

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal (C) No. 1245 of 2010

Branch Manager, National Insurance Company, Aakash Ganga Complex, Supela Bhilai, district Durg (CG) through authorized signatory for National Insurance Company Limited Divisional Office Bilaspur (CG)

---- Appellant

Versus

1. Lachhmi W/o late Shyam Sunder, aged about 26 years
2. Ku. Swati D/o late Shyam Sunger, aged 5 years
3. Himanshu S/o late Shyam Sunder, aged 2 years

All R/o Road 17 – 06 D Zone Khursipar, Bhilai Tehsil Vajila Durg (CG)

4. Smt. Saroj Tiwari W/o P. Tiwari R/o Shanti Nagar, Bhilai-3 Tehsil Patan, District Durg (CG)

---- Respondents

For Appellant	:	Shri B. N. Nande, Advocate.
For Respondents 1 to 3	:	Shri Amiya Kant Tiwari, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14/11/2017

Present is an appeal under Section 30 of the Employees' Compensation Act challenging the award dated 30.08.2010 passed by the Employees' Compensation, Labour Court, Durg in Case No. 121/W.C. Act Fatal/2007. Vide the impugned award the Commissioner in a death case has awarded compensation of Rs.2,84,340/- with default stipulation of accruing interest @ 10% in case the compensation amount is not deposited within a period of one month.

2. The present appeal was admitted on 09.07.2013 on the following substantial question of law:

“Whether Shyam Sunder died in the accident which arose out of and during the course of his employment.”

3. Present is an appeal by the Insurance Company questioning the finding of the Labour Court to the extent of the accident to have arisen out of and in the course of employment. Therefore, covering the risk of deceased Shyam Sunder, the order has been passed for payment of compensation and the liability has been fastened upon the Insurance Company.

4. Contention of the counsel for the Insurance Company is that it is a case which would not fall within the provision of Section 3 of the Workmen's Compensation Act as there was no causal connection whatsoever between the nature of employment and the accident which occurred or the resultant death of the deceased. According to the counsel for the appellant, it was a personal fight which took place between the deceased and an unknown person and in the course of the fight, the accused person is said to have assaulted the deceased resulting in his death which has no direct or indirect or a causal connection to the nature of employment which otherwise was required to be discharged. Counsel for the appellant relied upon the decision of the Supreme Court in the case of Mallikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd. & Anr. reported in 2009 AIR SCW 1688 and referred to paragraphs 14 & 15 of the said judgment.

5. Per contra, counsel for the claimants opposing the appeal submits that it is a case where the deceased in the instant case was a driver. The nature of employment was that of driving truck belonging to respondent no.4 and the place of incident was enroute the destination where he had gone to unload certain goods. Undisputedly, the deceased in the instant case was in the course of employment when the accident arose. In the course of his employment, the vehicle suffered breakdown and they had to halt and while the deceased was resting near the vehicle, he was attacked by an unknown person. Therefore, according to the counsel for the claimants, there is sufficient causal connection between the nature of employment and the attack made and the finding of the Labour Court does not warrant any

interference. Counsel for the claimants referred to the decision of the Supreme Court in the case of Smt. Rita Devi and others Vs. New India Assurance Co. Ltd. and another reported in 2000 AIR SCW 1579.

6. Having heard the contentions put forth on either side and on perusal of the record, it is reflected that undisputedly the deceased Shyam Sunder in the instant case was working as a driver in the truck bearing registration No. CG 07 ZC 2676 and that he was sent on duty for unloading certain articles from Bhilai (CG) to Chandrapur (MH) and that the incident occurred after unloading the articles at Chandrapur. It is also not in dispute that the incident occurred after the vehicle had suffered breakdown and was halted at a place for repairing of the vehicle. It appears that the accused person suddenly picked up an iron rod and assaulted the deceased. Therefore, in the opinion of this Court, the said incident would squarely fall within the provisions of Section 3 of the Employees' Compensation Act which only requires the injury or the death to have arisen out of and in the course of employment. Both these ingredients are clearly established from the contents of the FIR so also the statement of the claimants as well as the conductor who had gone along with the deceased.

7. In view of the same, the question of law framed by this Court as to whether the accident arose out of and during the course of employment is concerned, it is answered in the affirmative holding that Shyam Sunder died out of and in the course of employment.

8. The appeal of the Insurance Company thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge