

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 962 of 2009

The New India Assurance Co.Ltd., Branch Office, Kamthi Line, Rajnandgaon (C.G.), Through Division Office, Thakkar Chamber, G.E.Road, Power House, Bhilai, Tahsil and District Durg (C.G.).

---Appellant

Versus

1. Ku.Bharti Mandawi @ Bharti Kumari D/o Late Shankar Lal Mandawi, aged about 38 years, R/o village & Post Naragaon, P.S. & Tahsil Gurur, District Durg (C.G.).
2. Salik Ram Yadav S/o not known, aged about 45 years, Manager, Krishna Borewells, Kamthi Line, Rajnandgaon.
3. State of Chhattisgarh, Raipur, Through Secretary, Public Health Engineering Department, Mantralaya, Raipur (C.G.) (Chief employer of deceased Madhusudan Mandawi).
4. Superintendent Engineer, Public Health Engineering Department, Mahasamund, District Mahasamund (C.G.).
5. Shri Krishna Company, Marg-2 (C.G.) Zone-1, New Adarsh Nagar, District Durg (Owner of Vehicle).
6. Smt.Aasin Bai Netam W/o Shri Bhagirathi Netam, R/o Barkachhar, P.S.Charama, Tahsil Charama, District Kanker (C.G.).

---Respondents

For appellant	:	Shri Azad Siddiqui, Advocate.
For respondent No.2	:	Shri A.D.Kuldeep and Shri Tarun Dansena, Advocates.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/03/2018

1. Present is an appeal filed by the Insurance Company under Section 30 of the Workmen Compensation Act assailing the award dated 04/06/2009 passed by the learned Commissioner for Workmen Compensation, Labour Court, Durg (C.G.) in case No. 6/Category-1/B/2007/W.C.Act/Fatal.

2. Vide the impugned award, the Commissioner in a death case has awarded a compensation of Rs.2,84,011/-.

3. While passing the impugned award, the Commissioner has fastened the liability of payment of compensation upon the present appellant/Insurance Company.

4. The ground of challenge by the appellant/Insurance Company is that, the Insurance Company is not liable to pay the compensation in the present case in as much as the Insurance Company had not covered the risk of the deceased under the Workmen Compensation Act. It was also the contention of the counsel for the Insurance Company that, the death of the deceased was also not arising out of and in the course of employment and therefore also the claimants would not be entitled for compensation under the said Act. He further submits that, it is a case where the deceased died by snake bite and the nature of employment was entirely different and there is no causal connection between the employment and cause of death and thus the Insurance Company should have been exonerated of its liability.

5. Perusal of record would show that, the employer in the instant case – Shri Krishna Company had filed an appeal against the same award i.e. MAC No.1075/2009. This Court had allowed the appeal in part on 22/09/2017. It is relevant to refer to the findings of this Court in the said appeal as under:-

“So far as second ground is concerned, if we look into the nature of cause of death, it clearly reflects that the death was because of the snake bite. For the purpose of attracting the provisions of the Act, it requires that the accident should fall

within the ambit of Section 3 of the Act which says that accident should arise in the course of and also arising out of employment. If we look into the nature of employment, it was for carrying out a digging work of borewell which was the substantive nature of work which the deceased was supposed to carry out. Snake bite is an external factor which had caused death of deceased Madhusudan. It had no causal connection between the nature of employment and the cause of death. From the evidence which have come on record, it clearly reflects that it is a case where the death arose because of snake bite which cannot be in any manner attributed to the nature of his employment. However, considering the fact that cause of death may not be directly attributed to the nature of employment, but the fact which remains is that the contract which was provided for was digging of borewell and if the same is an area where there were snakes available, it should have been ensured by the employer to see that the said place is clear for the workers to work. If the area was not properly cleaned or was not clear of such snakes which were otherwise there, it cannot be said that the accident did not arise out of employment. The finding the Commissioner thus cannot be faulted with.”

6. A bare perusal of the aforesaid observation by this Court itself would show that, this Court has considered the ground raised by the Insurance Company in the present appeal of there being no causal connection between the employment and death of the deceased while deciding the appeal of the

employer. In the said order this Court has held that, there was causal connection between the nature of employment and the cause of death and therefore the claim of the claimants was sustainable under the provision of Workmen Compensation Act.

7. Once when this Court has already taken the view that the finding of the Labour Court is not erroneous or contrary to the evidence, the subsequent appeal of the Insurance Company would not be permissible by this Court to take a different stand.

8. Moreover, the ground raised by the Insurance Company is the same that was raised in the earlier appeal preferred by the employer.

9. Thus this Court does not find any strong case made out by the counsel for the Insurance Company calling for an interference with the impugned award.

10. The appeal thus fails and is accordingly rejected in the light of the findings by this Court in MAC No.1075/2009 decided on 22/09/2017.

Sd/-

(P. Sam Koshy)
JUDGE