was called upon by Sarveshwar Kaushik and thereafter the deceased was found murdered with injuries. Two persons were prosecuted for the alleged rape and murder of the deceased, i.e., Sarveshwar Kaushik and Gendlal and both of them were found guilty. Sarveshwar Kaushik was convicted for the offence under Sections 376, 302 & 201/34 of IPC and Gendlal was convicted for the offence under Section 201/34 of IPC.

14. What is to be seen in the instant case is, whether the death of the deceased was arising out of and in the course of employment? This is the substantial question of law which has also been framed by this Court on 18.11.2013.

15. For ready reference, it would be relevant to refer to Section 3 of the Employee's Compensation Act, which is reproduced herein under:

> **"3. Employer's liability for compensation.** – (1) If personal injury is caused to and 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: ....."

16. This provision has been dealt with elaborately by the Hon'ble Supreme Court in the landmark decision rendered in the case of **Regional Director ESI Corporation & Anr.** v. **Francis De Costa & Anr.**, **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 Hon'ble 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.
>
> xxxx xxxx xxxx
>
> **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.**"**

17. The finding so arrived at was based upon the decision reported in **1939 (4) All ER 558** titled as **Dover Navigation Co. Ltd.** v. **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.**"**

18. The High Court of Madras in the case of **Kalyani P**. v. **Divisional Manager**, **Southern Railway (Personal Branch)**, **2004 (1) LLJ 49**, relying upon the aforesaid judgments of the Hon'ble 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.

19. In view of the aforesaid legal position particularly in the light of the decision of the Hon'ble Supreme Court in **Francis De Costa** (supra) which has been followed and reiterated in a series of decisions of the Hon'ble Supreme Court as well as practically by all the High Courts, where it has been held that for a claim case under the Workmen's Compensation Act to sustain, the facts have to meet the requirements as required under Section 3 of the Workmen's Compensation Act.

20. The three ingredients for meeting the provisions of Section 3 have also been discussed in the preceding paragraphs. Nutshell of the ingredients required is that only because an accident or a murder having taken place within the premises of employer or in the course of employment, by itself would not attract Section 3. What is all the more also required is that the injury or the death, as the case may be, should also have a direct nexus to the nature of employment so as to bring it within the ambit of injury or death arising out of and in the course of employment.

21. In the instant case, though the place of incident may be within the premises of the employer, stretching it a bit far the accident also might have been in the course of employment, but what has not been proved and established before the learned Commissioner is the fact that the death of the deceased was not arising out of the employment. It was a criminal act on the part of the two accused persons which had led to the death of the deceased and that the death had no causal connection whatsoever with the nature of employment which the deceased had.

22. In **Shakuntala Chandrakant Shreshti** v. **Prabhakar Maruti Garvali & Anr**, **2006 AIR SCW 6009**, in paragraphs 27, 28, 29 & 30, the Hon'ble Supreme has held that:

> **"27.** An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.
>
> 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.
>
> **28.** The deceased was travelling in a vehicle. The same by itself cannot give rise to an inference that the job was strenuous.
>
> **29.** Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. A person may be suffering from a heart disease although he may not be aware of the same. Medical opinion will be of relevance providing guidance to court in this behalf.
>
> **30.** Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor.**"**

23. Likewise, the Hon'ble Supreme Court in **Mallikarjuna G. Hiremath** v. **Branch Manager, Oriental Insurance Co. Ltd. & Anr.**, **2009 AIR SCW 1688**, in paragraphs 15 and 20, has held as under:

> **"15.** An accident may lead to death but that an accident had taken place must be proved. Only because a death has taken place in course of employment will not amount to accident. In other words, death must arise out of accident. There is no presumption that an accident had occurred.
>
> xxx xxx xxx
>
> **20.** It is the specific case of the claimants that on 30.11.2000 the deceased who was driving the vehicle on the direction of the insured had gone to Gurugunta from Siraguppa. There he had gone to a temple and was sitting on the steps of the pond in the temple and he slipped and fell into the water and died due to drowning. This according to us is not sufficient in view of the legal principles delineated above to fasten liability on either the insurer or the insured. The High Court was not justified in holding that the present appellant was liable to pay compensation.**"**

24. The Hon'ble Supreme Court has also in **Rashida Haroon Kupurade** v. **Div. Manager, Oriental Ins. Co. Ltd. & Ors.**, **2010 AIR SCW 1434**, in paragraph 9, held as follows:

> **"9.** 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. As indicated hereinabove, in the instant case, there is no nexus between the accident and the death of the workman since the accident had occurred six months prior to his death.**"**

25. As regards the judgments which have been cited by the learned counsel for the appellants, if we peruse the facts of those cases it would reveal that in all those cases there was some causal connection between the nature of work and the death which has occurred and thus the same are distinguishable on their facts itself. In the instant case, the cause of death admittedly was murder and that the nature of employment had nothing to do with the cause of death as the death was not in any manner connected to the nature of employment. Thus, the judgments cited on behalf of the appellants cannot be made applicable in the present case.

26. In view of the same, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the learned Commissioner cannot be found fault with nor can it be said to be erroneous or perverse, calling for an interference. Thus, the question of law framed by this Court is answered in the affirmative holding that the learned Commissioner for Workmen's Compensation Act was justified in reaching to the conclusion that the death of the deceased was not arising out of and in the course of employment.

27. The appeal being devoid of merits deserves to be and the same is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

/sharad/