

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 140 of 2014**

- Steel Authority Of India Through- Managing Director, Now Chief Executive Officer, Bhilai Steel Plant, Bhilai, Tah. And Distt. Durg C.G.

---- Appellant**Versus**

1. Smt. Usha Widow of Jagdish Aged About 42 Years
2. Ku. Sunita D/o Late Jagdish Aged About 23 Years
3. Sanjay Kumar S/o Late Jagdish Aged About 18 Years
4. Sangeeta D/o Late Jagdish Aged About 25 Years

Address-All resident of Quarter No.5A, Street 32, Sector-6, Bhilai Nagar, Tahsil & Distt. Durg (CG)

---- Respondent

For Appellant	:	Shri PR Patankar, Advocate.
For Respondents	:	Shri Arvind Kumar Dubey, Advocate.

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****11/10/2018 :**

This appeal has been filed by the non-applicant/employer challenging the judgment dated 9.12.2013 passed by the Commissioner for Employees Compensation Act, Labour Court, Durg (CG) in Case No.02/WC Act/2011 F, whereby the Commissioner has granted Rs.2,92,400/- in favour of the applicants/claimants, dependents of deceased Jagdish Gond.

02. Applicants' case in brief is that on the date of incident i.e. 13th December, 2009 deceased Jagdish, aged 52 years, earning Rs.8550/- per month, died at his work place during the course of employment while attending the call of nature. Learned Commissioner considering the provisions of Workmen Compensation Act, awarded compensation in favour of the applicants as mentioned above. Aggrieved by the said judgment, the non-applicant/employer-BSP has filed the instant appeal.

03. Learned counsel for the appellant submits that the deceased was employee of the appellant but death of the appellant had no nexus with his employment and as such, the appellant/employer is not liable for payment of compensation to the applicants/claimants.

04. On the other hand, learned counsel appearing for the respondents/claimants supports the impugned judgment and submits that the same has been passed strictly in accordance with law and therefore, needs no interference by this Court.

05. Though it is an admitted appeal, however, no substantial question of law was framed at the time of admission. Hence the same is being framed as under:

“Whether death of deceased Jagdish occurred during the course of employment and it had any nexus with the nature of employment?”

06. In the instant case, deceased Jagdish died due to injuries suffered by him during the course of quarrel with his friend and his dead body was found about 150 meters away from the premises of his

work place. Applicant Witness No.1 Usha, wife of the deceased, admitted this fact in paras 1 & 3 of her statement that one unknown person of the department of her husband informed her at 2.30 pm that some quarrel has taken place between her husband and one person. On this, she sent her daughter Sunita to enquire about the incident and at 9 pm she (Usha) was informed about the death of her husband. She also admits in her statement that the incident regarding quarrel of her husband with his friend was informed by someone but she has no knowledge about the person who had quarreled with her husband.

07. Daughter of the deceased Sunita Kumari (AW-2) also admitted in paras 1 & 2 of her statement that her father was found in a drainage about 150 meters away from the place of his employment. As per statement of AW-3 Vishwanath, at about 10-11 am the deceased went to attend the call of nature and after some time the children informed him that one person is lying dead outside and when he went there, he found that it was the deceased who was lying dead outside the boundary of Bhilai Steel Plant.

08. Thus, from the evidence adduced by the applicants themselves, it stands proved that death of the deceased had no nexus with the nature of his employment. The deceased died outside the premises of Bhilai Steel Plant. According to the wife and daughter of the deceased, on the date of incident the deceased had a quarrel with his friend. As per merged intimation Ex.P/2 also lodged by Vishwanath (AW-3), the deceased had gone to attend the call of nature at 10 am outside the boundary wall of the plant and after some time when he went there, he

found the deceased lying dead there. Further, as per Ex.P/3 i.e. inquest, the body of the deceased was found outside the boundary wall of his work place. As per postmortem report of the deceased, there were multiple injuries on his body including fracture and the cause of death was asphyxia as a result of multiple injuries to vital organs – lungs and fracture of ribs.

09. Considering the facts and circumstances of the case and the evidence adduced by the applicants/respondents themselves, it is proved that the death of the deceased had no nexus with his employment or nature of employment. The death of the deceased did not occur as a result of any incident during the course of his employment, rather from the evidence it appears that he was subjected to assault by someone which resulted in his death and in these circumstances, it may be a criminal act on the part of that assailant but this incident cannot be construed as an incident having any nexus with the employment.

10. As per Workmen Compensation Act, for the purpose of compensation the ingredients required to be proved are that there was an accident resultant injury or death from an accident which occurred in the course of employment and arose out of the employment. 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 of the Act. 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. However, in the present case, the deceased died as a result of injuries suffered by him during the course of quarrel with some unknown person and his body was found about 150 meters away from his work place.

11. 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.”

12. 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.

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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.”

13. 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.”

This Court also in the matter of ***Steel Authority of India and another Vs. Smt. Dileshwari Bai Soni and others (MAC 760/2012,***

order dated 15.2.2018) wherein identical issue was involved, relying upon the aforesaid decisions, has allowed the appeal.

14. Thus, considering the overall facts and circumstances of the case, the evidence adduced by the respective parties, keeping in view of the principles of law laid down by the Hon'ble Supreme Court in the aforesaid matters, this Court is of the opinion that the death of the deceased had no nexus with the employment or nature of employment and as such, the Commissioner was not justified in passing the impugned judgment holding that the death of the deceased occurred in an incident arising out of the employment and during the course of employment.

15. In the result, the appeal is allowed in part. The impugned judgment is hereby set aside. However, considering the fact that the incident occurred in the year 2009, the claimants are widow and children of the deceased, the entire amount already stands deposited before the Commissioner and since there was no interim order, the entire amount also must have been disbursed, this Court is of the opinion that though finding of the Commissioner is set aside, however, if the amount has been disbursed, the same may not be recovered from the claimants. In case the amount has not been disbursed, the same can be refunded to the appellant.

Sd/

**(Gautam Chourdiya)
Judge**