

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 760 of 2012**

1. Steel Authority Of India Ltd. Bhilai Steel Plant, Through- Managing Director, Now Chief Executive Officer, Bhilai Steel Plant, Bhilai, Durg C.G.
2. Dy. General Manager, Rail And Structural Mill, Bhilai Steel Plant, Bhilai, Durg C.G.

---- Appellants**Versus**

1. Smt. Dileshwari Bai Soni Wd/o Late Jagdish Prasad Soni, Street No. 18, Block 2 D, Khursipar, Zone-I, Bhilai, Durg C.G.
2. Dr. Renuka Ghane, Asstt. Professor, JNML Hospital, Raipur C.G.
3. S.P. Mishra T.I. Through Superintendent Of Police, Durg C.G.

---- Respondents**MAC No. 357 of 2015**

Smt. Dileshwari Bai Soni Wd/o Late Jagdish Prasad Soni Aged About 52 Years, Residing At Block No. 2-D, Street No. 18, Khursipar, Zone-1, Bhilai, District - Durg, Chhattisgarh

---- Appellant**Versus**

1. The Managing Director, Bhilai Steel Plant, Ispat Bhawan, Bhilai Dt. Durg, Chhattisgarh
2. The Dy. General Manager, Rail And Structure Mill, Bhilai Steel Plant, Bhilai Distt.- Durg, Chhattisgarh
3. Dr. Renuka Ghane, Assistant Professor, J.N.M.L. Hospital, Raipur, Chhattisgarh,
4. Shri S.P. Mishra T.I. Through The Superintendent Of Police, Durg, Chhattisgarh

---- Respondents

For Appellants/Bhilai Steel Plant : Mr. P.R. Patankar, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15/02/2018**

1. These are two appeals arising out of the order dated 19.06.2012 passed by the Commissioner for Workmen's Compensation, Labour Court, Durg, Chhattisgarh, in Case No. 21/W.C.Act/2005/Fatal, whereby the Commissioner in a death case has awarded a compensation of Rs.2,92,400/-.

2. MAC No. 760/2012 is an appeal by the employer and MAC No. 357/2015 is an appeal by the Claimants.
3. This is the second round of litigation. The Commissioner had on an earlier occasion passed an order on 27.08.2010 holding that the Claimant is entitled for an amount of Rs.2,92,400/- towards compensation under the Workmen's Compensation Act. The said award was challenged in MAC No. 1051/2010, which stood allowed vide order of the Division Bench of this Court on 01.03.2012. The order was set-aside and the matter was remitted back for afresh adjudication.
4. None of the parties to the dispute led any fresh evidence and the Commissioner again vide impugned order has passed an order in favour of the Claimant awarding a compensation of Rs.2,92,400/-.
5. Present appeal was admitted by this Court on 21.07.2014 on the following substantial questions of law. "Whether the death of the deceased could be attributed to be an accident during the course of and arising out of an employment" and "Whether the finding of the Tribunal is perverse or not?"
6. If we look into the facts of the case, the undisputed facts is that the deceased in the instant case namely Jagdish Prasad Soni was an employee working at the Bhilai Steel Plant. He was a painter and was working in the Rail Structural Mill Department. The nature of the duties assigned to the deceased was for marking with paint on the rail lines manufactured by the Steel plant, so that the rail lines could be cut from the area which was marked by the deceased. The incident is of the intervening night between 23-24.12.2003. The duty time of the deceased was from 10:00 PM to 6:00 AM in the morning.

It is said that the deceased on the culmination his duties came to his locker where he had kept his shoes and helmet and suddenly he collapsed and fell down. The deceased was immediately taken to the hospital where he was declared dead and postmortem was also conducted. The postmortem report gave no definite opinion. The opinion so far as the cause of death as per the Doctor is hereby reproduced:

“No Definite Opinion- Can be given regarding cause of Death. However, Viscera are preserved for chemical analysis. Whole Heart preserved for Histopathology and other needful examination. Time passed since death up to PM examination within Twenty Four (24) Hours.”

7. The counsel for the appellants further refers to the evidence of two witnesses examined one is Ram Murti, who was working on the same shift and also another person namely Ramdutta Banchhod, who was also working along with the deceased. Both these witnesses have stated before the Commissioner that there was no accident of any nature, which has caused the injuries and resultant death. Ramdutta Banchhod, the witness examined on behalf of the management has specifically stated after the conclusion of the duties as the deceased had gone to the locker room and has placed his helmet and the shoes in the locker room, and then he sat down, then he collapsed and died.
8. With this facts, what has to be determined is whether the death of the deceased was from an accident arising out of or in the course of his employment. When we assess the nature of work assigned to the deceased, it would reveal that the nature of work was not such which required much stress or strength. The deceased was a painter and all that he was to do was to put paint marks on the rail lines

manufactured by the appellants, so that the lines could be cut from the marked portion.

9. The record also shows that there was no evidence brought before the Commissioner which could show that there was any sought of accident or a fall which the deceased had in the course of his employment which could have resulted in his death. It is settled position of law that so far as the provisions of the Workmen's Compensation Act is concerned, the requirement of law is that there should be an accident resultant injury or death from an accident and the accident should be in the course of employment and apart from being in the course of employment it should also arise out of the employment. For better understanding this proposition, it is relevant to refer to Section 3 of the Workmen's Compensation Act.
10. For ready reference, it would be relevant to refer to Section 3 of the Employee's Compensation Act, which is reproduced herein under:

“3. Employer's liability for compensation. – (1) If personal injury is caused to and employee 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:”
11. This provision has been dealt with elaborately by the Hon'ble Supreme Court in the landmark decision rendered in the case of **Regional Director ESI Corporation & Anr. v. Francis De Costa & Anr., 1996 (6) SCC 1**. In the said case, the employee met with an accident while he was on his way to his place of employment. The Employees State Insurance Court allowed his claim application for grant of disablement benefit which was also affirmed by the High Court. After considering the decisions rendered by the different Courts in respect of employment injury, the Hon'ble Supreme Court

finally in paragraphs 7 and 29 has held as under :

“7. 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 employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment.

XXXX

XXXX

XXXX

29. Although the facts of this case are quite dissimilar, the principle laid down in this case, are instructive and should be borne in mind. In order to succeed, it has to be proved by the employee that (1) there was an accident,(2) the accident had a causal connection with the employment and (3) the accident must have been suffered in course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any causal connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment.”

12. The finding so arrived at was based upon the decision reported in

1939 (4) All ER 558 titled as **Dover Navigation Co. Ltd. v. Isabella**

Craig, wherein it was held as under:

“Nothing could be simpler than the words" arising out of and in the course of the employment." It is clear that there are two condition to be fulfilled. What arise "in the course of" the employment is to be distinguished from what arises " out of the employment." The former words relate to time conditioned by reference to the man's service, the latter to causality. Not every accident which occur to a man during the time when he is on his employment - that is directly or indirectly engaged on what he is employed to do - gives a claim to compensation unless it also arises out of the employment. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

13. The High Court of Madras in the case of **Kalyani P. v. Divisional Manager, Southern Railway (Personal Branch)**, **2004 (1) LLJ 49**, relying upon the aforesaid judgments of the Hon'ble Supreme Court has held that in order to enable a person to get compensation under the Act, 1923, three conditions must be fulfilled (a) personal injury (b) injury resultant of an accident and (c) the injury arose out of and in

the course of employment.

14. In view of the aforesaid legal position particularly in the light of the decision of the Hon'ble Supreme Court in **Francis De Costa** (supra) which has been followed and reiterated in a series of decisions of the Hon'ble Supreme Court as well as practically by all the High Courts, where it has been held that for a claim case under the Workmen's Compensation Act to sustain, the facts have to meet the requirements as required under Section 3 of the Workmen's Compensation Act.
15. The three ingredients for meeting the provisions of Section 3 have also been discussed in the preceding paragraphs. Nutshell of the ingredients required is that 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. 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.
16. In the instant case, though the place of incident may be within the premises of the employer, stretching it a bit far the accident also might have been in the course of employment, but what has not been proved and established before the learned Commissioner is the fact that the death of the deceased was not arising out of the employment.
17. 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.”

18. 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.

xxx

xxx

xxx

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.”

19. 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.”

20. In the light of the principles of law laid down by the Hon'ble Supreme Court in the judgment referred to in the preceding paragraphs, what clearly reflects is that there must be some causal connection between the nature of work and the death which has occurred. Only because the deceased happens to be in the employment at the relevant point of time by itself is not sufficient to attract the provisions of Workmen's Compensation Act.
21. In view of the same, this Court has no hesitation in reaching to the conclusion that the finding arrived at by the Commissioner cannot be accepted or sustained and this Court further has no hesitation in holding that the Claimants have not established whether the death of the deceased was arising out of his employment, though he may have died in the course of employment. Unless both the factors are available, the Claimants would not be entitled for compensation under the provisions of the Workmen's Compensation Act. The finding of the Labour Court thus is not sustainable.

22. However, taking into consideration the peculiar facts of the case that the death of deceased took place in the year 2003 and the award passed is of 19.06.2012 and 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 the finding of the Commissioner is set-aside, however since the amount if it has been disbursed, the same may not be recovered from the Claimants. However, in case if the amount has not been disbursed, the same can be refunded to the appellant.
23. The appeal thus stands allowed.
24. So far as the appeal preferred by the Claimants are concerned, in the light of finding of this Court in MAC No. 760/2012, the appeal of the Claimants does not have any merits and the same deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge