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HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 847 of 2012**

Steel Authority of India Ltd., Through- Managing Director, (Now Chief Executive Officer), Bhilai Steel Plant, Bhilai, Durg, Chhattisgarh

---- Appellant**Versus**

Smt. Tijan Bai, W/o. Late Goverdhan, C/o. Shobharam Banjare, Village Parsulidih, P.O. Khorpa, Thana Abhanpur, District Raipur Chhattisgarh

---- Respondent**MAC No. 174 of 2013**

Smt. Tijan Bai, Wd/o. Late Goverdhan, C/o. Shobha Banjare, Village Parsulidih, P.O. Khorpa, Thana Abhanpur, District Raipur Chhattisgarh

---- Appellant**Versus**

Bhilai Steel Plant, Steel Authority of India Ltd., Bhilai, Through the Managing Director, Bhilai, Durg, Chhattisgarh

---- Respondent

For Appellant/Steel Authority of India Ltd.	:	Mr. Ashish Surana, Advocate Mr. C.K. Sahu, Advocate
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Hon'ble Shri Justice P. Sam Koshy**Order on Board****15/02/2018**

1. These are two appeals under Section 30 of the Workmen's Compensation Act. The challenge in the present appeals is order dated 21.06.2012, passed by the Commissioner for Workmen's Compensation-cum-Labour Court, Durg, Chhattisgarh, in Case No. 86/W.C.Act/2006/Fatal. Vide the impugned award the Commissioner has awarded a compensation of Rs.2,71,120/-.
2. MAC No. 847/2012 is an appeal preferred by the employer-the Steel Authority of India and MAC No. 174/2013 is an appeal preferred by the Claimants seeking for enhancement of the compensation.

3. So far as the appeal by the employer-Steel Authority of India is concerned, the substantial question of law raised while assailing the impugned order is “***Whether the deceased Goverdhan had died from an employment related accident i.e. whether the deceased died of an accident ‘arising out of and in the course of his employment’***”.
4. The brief facts relevant for consideration of deceased employee Goverdhan was employed in the mechanical maintain section of the Bhilai Steel Plant in the Wire Rod Mill. He was working as a Senior Technician. On 21.10.2001, he was supposed to work in the A-shift from 6:00 AM to 2:00 PM. Immediately, on his reporting to his duty at around 6:15 AM on 21.10.2001 he collapsed and fell. Immediately, the co-workers pick-up him up and took him to the medical centre and thereafter to the hospital but by that time, he had already expired.
5. The legal representative of the deceased Goverdhan filed a claim application before the Commissioner, Workmen’s Compensation-cum-Labour Court, Durg seeking compensation under the provisions of the Workmen’s Compensation Act. Initially the Commissioner passed an order on 04.05.2009 granting compensation to the Claimants. The said order dated 04.05.2009 was put to challenge before the High Court vide MAC No. 1151/2009 by the employer-the Steel Authority of India. The contention of the employer therein was that the deceased had died a natural death and that there was no accident which occurred resulting in the death of the deceased.
6. The appeal preferred by the employer stood allowed on 11.04.2011 and after setting aside the award dated 04.05.2009, the matter was

remitted back to the Commissioner, Workmen's Compensation to decide as to whether there was any type of accidental injury caused to the deceased, which resulted in his death. That even after the matter was remitted back, no fresh evidence was brought on record on the part of the Claimants with which it could be established that the deceased had died because of the injury sustained as a result of an accident which arose out of and in the course of the employment. The Commissioner yet again reached to the conclusion that the deceased had died from an accident arising out of and in the course of employment.

7. The counsel for the appellants submits that for the provisions of Workmen's Compensation Act to become applicable it is incumbent upon the Claimants to establish that an accident did take place and the deceased suffers injuries in the said accident which was the cause of his death. In the absence of any material to establish the accident and the resultant death, the claim application itself was not maintainable and the claim application ought to have been rejected by the Commissioner and hence prayed for the appeal to be allowed and the award to be set-aside.
8. It was the contention of the employer that the body of the deceased was sent for postmortem and the Doctor in the postmortem did not find any injury on the body of the deceased, nor could the Doctor give a definite opinion as to the cause of death being an accidental death. It was also the contention of the employer that the Claimants have failed to establish an accident taking place on 21.10.2001. The Claimants have also failed to establish that the deceased received injuries as a result of the said accident. Neither is there any evidence

which could also establish that the accident arose in the course of his employment and prayed for the award to be set-aside accordingly.

9. Opposing the appeal, the Claimants submit that the award passed by the Commissioner is a speaking award and the same do not warrant any interference. He submits that there was sufficient material on record to show that the deceased had slipped and fell on the floor and had sustained injury on his head which proved fatal. The Claimants further had submitted that they have also preferred an appeal challenging the award on the ground that the compensation awarded is too less and further that the Claimants would be entitled for an interest as well as the penalty as per Section 4A of the Workmen's Compensation Act.

10. The counsel for the appellant tried to refer to the statement of AW/2 Shobha Ram Banjare, the son of deceased, who said that it was informed on the morning of 21.10.2001 at around 8:30 a.m. that his father deceased Goverdhan had slipped and fell and sustained injuries and was taken to the hospital and thus tried to impress on the aspect that the deceased as a result of his slipping down and falling sustained injuries which resulted in his death and which was accepted by the Commissioner while deciding the matter and thus prayed for the rejection of the appeal by the employer and for allowing the appeal filed by the Claimant by suitably enhancing the compensation.

11. With the aforesaid facts and circumstances of the case what really is to be seen is whether an accident did not take place on 21.10.2001. From the document which has been produced before the Labour

Court so also from the deposition which was recorded during the course of the evidence, there does not appear to have been a single evidence with which it could be established that an accident took place on 21.10.2001. Another important aspect which is requires to be taken note is the time of incident i.e. around 6:15 AM and 6:00 AM was the time from which the duty hours of the deceased had started. Thus, on the date of incident in fact the deceased had not even commenced his daily routine job as a senior technician, but had collapsed barely after reporting for duties within the premises of the company. The MLC conducted of the deceased at the first instance and also the postmortem report both do not show any sign of injury on the body of the deceased either external or internal. The Doctor has also not given an opinion that the death of the deceased was as a result of an accidental injury. Thus, from the overall facts and circumstances which have come before the Labour Court and is available on record, it appears that the deceased had died because of a Cardiac arrest. Since the deceased had not even started his work, it cannot also be said that the deceased must have been subjected too much stress or strain which must have caused the Cardiac arrest. No evidence in this regard was also available. At this juncture, it would be relevant to consider the provisions of the Act which enable a person to claim compensation under the Workmen's Compensation Act.

12. 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:”

13. 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.

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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.”

14. 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."

15. 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.
16. 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.
17. The three ingredients for meeting the provisions of Section 3 have also been discussed in the preceding paragraphs. 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.
18. 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.

19. 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 traveling 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.”

20. 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.”

21. 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.”

22. 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.
23. 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 Claimant has 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 Claimant 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.

24. However, taking into consideration the peculiar facts of the case that the death of deceased took place in the year 2001 and the award passed is of 21.06.2012 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 Claimant. However, in case if the amount has not been disbursed, the same can be refunded to the appellant.
25. The appeal thus stands allowed.
26. So far as the appeal preferred by the Claimant is concerned, in the light of finding of this Court in MAC No. 174/2013, the appeal of the Claimant does not have any merits and the same deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge