AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1170 of 2014

- The Oriental Insurance Company Ltd. Thru- Its Divisional Manager, Madina Building, Jail Road, Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Smt. Punni Bai W/o Late Kartik Ram Aged About 30 Years
2. Ghanshyam Nishad S/o Kartik Ram Aged About 14 Years
3. Kumari Ganeshi D/o Kartik Ram Aged About 12 Years
4. Chintu Nishad S/o Late Ramadhar Nishad Aged About 65 Years
5. Bhagwantin Bai Nishad W/o Chintu Nishad Aged About 60 Years

Non-applicant No.2 & 3 are under Guardianship of mother Smt. Punni Bai.

All are R/o Near Shradhanand School, Santoshi Nagar, Raipur, Thana-Tikrapara, Distt. Raipur C.G.

6. Kailash Motwani S/o Raghumal Motwani Aged About 40 Years R/o In Front Of Office Of Labour Court, Kitchari Chowk, Raipur C.G.

---- Respondents

For Appellant : Smt. Chitra Shrivastava, Advocate.
For Respondent No.1 : Shri AL Singroul, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

14/11/2018

Aggrieved by the judgment dated 6.9.2014 passed by Commissioner for Workmen Compensation-cum-Labour Court No.1, Raipur, in Case No.78/WC Act/2010/Fatal, the appellant/insurance company has preferred this appeal under Section 30 of the Employees

Compensation Act.

02. It is an admitted fact that Kartik Ram Nishad was under the employment of respondent No.6 Kailash Motwani as Khalasi in his vehicle Truck bearing registration No.CG 04 ZC 6120 and the said vehicle was insured with the appellant herein and on 28.11.2009 while Kartik Ram was unloading the iron rods from the said truck, due to excessive work he suffered heart attack and died as a result thereof.

03. On claim petition being filed by the claimants, who are widow and children of the deceased, the Commissioner considering the evidence of both the parties granted a total compensation of Rs.2,91,172/- with interest @ 12% per annum from the date of accident in favour of the claimants, fastening liability on the appellant/insurance company.

04. Counsel for the appellant submits that the Commissioner has committed an illegality in fastening liability on the insurance company as the deceased died due to heart attack and not in an accident involving the vehicle in question. It is further argued that the driver of the vehicle was not having a valid and effective driving licence to drive the same and as such, there being breach of policy conditions, the insurance company is not liable to pay any compensation and liability, if any, of paying compensation is of respondent No.6/employer.

05. On the other hand, learned counsel for respondent No.1 supports the impugned judgment and submits that there is no illegality or infirmity in it warranting interference by this Court. He has placed reliance on the decision of the Hon'ble Supreme Court in the matter of

Mallikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Co. Ltd. and another, (2009) 13 SCC 405.

06. Heard learned counsel for the parties and perused the material available on record.

07. As per Ex.P/3 i.e. inquest report, deceased Kartik Ram Nishad died in the truck in question and his body was also lying there. Further, as per postmortem report Ex.P/4, cause of death of the deceased was cardiorespiratory failure. It has been admitted by respondent No.6/employer that the deceased had got very much tired while unloading the iron rods and therefore, he suffered heart attack and died. AW-2 Ganesh Yadav has also supported the above evidence of respondent No.6. Thus, from the medical and the oral evidence it stands proved that the deceased died as a result of heart attack due to stress of work while he was under the employment of respondent No.6 in his truck which was duly insured with the appellant/insurance company.

08. True it is that no accident occurred in this case and the deceased died due to heart attack. However, on that ground the insurance company cannot be absolved of its liability. Similar issue was considered by the Hon'ble Supreme Court in the matter of ***Malikarjuna G. Hiremath*** (supra) and the insurer was held liable for paying compensation. It the said case it has been observed as under:

> *"12. "5. Section 3(1) of the Act which is relevant for the purpose of this case reads as follows:-*
>
> *"3. Employer's liability for compensation. - (1) If personal*

injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Provided that the employer shall not be so liable -

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement, caused by an accident which is directly attributable to -

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen."

6. Under Section 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural death because of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear of the employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out *of the employment and the employer would be liable.*

7. The expression "accident" means an untoward mishap which is not expected or designed. "Injury" means physiological injury. In Fenton v. Thorley & Co. Ltd. (1903) AC 443, it was observed that the expression "accident" is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane, L.C. in Trim Joint District School Board of Management v. Kelly (1914) A.C. 667 (HL) as follows:

"… I think that the context shows that in using the word "designed" [Lord Macnaghten] was referring to designed by the sufferer".

26. In a case of this nature to prove that accident had 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."

09. Thus, considering the facts and circumstances of the case, the evidence adduced by the parties, the admitted facts, keeping in view decision in the matter of Malikarjuna G. Hiremath (supra), this Court is of the opinion that the Commissioner was fully justified in holding the appellant/insurance company liable for paying compensation to the claimants as the deceased died during the course of employment due to stress and strain of the work while unloading iron rods from the vehicle duly insured with the appellant/insurance company at the relevant time.

10. In the result, the appeal being without any substance is liable to be dismissed and is, accordingly, dismissed.

Sd/

(Gautam Chourdiya)

Judge

Khan