

* HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

+ CMA No.1030 of 2005

% 13-04-2018

National Insurance Co. Ltd.,

... Appellant/
OP-2

v.

\$Smt. K. Venkata Narasamma
and 3 others.

... Respondents/
Applicants 1 to 3 & OP-1

! Counsel for the appellant: Sri Ravi Shankar Jandhyala

Counsel for the Respondents: Sri Chandrasekhar Reddy
Gopi Reddy

< Gist:

> Head Note:

? Cases referred:

¹ 1969 ACJ 422

² 1967 ACJ 194

³ 1975 ACJ 243

⁴ AIR 1964 SC 193

⁵ 2005 (1) LLJ 763

⁶ 2005 (5) ALD 185

⁷ 2012 (4) ALD 266

⁸ 2004 ACJ 1639

⁹ 2006 ACJ 890

¹⁰ (2014) 14 SCC 21

¹¹ 2017 SCC Online 980

¹² (2009) 6 SCC 280



HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

C.M.A.No.1030 of 2005

JUDGMENT:

This appeal is filed by the insurance company against the order dated 20.01.2005 passed in W.C.No.88 of 2002 by the Commissioner for Workmen's Compensation and Asst. Commissioner of Labour, Nalgonda.

The applicants have filed the case before the Commissioner claiming compensation for the death of one Sri Kampasati Venkanna, who died in an accident that occurred on 15.10.2002. The said Venkanna was a driver of a lorry bearing No.AP-16U 6367 belonging to the first opposite party and insured with the second opposite party.

The case of the applicants is that the deceased took the lorry with a load on 15.10.2002 to Bibigudem. As there was a shortage of labourers to unload the lorry, he parked the lorry and was waiting for the coolies to come and unload the lorry. At that point of time, he walked across the road and was hit by a unknown lorry. The injuries were fatal and caused his death. The case was therefore filed seeking compensation of Rs.3,00,000/-.

The first opposite party remained *ex parte*. The second opposite party filed a counter denying the case set up by the applicants.

On behalf of the applicants, AW.1 was examined and Exs.A.1 to A.6 were marked. For the opposite parties, one

witness was examined as RW.1 and Ex.B.1 was marked. Basing on the pleadings, evidence etc., the Commissioner awarded compensation of Rs.3,57,587/- with interest and costs. It is this order that is now assailed in the appeal.

This Court has heard Sri Ravi Shankar Jandhyala, learned counsel for the appellant/insurance company and Sri Chandrasekhar Reddy Gopi Reddy, learned counsel for the respondents/ applicants.

The essential grounds that are urged in the appeal are that there is no connection between the accident and the employment and that the accident occurred on a public road. On the other hand, the learned counsel for the respondents/ applicants argued that in the written statement that is filed before the Commissioner, none of the present issues were raised. Therefore, it is his contention that the respondents cannot now raise these issues in the appeal. Nevertheless, as the points that are raised are a part of the evidence and are part of the issues raised before the Commissioner during the course of evidence and arguments, this Court considered the same.

The essential question that falls for consideration is whether the accident occurred out of and in the course of employment and whether the applicants are entitled to compensation.

The facts which are not in dispute are that the deceased drove the lorry to Bibiguda and parked the fully loaded lorry

in the rice mill. The loaded lorry could not be unloaded because of the shortage of coolies. The deceased then decided to come to the bus stand to catch a bus stating that he will return the next day. At that point of time, on the road just outside the mill, he met with a fatal accident.

AW.1 the witness for the applicant is not an eye witness. RW.1 the witness examined for the opposite parties is an investigator, who is also not an eye witness to the accident. Therefore, neither of them are actually competent witnesses to speak about the accident. However, the examination of RW.1 (investigator) discloses the following factors a) the distance between the place of the accident and the mill was only 100 meters; b) on the date of accident the deceased Venkanna was 'on duty on lorry No.AP-16U-6367'; c) the deceased was in search of labour for unloading purpose because the mill labourers were availing the 'festival of Dasara'; and d) the lorry was 'not unloaded' when the accident occurred.

Therefore, from the examination of RW.1, it is clear that he admits that the deceased was looking for labourers at the time of his death and also admits that on the date of the accident, the deceased Venkanna was on duty.

The learned counsel for the appellant/insurance company basing on three judgments i) ***Mackinnon Mackenzie & Co. v. Ibrahim Mahmmud Issak***¹, ii) ***A.C. Roay & Co. (P) Ltd.***

¹ 1969 ACJ 422

*v. Taslim & another*²; and iii) *Executive Engineer, R.C.P. Central Workshop Division, Suratgarh v. Veera*³ argued that the applicant was not 'on duty' at the time of the accident and the accident did not occur out of and in the course of employment. He stressed mainly on *Mackinnon Mackenzie & Co.*'s case (1 supra), wherein the Hon'ble Supreme Court of India held that the accident in the course of his employment means an accident in the course of work in which the workman is employed to do. The words 'arising out of employment' were interpreted as per him to mean that during the actual course of employment. In other words, he urged that there should be a relationship between the accident and employment. The learned counsel stressed the fact that at the time of death in this case the deceased was walking across the road and was not either driving the lorry or even near the lorry. According to the learned counsel, there is no connection between the actual accident and the employment. Relying on other two cases also, he pointed out that the connection is not established.

In reply to this, the learned counsel for the respondents/applicants relying upon i) *General Manager, B.E.S.T. Undertaking, Bombay v. Mrs. Agnes*⁴; ii) *Superintending Engineer, Tamilnadu Electricity Board v. Sankupathy, (TMT)*⁵; iii) *New India Assurance Coompany Ltd.*

² 1967 ACJ 194

³ 1975 ACJ 243

⁴ AIR 1964 SC 193

⁵ 2005 (1) LLJ 763

Secunderabad v. P. Padmavathi⁶; iv) **New India Assurance Co. Ltd., Gudivada v. Mandava Krishna Kumari**⁷; v) **Branch Manager, New India Assurance Co. Ltd. V. Siddappa**⁸; and vi) **Premila v. Shaliwan**⁹ argued that the theory of notional extension of employment is applicable to the facts and circumstances of this case also. The majority decision in **Mrs. Agnes's** case (4 supra) is to the following effect:

“Under S. 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension as both the entry and exit by time and space. The scope of the such extension must necessarily depend on the circumstances of a given case. An employment may end or may begin not only when the employee begins to work or leaves his tools but also when he uses the means of access and egress to and from the place of employment.”

Similarly, the Division Bench of Madras High Court also held that the notional extension of employment extends to accidents that occurred while he was proceeding to the work also. A learned single Judge of this Court in **P. Padmavathi's** case (6 supra) held that the words ‘arising out of and in the course of employment’ have to be interpreted liberally keeping in view the fact that the Workmen’s Compensation Act is a beneficial Legislation. The facts in **P. Padmavathi's** case show that the accident occurred to a cleaner of the lorry who was actually bringing tiffin to the driver of the lorry after it is parked. The learned counsel also

⁶ 2005 (5) ALD 185

⁷ 2012 (4) ALD 266

⁸ 2004 ACJ 1639

⁹ 2006 ACJ 890

pointed out that in **Mandava Krishna Kumari's** case (7 supra), the facts reveal that the vehicle was stopped and while the driver was cooking food for himself, his lungi caught fire and he died because of the burn injuries. The learned single Judge held that the accident occurred out of and in the course of employment. Therefore, the learned counsel argued that in this case also the injury must be held to have occurred out of and in the course of employment.

On a review of facts, the evidence on record and the case law cited across the bar in this case, this Court is of the opinion that the accident occurred out of and in the course of employment only. The deceased was present at that spot only because of his employment and as the coolies were not found, he parked the lorry. The lorry was admittedly not unloaded as per the evidence of RW.1. RW.1 also admitted that the driver was on duty at that point of time. The presence of the deceased at that spot can only be attributed his employment. If he was not in the 'course of his employment', he would not have been on the road in Bibinagar very close to the Rice mill. The proximity in time and the place of accident are also critical. This Court also notices the judgment of the Hon'ble Supreme Court of India in the case of **Manju Sarkar v. Mabish Miah**¹⁰ wherein the Hon'ble Supreme Court awarded compensation to a driver who met with a factual road accident after he parked his truck at the godown and left the place.

¹⁰ (2014) 14 SCC 21

This case was followed in the judgment of **Daya Kishan Joshi v. Dynemech Systems Pvt. Ltd.**¹¹.

Keeping in view the fact that the Workmen's Compensation Act is a beneficial Legislation meant to be liberally interpreted, this Court holds that the injury was an injury arising out of and in the course of employment. As decided by learned single Judges of this Court, when a cleaner bringing tiffin or a driver cooking food for himself, were held to be entitled to compensation, this case is also on equal footing. Even the judgment of **Mackinnon Mackenzie & Co.** (1 supra) was the case of seaman/deck hand who was missing on board a ship. The body was not found despite search and there was no proof available to show how the seaman died. Nobody saw the missing seaman at the so-called place of accident. The Commissioner held a local inspection of the ship also. The evidence available did not show that it was a stormy night for the seaman to fall overboard. In these circumstances, the Additional Commissioner held that there was no material to hold that the death of the seaman took place on account of an accident which arose out of his employment. This finding of the Commissioner was upheld by the Hon'ble Supreme Court in the cited judgment (**Mackinnon Mackenzie & Co.**). These facts are not present in this case. The proximity to the parked lorry; the cause of death are all apparent from the record. As was held by various Courts, a purposive and liberal

¹¹ 2017 SCC Online 980

interpretation is necessary in this case. The legislative intent contained therein is required to be interpreted with a view to give effect thereto (as per ***Oriental Insurance Co. Ltd. v. Mohd. Nasir***¹²). There was a casual connection to his employment and the accident was reasonably incidental to his employment. Above all the decisions in ***Manju Sarkar*** (10 supra) and ***Daya Kishan Joshi*** (11 supra) come to the aid of the workman in this case.

For all the above reasons, this Court finds that there are no reasons to disagree with the findings of the lower Court. Hence, the impugned order of the Commissioner dated 20.01.2005 in W.C.No.88 of 2002 is confirmed. The appeal is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 13.04.2018

Isn

Note: L.R. Copy marked.

¹² (2009) 6 SCC 280