

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 1562 of 2017**

The Oriental Insurance Company Ltd. 1st. Floor, Shivnath Complex
G. E. Road, Bhilai, Supela, District Durg, Chhattisgarh

---- Appellant**Versus**

1. Smt. Aarti Kahar (Bhoi) W/o late Dhaleshwar Prasad Kahar, aged about 26 years, R/o Village Sirna Bhata, Tahsil Dhamdha, District Durg, Chhattisgarh
2. Ku. Gunjan D/o late Dhaleshwar Prasad Kahar, aged about 4 years, Minor through natural guardian mother Smt. Aarti Kahar, R/o Village Sirna Bhata, Tahsil Dhamdha, District Durg, Chhattisgarh
3. Master Kushi D/o late Dhaleshwar Prasad Kahar, aged about 2 years, Minor through natural guardian mother Smt. Aarti Kahar, R/o Village Sirna Bhata, Tahsil Dhamdha, District Durg, Chhattisgarh
4. Rudra Prasad Kahar S/o late Dhaleshwar Prasad Kahar, aged about 15 years, minor through natural guardian mother Smt. Aarti Kahar, R/o Village Sirna Bhata, Tahsil Dhamdha, District Durg, Chhattisgarh
5. Manjit Singh Chawla S/o Shri Dilip Singh Chawla, Age not mentioned, R/o M I G A, H U D C O Colony, Durg District Durg, Chhattisgarh
6. Jeevan Lal S/o late Chhotelal, aged about 52 years, R/o Village Sirna Bhata, Tahsil Dhamdha, District Durg, Chhattisgarh
7. Smt. Bhagwati W/o Jeevan Lal, aged about 50 years, R/o Village Sirna Bhata, Tahsil Dhamdha, District Durg Chhattisgarh

---- Respondents

For Appellant : Shri H. P. Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board**

16/11/2017

Challenge in the present appeal is to the award dated 30.08.2017 passed by the Commissioner, Workmen's Compensation Act, Labour Court, Durg in Case No. 38/W. C. Act/2012/Fatal. Vide the impugned award, the Commissioner has awarded a compensation of Rs.5,33,925/- in favour of the claimants i.e. respondents 1 to 4.

2. Contention of the counsel for the Insurance Company is that in the instant case the claim application would not have been maintainable for the reason that the death of Dhaleshwar Prasad Kahar was not on account of any accident rather it was a natural death. Therefore, the provisions of the Workmen's Compensation Act would not be applicable in the present case. He submits that even the postmortem report of the deceased does not reflect the actual cause of death and therefore the finding of the Commissioner is perverse. Counsel for the appellant contended that it is a case where there is no medical evidence to show that the deceased was subjected to much stress and strain with which the deceased could have received heart attack resulting in his death. In the absence of any such proof, the appeal deserves to be allowed and the award passed by the Commissioner deserves to be rejected. Counsel for the appellant relied upon two decisions; one is of the Supreme Court in the case of Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and Another reported in (2007) 11 SCC 668 and the other by this Court in the case of Husna Khatoon (Smt.) and others Vs. Urmila Transport Company (M/s) reported in 2010 (2) M.P.H.T. 38 (CG).

3. The records produced before this Court reflect that there is no evidence led on behalf of the Insurance Company to substantiate any of

their contentions. The claimants on the contrary have led evidence of AW-2 namely Kashi Naresh Choubey who also happens to be a driver and had gone along with the deceased to Karnataka to bring vegetables. This witness has proved the fact regarding the long driving that the deceased had undertaken before he died.

4. The brief facts of the case are that the deceased in the instant case Dhaleshwar Prasad Kahar was a driver and was working on the truck bearing registration No. CG 07CA/0562. He had gone to Karnataka to bring vegetables and after having brought vegetables from Karnataka, he was collecting money from the vegetables traders. In the course, he received chest pain and collapsed at the spot and by the time he was taken to the hospital, he was declared dead. The claimants have examined one Kashi Naresh Choubey as AW-2 who had also taken another vehicle to Karnataka along with the deceased in the present case for bringing vegetables. He has deposed before the Court below in respect of the duration and the distance which they had covered. He has also made a statement as regards the stress and strain having caused in the course of driving a truck from Rajnandgaon to Karnataka and back to Rajnandgaon. All these facts would show that there was sufficient amount of stress and strain caused to the deceased which could have resulted in his suffering from heart attack leading to his death. The fact that the deceased had gone from Rajnandgaon to Karnataka and died immediately after sometime coming from Karnataka to Rajnandgaon also shows that there was causal connection to the death of the deceased with that of his employment as a truck driver.

5. The Rajasthan High Court in the case of **Divisional Personal Officer, Western Railway Vs. Ashiya Begam, 1994 LLR 11 (Raj)** has held as under:

“Where death was accelerated on account of stress and strain of the working condition, it is not necessary that there should be a direct connection between the cause of death and the nature of duties. Even if a casual connection between the two can be shown then the dependants of the deceased would be entitled to claim compensation from the employer.

6. The aforesaid view of the Rajasthan High Court further stands strengthened from the recent decision of the Supreme Court in the case of **ParamPal Singh through father Vs. National Insurance Company and another** reported in **(2013) 3 SCC 409** wherein the Supreme Court in paragraph-29 has held as under:

“29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was CAUSAL CONNECTION to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45 years old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 kms. away from Delhi, would have definitely undergone grave strain and stress due to such long distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental resources & endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his life span. Such an ‘untoward mishap’ can therefore be reasonably described as an ‘accident’ as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer’s trade or business.”

7. This view of the Supreme Court was based upon many of its previous decisions on the subject matter. Thus, this Court is inclined to uphold the

impugned decision passed by the Commissioner for Workmen's Compensation.

8. So far as the two judgments cited by the counsel for the appellant are concerned, the judgment of the Supreme Court in the case of Shakuntala (supra) is distinguishable on the facts alone as the deceased in the said case was a cleaner and the death of the deceased took place in the night. On the contrary, in the instant case, the driver had gone from Rajnandgaon to Karnataka for bringing vegetables and he had also returned to Rajnandgaon and in the course of delivery of vegetables and collection of money, the deceased died because of heart attack. The nature of duty undertaken by the deceased in the instant case shows sufficient stress and strain already undergone by him. Thus, the said judgment is distinguishable.

9. In view of the aforesaid fact, this Court with all great humility at its command differs with the view taken by the Co-ordinate Bench of this Court in the case of Husna Khatoon (supra) and is inclined to accept the view of the Supreme Court in the case of Param Pal Singh (supra).

10. In view of the same, this Court is of the opinion that in the given factual matrix of the case, no strong case has been made out for interfering with the impugned award passed by the Commissioner. The appeal of the Insurance Company thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE