

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL MISCELLANEOUS APPEAL No. 567 OF 2009

JUDGMENT:

1. The appellant-Insurance Company aggrieved by the order and Award dated 17.02.2009 passed in W.C.No.144 of 2005 (F) by the learned Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, at Nalgonda in awarding the compensation of Rs.4,00,741/- with subsequent interest at 12% per annum from the date of accident, i.e.10.09.2003 till the date of realization, preferred present appeal.

2. The claim of the first respondent in brief is that: the deceased Darshanam Ganesh was working as Driver on the lorry bearing No. ADT 9327 under the employment of second respondent and that the deceased met with an accident on 10.09.2003 and succumbed to injuries. On 10.09.2003 while the deceased was sleeping in front of the lorry office, at about 3.00 AM, he was bitten by a snake and died.

3. The deceased was aged 25 years as on the date of death and earning Rs.4,000/- per month as wages. The said snake bite was in the course of his employment.

4. Before the Commissioner, first respondent herself was examined as P.W.1 and got marked Exs.A.1 to A.7 and

Ex.B.1 with consent. No oral or documentary evidence was adduced on behalf of the appellant-Insurance Company and second respondent.

5. The contention of the appellant is that the deceased was not on employment at the time of accident and that there is no casual connection between the accident and employment. In support of his contention, he placed reliance on the decision of the Apex Court in EMPLOYEES' STATE INSURANCE CORPORATION Vs. FRANCIS DE COSTA (1996 ACJ 1281) wherein the injury was sustained while the employee was on his way to the factory where he was employed. The accident took place one Kilometer away from the place of employment. The Apex Court held that unless it can be said that his employment began as soon as he set out for the factory from his home, it cannot be said that the injury was caused by an accident 'arising out of his employment'. A road accident may happen anywhere at any time, but such accident cannot be said to have arisen out of employment, unless it can be shown that the employee was doing something *incidental to his employment*. 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 his employment or for the purpose of employment cannot be said to have arising out of his employment.

In the case on hand, the evidence of P.W.1 was that her brother Darshanam Ganesh was working as driver under the second respondent on the lorry bearing No. ADT 9327. On 10.09.2003 at about 3.00 AM while he was sleeping in front of the lorry office, a snake bite him and died.

6 The claimant was examined as P.W.1, who is the sister of the deceased. Her clinching evidence is that her brother Darshanam Ganesh was working as Driver under the second respondent on the lorry bearing No. ADT9327. As on the date of accident, while the deceased was sleeping in front of the lorry office, at about 3.00 AM he was bitten by a snake. He was taken to Dr. Ramulu Clinic at Nakrekal and later shifted to Head Quarter Hospital, Nalgonda after first aid, whereat he was declared dead.

7 Ex.A.1 is the attested copy of FIR and Ex.A.4 is the attested true copy of Final Report. The evidence of P.W.1 goes to suggest that in Ex. A.1-FIR it was asserted that on 10.09.2003 while the deceased was sleeping in front of the lorry office, at about 3.00 AM he was bitten by a snake, due which, he died. The final report, Ex.A.4 also corroborates Ex. A.1-FIR and supports the evidence of PW.1. The Inquestdars under Ex.A.2 also opined that the death was due to the snake bite while the deceased was

under the employment of the second respondent. P.W.1 also filed driving licence of the deceased which was marked as Ex.A.5 which shows that the deceased possessed a valid and effective driving licence to drive the aforesaid lorry.

8 Learned Counsel for the first respondent/claimant contends that the sleeping in front of the lorry office was incidental to his employment as a driver. In support of his contention, he relied on the decision of the Apex Court in DAYA KISHAN JOSHI AND ANOTHER Vs. DYNEMECH SYSTEMS PVT LTD {2017(6) ALD 106 (SC)} wherein it was held as under:

“ The words ‘arising out of ‘ and ‘in the course of employment’ are in fact two different phrases and have been understood as such. If the accident had occurred on account of a risk which is an incident of employment, the claim shall succeed unless, of course, the workman had exposed himself to an added peril by his own imprudent act. The phrase ‘in the course of employment’ suggests that the injury must be caused during the currency of employment, whereas the expression ‘out of employment’ conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident.”

In the case on hand, the deceased was a driver on lorry bearing No. ADT 9327. The second respondent employed him as a driver and entrusted the said lorry. During the course of employment, he stopped the lorry and sleeping in front of lorry

office and at 3.00 AM a snake bite him, which is clear that the snake bite was during the course of his employment while on duty.

9 Therefore the evidence of P.W.1 supported by documentary evidence at Exs.A.1 to A.7 well establish that at the time of snake bite, the deceased was under the employment of the second respondent and died during the course of employment. No rebuttal evidence was produced by the Opposite Parties (Appellant-Insurance company and second respondent herein). Even the second respondent did not file counter or adduce any evidence before the Tribunal. Both oral and documentary evidence on record well establish that the deceased-Darshanam Ganesh was the driver on lorry bearing No. ADT 9327, and he possessed valid and effective driving licence Ex.A.5 as on the date of his death and that Ex. B.1-policy was in force as on the date of accident. By virtue of Ex.B.1 Insurance Policy, the appellant-Insurance Company is liable to indemnify the second respondent.

10. Asolutely there is no documentary evidence in proof of age and income of the deceased. In the absence of any material on record, the Commissioner has validly taken the minimum wages prescribed by the Government to the category of driver as on the date of accident i.e. at Rs.3,695/- and age of the deceased as 25 years, which is the basis for determination of compensation under the Workmen's Compensation Act. There is

no rebuttal evidence and hence the Tribunal was right in considering the unimpeachable evidence of P.W.1 and documentary evidence at Exs.A.1 to A.7 and awarding the compensation of Rs.4,00,741/- with subsequent interest at 12% per annum from the date of accident i.e. 10.09.2003 till the date of realization, holding that the appellant-Insurance Company and second respondent are jointly and severally liable to pay the compensation. The Award of the Commissioner for Workmen's compensation is legal, valid and does not suffer from any legal infirmities.

11. For the foregoing discussion and in the result, the appeal is dismissed, with costs, confirming the award dated 17.02.2009 passed in W.C.No.144 of 2005 by the learned Commissioner for Workmen's Compensation and Deputy Commissioner of Labour, at Nalgonda.

12. The first respondent/claimant is permitted to withdraw the compensation amount already deposited.

13. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 12th December, 2017.
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