

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**MAC No. 639 of 2011**

United India Insurance Co. Ltd. through its Branch Manager, Branch office
Kamthi Line, Rajnandgaon, Tah. And District Rajnandgaon (CG).

---- Appellant**Versus**

1. Dayaban Goswami S/o late Shri Rajban Goswami, aged about 46 years, R/o village Sukhari Post Arjuni, Tah. Dongargarh, Distt. Rajnandgaon (CG).
2. Rajesh Kumar Yadav owner of the vehicle Delhi Electric Engineering New Krishi Upaj Mandi near Basantpur, Rajnandgaon, Tah. And Distt. Rajnandgaon (CG).

---- Respondents

For Appellant	:	Shri Dashrath Gupta, Advocate.
For Respondent No.1	:	Shri Rakesh Thakur, Advocate.
For Respondent No.2	:	Shri Sudhir Verma, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****23.01.2018**

1. The present appeal under Section 30 of the Workmen's Compensation Act, 1923 (in short, the Act, 1923) has been filed by the appellant-insurance company assailing the award dated 05.04.2011 passed by the Commissioner for Workmen Compensation, Labour Court, Rajnandgaon, in Case No.52/WC Act/2007/Non-Fatal. Vide the impugned award, the Commissioner in an injury case has awarded compensation of Rs.91,503/- with penal interest @ 7 percent if the amount is not deposited within 30 days before the Commissioner.
2. Learned counsel for the appellant at the outset submits that it is a case where the Commissioner has miserably failed to appreciate the fact that the accident which is claimed by the claimant did not occur arise out of and in the course of employment. He submits that the very requirement under Section 3 of the Act, 1923 is that the accident should not only be in the course of and it should also arise out of employment whereas, in the

instant case, the claimant's case itself is that the accident occurred when the claimant was sleeping in the cabin of the vehicle when he fell down which by itself shows that it was not duty hours, but it was the rest hours during which time he sustained injuries. Referring to cross examination of the worker, he submits that the claimant himself has accepted the fact that on the fateful day he was not sleeping in the cabin, but was sleeping in an open area which further disproves the accident and the injuries sustained in the course of employment or while sleeping in the cabin of Dumper and for both these reasons he prays for setting aside of the impugned award.

3. On the contrary, learned counsel for the respondents submits that the claimant in his evidence as well as in the claim application has stated that he was sleeping in the cabin when he fell down and sustained injuries and that since the place of accident was also the site where the work was going on of the Contractor, it has to be presumed that it was in the course of employment when the accident occurred applying the principle of notional extension. He further submits that the claimant has also filed a cross objection seeking for enhancement of compensation under Order 41 Rule 22 CPC and prayed for dismissal of the appeal and the award amount be suitably enhanced.
4. Having considered the rival contentions put forth on either side and on perusal of records, so far as the cross objection is concerned, this court has no hesitation in holding that the provisions of Order 41 Rule 22 CPC would not be applicable in an appeal under Section 30 of the Act, 1923. Rule 41 of Workmen Compensation Rules, 1924, clearly envisages the limited provision of the CPC which would be applicable in a proceeding under the Act, 1923. In the said Rules, the provision of Order 41 Rule 22 of CPC is not reflected. Accordingly, the cross objection filed by the claimant seeking enhancement of compensation is not maintainable. The same

deserves to be and is accordingly rejected.

5. So far as the present appeal by the insurance company is concerned, indisputably, Section 3 of the Act, 1923, stipulates the conditions required for making the provisions of Act, 1923 applicable. Section 3 of the Act, 1923 clearly spells out the conditions when the employer shall be liable for payment of compensation and the first condition is that of personal injuries caused arising out of and in the course of employment. That means, there has to be a personal injury arising out of employment and that it should not only arise out of, but it should also occur in the course of employment.
6. In the present case the claimant's case itself is that the accident occurred at around 2 AM in the night. The duty hours were 9 AM to 5 PM which by itself establishes the fact that 2 AM in the night was not the working hours for the claimants. Further, the claimant was a driver and he was said to be a driver of Truck-Dumper. The accident did not arise when the vehicle in which he was a driver met with an accident. It is a case where he is alleged to have been fallen while he was sleeping in the cabin of Dumper. This again cannot be brought within the ambit of accident to arise out of and in the course of employment.
7. By now it is a well settled law that there has to be a causal connection between the employment and the accident and both these ingredients i.e. in the course of employment and arising out of employment should be proved for enabling compensation. From the cross examination of the worker, he has not been able to establish the necessary ingredients required under Section 3 of the Act, 1923.
8. Under the said circumstances, this court is of the opinion that the findings of the Commissioner in awarding compensation in favour of the claimant is not sustainable, the same deserves to be and is accordingly set aside.
9. The question of law framed by this court while admitting the appeal is

answered in the affirmative inasmuch as this court finds the finding of Commissioner for Workmen Compensation to be erroneous and perverse to the evidence which have come on record.

10. The appeal, thus stands allowed and the award dated 05.04.2011 passed by the Commissioner for Workmen Compensation, Labour court, Rajnandgaon, is set aside. The consequence to follow.

Sd/-

(P.Sam Koshy)
Judge

inder