

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

386

FAO-379-1998 (O&M)

Date of Decision : 21.5.2018

Smt. Mehsar and another

....Appellants

vs.

Haryana State through its Collector and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.D.K.Prajapati, Advocate
for the appellants.

Mr. Kapil Bansal, DAG, Haryana.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the Commissioner under the Workmen's Compensation Act, 1923, Hisar dated 1.12.1997 and dismissing a claim filed by the appellants.

The case of the appellant No.1 was that her husband was employed as a driver with the Haryana Roadways. On the fateful day he had driven the bus from Hansi to Hisar and which was arrived at 7:35 p.m. Thereafter he had to drive the bus to Adampur at 8:30 p.m. He had gone out of the premises of the bus stand to eat his dinner and on the way back he met with an accident. The Commissioner held that the death did not took place during the course of employment and dismissed the claim.

Counsel for the appellant placed reliance on the judgment of the Supreme Court passed in the matter of **Regional Director, E.S.I Corporation vs. Francis De Costa** reported as **1996 (6) SCC 1**. In that case the victim had met with an accident while he was on his way back to his place of employment. The Hon'ble Supreme Court held that this did not

occur during the course of employment because his duty was to start at 4:30 p.m. while the accident took place on 4:15 p.m.

Counsel for the appellants has argued that the Commissioner completely misapplied this judgment. As per him the duty clerk (one Ramphal) had appeared as AW-3 and had testified that the break between 7:30 to 8:30 had been given only to enable the driver to have his meal but otherwise it is within the duty hours and this testimony was not challenged. Learned Deputy Advocate General has however argued that once the deceased went out of the premises of the employer then he would not be covered by the prospect of employment injury even after applying the concept of notional extension. In this context paragraph No. 14 of the judgment is mentioned herein below:-

*“14. The point raised before us can be answered on the basis of the principle laid down in the aforesaid two cases. But Mr. Chacko, appearing on behalf of the respondent has contended that proximity of time and place is a factor to be borne in mind. The employee was to report for duty at 4.30 P.M. The accident took place at 4.15 P.M. only one kilometer away from the factory. In our view this cannot be a ground for departing from the principle laid down by the aforementioned cases that the employment of the workman does not commence until he has reached the place of employment. What happens before that is not in course of employment. It was also pointed out by Lord Denning in the aforesaid case of **Regina v. National Insurance Commissioner, Ex. Parte Michael** (supra) that the extension of the meaning of the phrase "in the course of his employment" has taken place in some cases but in all those cases, the workman was at the premises where he or she worked and was injured while on a visit to the canteen or some other place for a break. The test of what was "reasonably incidental" to employment,*

*may be extended even to cases while an employee is sent on errand by the employer outside the factory premises. But in such cases it must be shown that he was doing something incidental to his employment. There may also be cases where an employee has to go out of his workplace in the usual course of his employment. Latham, C.J. in **South Maitland Railways Proprietary Limited v. James (67 CLR 496)** observed that when the workmen on a hot day in course of their employment had to go for a short time to get some cool water to drink to enable them to continue to work without which they could not have otherwise continued, they were in such cases doing something in the course of their employment when they went out for S water. But the case before us does not fall within the exceptions mentioned by Lord Denning or Latham, C.J. The case squarely comes within the proposition of law propounded by S. Jafar Imam, J.”*

Looked at from this angle, it has to be held that the accident took place during the course of employment because here the employee went to have his meal in the break provided during his duty hours. In the circumstances the appeal is allowed. Since the claim was dismissed it would be appropriate to refer the matter back to the Commissioner under the Employees Compensation Court, Hisar to now work out on the exact compensation payable. Record be sent back to ESI Court, Hisar. Parties through counsel are directed to appear before the Commissioner, ESI Court, Hisar on 20.7.2018.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

21.5.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No