

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

CMA.No.475 of 2008

JUDGMENT:

This appeal is filed by the Oriental Insurance Company Limited against order dated 25.01.2008 passed in WC.No.166 of 2006 by the commissioner of Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

The application in the lower Court was filed by two claimants after the death of one Sri D.Hanumanthu. The said Hanumanthu was working as the Driver of lorry bearing No.AP 9U 8088 belonging to the first opposite party. It was insured with the second opposite party. The case in the lower Court was that the said D.Hanumanthu died on 27.09.2006 while he was on duty when he was deliberately hit by another lorry bearing No.AP 28L 8739. He succumbed to the injury sustained. Hence, the claim is filed.

The first opposite party filed a counter admitting the employment. He submitted that as there is a valid insurance policy, the second opposite party alone is to pay the compensation. The second opposite party filed a counter and pleaded that the death of the employee in this case is not a death arising out of and in the course of employment. The second opposite party pleaded that deceased was murdered and that therefore, the same cannot be treated as an employment injury. Hence, as per the second opposite party; no compensation can be awarded.

The lower Court, after considering the pleadings, evidence etc., including the plea of murder, came to a conclusion that the death of the workman was a death that arose out of and in the course of employment and it proceeded to award the compensation. The lower Court in paras 18 and 19 clearly held that the death was due to an accident arising out of the employment. Ultimately, a sum of Rs.3,46,230/- was awarded as compensation. It is this order that is now assailed in the present appeal.

The question of law that was raised and argued by the appellant is about the cause of death in this case.

This Court has heard Sri Naresh Byrapaneni, learned counsel for the appellant and Sri L.Prabhakar Reddy, learned counsel for the respondents.

The essential point both legal and factual that was argued by the learned counsel for the appellant insurance company is that the deceased was deliberately run over by the Driver of another lorry and that such a deliberate act of murder or homicide does not fall within the definition of an accident. Therefore, he argued that the lower Court was clearly wrong in awarding the compensation.

Learned counsel relied upon the decision reported in ***Mackinnon Mackenzic & Company Pvt., Ltd., v. Ibrahim***

Mahmmod Issak¹ and argued that the injury and the accident must arise out of and in the course of employment. Learned counsel argued basing on this judgment of the Hon'ble Supreme Court of India that there should be a connection between the employment and the accident. The accident must be caused by the employment. The learned counsel argued that unless and until there is a connection between the employment and the death, the compensation cannot be awarded. It is his specific case that the deceased was deliberately run over by the Driver of another lorry and that therefore, there is no injury arising out of and in the course of employment.

In reply thereto, learned counsel for the respondents pointed out that the death of the deceased occurred when the lorry was kept in a line for loading of sand at Rampally Village, Keesara Mandal. The deceased took his lorry to the said spot for loading of sand. When he was waiting in queue, the accident occurred and he died. Therefore, it is his contention that the presence of the deceased at that particular spot was only because of his employment. He was present at that spot only because he went there to load the sand in the lorry.

Learned counsel points out that there has been a change in the law over a period of time and that the Courts

¹ 1969 A.C.J 422

are considering this sort of death and accidents as deaths arising out of and in the course of employment. He relies upon judgment reported in ***State of Maharashtra v Arti***² wherein, a labourer was murdered with an iron rod. At para 20 learned single Judge of the Maharashtra High court held that it was an accident arising out of and in the course of employment.

The next judgment relied upon is a judgment of the Delhi High Court in ***New India Assurance Company Ltd., v Shehzadi Yasmeen & others***³. Here also the workman's death was caused by a deliberate act by a bus and a case under Section 302 IPC was registered against the accused Driver. In paras 13 and 14, after considering the facts and circumstances, the Delhi High Court awarded the compensation. Learned counsel lastly relied upon a judgment in ***United India Insurance Co., Ltd., v. Kamlesh and others***⁴. The learned single Judge of the Delhi High Court reviewed the entire case law on this subject including the decisions of the Supreme Court of India as also the judgment relied upon by the counsel for the appellant in this case and came to a conclusion that the death, even in such cases of murder or deliberate action, would amount to an accident

² 2007 (6) MhLJ 108 = 2008 ACJ 1406

³ 2014 Law suit (Delhi) 3363

⁴ 2017 (3) ACC 891 = 2017 Law suit (Delhi) 3619

arising out of and in the course of employment. The learned Judge of the High Court held as follows:

“There is a casual connection between the employment and the accidental death as the deceased was on duty at the time of the accident and was handing over the charge of the insured vehicle to Kedar Singh when sudden altercation/quarrel took place and Kedar Singh hit the deceased which resulted in his death. But for his employment, the deceased would not have been at the place of accident.”

In addition to this, this Court also notices the judgment of the Hon'ble Supreme Court of India in the case reported in ***Smt. Rita Devi and others v. New India Assurance Company Ltd., and another***⁵, wherein the Hon'ble Supreme Court of India considered the leading judgments of ***Challis v. London and South Western Railway Company*** (1905 2KB 154) and ***Nisbet v. Rayne & Burn*** (1901) 1 KB 689 and concluded as follows :

"14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of

⁵ (2000) 5 SCC 113

stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw.”

In view of the march of law and the judgments of the various High Courts including the judgment of the Hon'ble Supreme Court of India, this Court is of the opinion that a purposive interpretation of the Workmen's Compensation Act is the order of the day. The workman in this case was present at the spot where his death occurred only because of his employment. As he was in the course of employment, he had parked his lorry at the spot where he was killed. His presence at that spot was therefore, a presence arising out of and in the course of employment only. Since he died at that spot, this Court is of the opinion that in this case the manner of this death whether it is by a murder or an accident is really immaterial. In line with the judgment of the Hon'ble Supreme

Court of India and the judgments cited by the counsel for the respondents, this Court is of the opinion that the deceased died because of an injury arising out of and in the course of his employment. It is also pointed out by the learned counsel for the respondents that in ***Mackinnon Mackenzic's*** case (1 supra), relied upon by the learned counsel for the appellant, the body of the deceased was not found nor was the cause of death established. In those circumstances, as the missing worker or his body were not traced, the Hon'ble Supreme Court held that there should be a connection between the death and the employment.

In the case on hand, a reading of all the documentary evidence would show that the deceased was present at that spot because of his employment and the death occurred at that particular spot only. The lorry was parked in a line for loading of sand. Therefore, this Court is of the opinion that there is no infirmity in the order passed by the lower Court and the judgment and decree dated 25.01.2008 are confirmed.

There are no merits in the appeal and accordingly, the same is dismissed. 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: .06.2018

KLP

