

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 851 of 2013**

- Steel Authority Of India Limited Through- Managing Director, (Now Known As Chief Executive Officer), Bhilai Steel Plant, Bhilai, Tahsil and District Durg (C.G.)

---- Appellant**Versus**

1. Smt. Mandakini Bhole, W/o Late S.N. Bhole Aged About 42 Years
2. Vinod Bhole S/o Late S.N. Bhole
3. Versha Bhole D/o Late S.N. Bhole Aged About 26 Years

All residents of Quarter No. 87/5, Maitri Nagar, Risali, Bhilai, Distt. Durg C.G., District : Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri P.R. Patankar, Advocate with Shri Vedant Bhelonde, Advocate
For Respondents	:	None.

Order On Board By Hon'ble Shri Justice Parth Prateem Sahu**09/05/2019**

1. Appellant-employer has preferred this appeal under Section 30 of the Workmen Compensation Act, 1923 challenging the judgment dated 19.7.2013 passed by the Commissioner for Workmen's Compensation Act, 1923-cum- Labour Court, Durg (for short 'the Commissioner') in Case No.46/WCA-F/2003 whereby the Commissioner partly allowed application of respondent-claimants for grant of compensation and awarded compensation of Rs.1,59,800/- on account of death of Late S.N. Bhole.

2. Brief facts relevant for disposal of this appeal are that Late S.N. Bhole was employed with appellant company and on the date of accident he was working as 'Private Secretary' in T&D Department of appellant company. On 7.2.1997 said S.N. Bhole was on general shift duty. After discharging his official duties, while he was returning his home, he met with an accident near Vegetable Market, Ruanbandha. After the accident, one B.B. Adhikari came there and with the help of driver of one four wheeler, took him to Sector-9 Hospital, injured S.N. Bhole was admitted and during course of treatment he died on 27.2.1997.
3. Claimants who are widow and children of deceased S.N. Bhole, filed an application for grant of compensation before the Commissioner stating therein that husband of claimant No.1 was employed as Private Secretary to Assistant General Manager, T&D Section of Bhilai Steel Plant, Bhilai. In application it has been very specifically mentioned that on 7.2.1997 deceased was returning to his house after performing his duty of general shift but on the way he met with an accident at about 5.15 p.m. Matter was reported to concerned police station.
4. Non-applicant/appellant herein submitted reply to claim application and admitted that on 7.2.1997 said S.N. Bhole was in general shift and working of general shift was from 9.30 to 4.30 p.m. However, it has been denied that death of said S.N.

Bhole was not due to an accident in the course of employment. It was further pleaded that application has been filed after lapse of sufficient long time and therefore prayed for its dismissal.

5. On the pleadings of both the parties, the Commissioner framed as many as 7 issues for consideration, including an issue whether Late S.N. Bhole was employed with appellant company and whether death of Lat S.N. Bhole took place due to an accident arising out of and in the course of his employment?
6. In support of their case, the claimants have examined Smt. Mandakini Bhole (AW-1), I.M. Jain (AW-2), Laxman Umrikar (AW-3), Ramshiromani Tripathi (AW-4). Appellant company examined K.R. Mehta (NAW-1).
7. The Commissioner while appreciating pleadings and evidence brought on record by respective parties partly allowed claim application of claimants and awarded compensation to the tune of Rs.1,59,800/- vide his judgment dated 13.11.2006.
8. Feeling aggrieved by judgment dated 13.11.2006, appellant Company preferred an appeal before this Court bearing MAC No.52/2007 and this Court taking into consideration bi-parte agreement between employer and employees union that injury causing death or permanent/temporary disablement of an employee, arisen during journey from residence to place of

work and back within one hour of the start or end of his duty hours, the victim/dependants are entitled for compensation and remanded back the matter to the Commissioner for taking decision afresh in accordance with law after providing proper opportunity to the parties to lead evidence and to file additional documents, if any.

9. After remand, the Commissioner fixed the case for recording of evidence of parties. The claimants have chosen not to lead any further evidence, however, appellant company examined Girish Umredkar & B.R. Adhikari.
10. The Commissioner after appreciating evidence available in record has partly allowed the appeal by holding that death of Late S.N. Bhole was due to an accident arising out of and in the course of employment and awarded Rs.1,59,800/- as compensation along with penal interest @ 12% p.a., which is under challenge in this appeal.
11. This appeal was admitted for consideration on following question of law:-

“Whether the Commissioner for Workmen's Compensation was justified in holding that death of deceased S.N. Bhole was caused by the accident arising out of and during the course of employment?”
12. Learned counsel for the appellant submits that deceased employee left the office after duty hours i.e. at 4.30 p.m.,

whereas, he was admitted in the hospital at 7.50 p.m. and therefore it cannot be said that deceased sustained injuries as a result of accident arising out of and in the course of employment. As such, the agreement extending benefits to death or permanent/temporary disablement arising during journey from resident to place of work and back within one hour of the start or end of duty hours is not proved in the present case. He also argued that after remand of case, appellant company examined two witnesses and from their statements it is clear that accident took place much after the period of one hour after duty hours of deceased, but claimants have not examined any witness nor placed any document on record. In support of his contention, he placed reliance on the order passed by the coordinate Bench of this Court in MAC No.760/12.

13. I have heard learned counsel for the appellant and perused the records.
14. Smt. Mandakini Bhole (AW-1) has stated in his statement before the Commissioner that on 7.2.1997 at about 6.00 p.m. she received information that her husband met with an accident. She has further stated that after office hours i.e. 4.30 p.m., as per instruction of superior officials, her husband went to the house of his superior namely Mr. Jain, who resides at Sector-8, Bhilai, in connection with official work i.e. to handover office files to him. While returning from the house of

his superior, her husband met with an accident at 5.30 p.m.

15. I.M. Jain (AW-2) has stated in his statement that at the relevant time he was posted as Assistant General Manager in T&D Department and deceased S.N. Bhole was working under him on the post of Personal Secretary. Duty hours of the deceased was from 10.00 a.m. to 5.00 p.m. On 7.2.1997 on his instruction, the deceased came to his house to drop some important official documents and while returning home, deceased met with an accident near Vegetable Market, Ruanbandha. He further stated that on coming to know about the accident at 6.00 p.m., he went to the hospital at 7.00 p.m. to see him. In the cross-examination, he admitted that the claimants have filed application for compensation in the year 1997 itself and it was forwarded by him. He also admitted that though nature of work of deceased was restricted to office campus only but as per requirement of work, he used to visit house of his superior i.e. Assistant General Manager. He further admitted that on the date of accident after duty hours, deceased came to his house for leaving some important files & documents and when the deceased was returning his home, he met with the accident.

16. Laxman Umrikar (AW-3) has stated in his statement that accident took place at about 5.30 p.m. when the deceased was returning back home from the house of his superior officer i.e. Assistant General Manager. He also stated that on the

date of accident he had gone to vegetable market and there he saw S.N. Bhole lying in injured condition. He took the injured to the hospital in a car.

17. Ramshiromani Tripathi (AW-4) was posted as Head Constable in Sector-6 Police Station, Bhilai at the relevant point of time and it is he who lodged FIR vide Crime No.64/97. Copy of FIR is exhibited as Ex.P-1 and its photocopy is marked as Ex.P-1C. This witness also produced and marked documents relating to criminal case as Ex.P-2, P-3 & P-4. Perusal of FIR (Ex.P-1) reflects time of accident as 5.15 p.m. This witness has been cross-examined by learned counsel appearing on behalf of appellant company but no specific question has been put to him with respect to time of accident mentioned in FIR.
18. Appellant Company examined K.R. Mehra as NAW-1 and he has deposed that duty hours of general shift in which deceased S.N. Bhole was on duty was from 9.30 a.m. to 4.30 p.m. Accident was not occurred inside the plant. Duty of deceased S.N. Bhole was in the office of Assistant General Manager situated within plant. In the cross-examination he admitted that on the date of accident, he was not working in the department where S.N. Bhole was working. He admitted that he and deceased were posted in different departments. Employee of one department is not aware about working of employee of other department.
19. After remand of matter, appellant company examined Dr.

Girish Umredkar, who on the date of accident i.e. 7.2.1997, was working in Casualty Department of Sector-9 Hospital, Bhilai and was on duty from 2.00 p.m. to 10.00 p.m. According to this witness, at about 7.50 p.m. one Sudhir Joshi & B.R. Adhikari brought one unknown person to casualty department and informed that said person has fallen down from scooter near Kalibadi Market, Fuwwara Chowk, Bhilai. In cross-examination this witness admitted that he did not know as to how accident occurred. He further admitted that he had informed the police but no document in support thereof has been placed on record.

20. B.R. Adhikari was also examined by appellant company after remand and according to this witness, it is he who brought deceased to hospital from the place of accident i.e. from Vegetable Market, Ruanbandha to Sector-9 Hospital, Bhilai. He stated in his statement that when he reached on the spot, he found one person was lying on road, his scooter was lying near to him and though injured was surrounded by about 8-10 persons but none came forward for his help or to take him to hospital. Injured was though breathing but unconscious. He stopped one Maruti Car, asked driver for his help in taking injured to the hospital and thereafter they brought injured to hospital. He further stated that in the same night the police came to his house and recorded his statement. In cross-examination this witness admitted that employees of Bhilai Steel Plant come to the plant from a distance of about 10-15

kilometre and the place where injured met with accident is situated at a distance of 6-7 kilometer from the plant.

21. In earlier round of litigation filed by appellant before this Court bearing MAC No.52/2007, this Court vide order dated 2.4.2012, considering some bi-parte agreement between the Union & the Management notionally extending compensation benefit to the workman met with road accident during to & fro journey, on normal route, from residence to place of work within one hour of the start of duty and one hour after the duty, placed on record in appeal, remanded back the matter to the Commissioner, Workmen's Compensation-cum-Labour Court, Durg for taking decision afresh in accordance with law on its own merit, after providing opportunity of leading evidence and to file additional documents, if any, to the parties.
22. Perusal of records would reveal that none of the parties has exhibited so-called agreement on record nor proved it after remand, which was taken into consideration in earlier round of litigation by the coordinate Bench. Therefore, in the light of material available on record, it is to be considered whether the dependant (s) of deceased workman is/are entitled to get compensation as per provisions of Section 3 of the Act of 1923?
23. As per Section 3 of the Act of 1923, undoubtedly the employer is liable to pay compensation in respect of personal injury or death caused to a workman by accident arising out of and in

the course of his employment. Relevant portion of Section 3 of the Act of 1923 is reproduced herein below for ready reference;-

“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:”

24. The Law Makers have consciously used the words “***personal injury is caused to an employee by accident arising out of and in the course of his employment***” for holding the employer liable to pay compensation under the Act of 1923. In the case at hand, indisputably accident took place on a public road when deceased employee was returning home and the place of accident is about 6-7 kilometer away from the place of work. Deceased employee was not going on public road in connection with his official duty but he was returning home from his duty. Section 3 of the Act of 1923 has been discussed by Hon'ble Supreme Court in the matter of Regional Director ESI Corporation & anr v. Francis De Costa & anr. reported in (1996) 6 SCC 1 and 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.

29. Although the facts of this case are quite dissimilar, the principles 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.”

25. In the above cited case, the employee met with accident when he was coming to the place of employment from his home. The ESI Court allowed the claim and the same was affirmed by the High Court also. In this situation, Hon'ble Supreme Court has held that accident which took place while going to the place of employment cannot be said to have arisen out of his employment. There is no casual connection between accident and employment. It was also held that for claiming compensation from the employer, the accident must have been occurred in the course and out of the employment. In the said decision, the Supreme Court has considered the judgment rendered in *Dover Navigation Co. Ltd. v. Isabella Craig* reported in 1939 (4) All England Reporter 558 wherein it

was held that every casualty in the accident cannot give rise to claim compensation unless it arises out of employment.

In the matter of Rashida Haroon Kupurade v. Div. Manager, Oriental Insurance Co. Ltd. reported in 2010 AIR SCW 1434, Hon'ble Supreme Court also laid down conditions that for claiming compensation under the Act of 1923, the fact of accident should meet the requirements as provided under Section 3 of the Act of 1923 i.e. casualty/injury suffered by an employee must be arisen out of and in the course of employment.

26. In the case at hand, the claimants failed to prove the agreement entered between the employees Union and the Management covering the employment of deceased in granting notional extension for attracting provisions of Section 3 of the Act of 1923. Therefore, considering the fact that accident took place after the duty hours on a public road far from the work place when deceased employee was returning home. In such circumstances and in the light of specific provisions under the Act of 1923, appellant employer cannot be held liable to pay amount of compensation under the Act of 1923.

27. Finding recorded by the Commissioner with respect to Issue No.2 that accident of Late S.N. Bhole took place during the course of his employment, is not sustainable being not supported by any specific evidence on record and also being

contrary to aforementioned law laid down by Hon'ble Supreme Court in this regard. The Commissioner has not recorded any specific reason to decide Issue No.2 in favour of claimant when the evidence and record go to show that accident took place when deceased employee was returning home.

28. For the foregoing discussions, the question of law framed for decision of this appeal is answered in negative. Appeal is allowed and the impugned judgment dated 19.7.2013 passed by the Commissioner, Workmen's Compensation-cum- Labour Court, Durg in Case No.46/WC Act/2003 Fatal is set aside. Appellant will be entitled for refund of the amount, if any, deposited by it.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-