

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on : 04/04/2019

Judgment delivered on : 14/05/2019

MAC No. 42 of 2013

- United India Insurance Co. Ltd. Branch- Rajnandgaon, Distt. Rajnandgaon C.G., Chhattisgarh (Policy No. 190507/44/06/03/60000001 dated 02.05.2006 to 01.05.2007.)

---- Appellant

Versus

1. Smt. Devkumari W/o Late Prem Lal Dewangan Aged About 34 Years
2. Ram Gopal S/o Late Prem Lal Dewangan Aged About 14 Years (date of birth 13.11.1993)
3. Kunj Bihari Aged About 12 Years (date of birth 9.12.1995)
4. Chandrahas Aged About 9 Years (date of birth 20.2.1999)

No. 2 to 4 are minor S/o Late Shri Prem Lal Dewangan, through natural guardian mother Smt. Devkumari Wd/o Shri Prem Lal Dewangan.

5. Shankar Lal S/o Pachkoud Dewangan Aged About 69 Years R/o Village And Post- Tilai, Tah. And Distt. Rajnandgaon C.G.
6. Employer- Mahabir Construction Company Proprietor Shanti Lal Bohra, Head Office, Vardhman Nagar, Rajnandgaon C.G.
7. The New India Insurance Co. Ltd. Branch Kamthi Line, Rajnandgaon C.G., At Present The Company Has Transferred Situated At Station Road, Durg C.G. (Dated 10.6.2006 to 9.6.2007, policy no. 06000575).

---- Respondents

For Appellant	:	Shri HB Agrawal, Sr. Advocate. with Shri Pankaj Agrawal, Advocate.
For Respondent Nos. 1 to 5	:	Shri Rakesh Thakur, Advocate.
For Respondent No.6	:	Shri NK Vyas, Advocate.
For Respondent No.7	:	Shri HP Agrawal, Advocate.

MAC No. 359 of 2013

- The New India Assurance Company Branch Office Kamthi Line,

Rajnandgaon C.G., Presently Running The Office At Station Road, Durg C.G.

---- Appellant

Versus

1. Devdhar S/o Late Nohru Ram Sahu Aged About 18 Years
2. Sarju S/o Late Nohru Ram Sahu Aged About 14 Years
3. Bhupendra Kumar S/o Late Nohru Ram Sahu Aged About 7 Years
4. Smt. Parvati Bai W/o Late Nohru Ram Sahu Aged About 40 Years

All are R/o Village Sundra, Tahsil and Distt. Rajnandgaon (CG), Respondents No. 2 & 3 are minors through natural guardian mother respondent No.4.

5. M/s Mahaveer Construction Company Through Proprietor Shantilal Vohara, 23, Mahaveer Kunj, Vardhman Nagar, Rajnandgaon, Tah. And Distt. Rajnandgaon C.G.
6. Branch Manager United India Insurance Co. Ltd., Kamthi Line, Rajnandgaon, Tah. And Distt. Rajnandgaon C.G.

---- Respondents

For Appellant	:	Shri HP Agrawal, Advocate.
For Respondent Nos. 1 to 4	:	Shri Rakesh Thakur, Advocate.
For Respondent No.5	:	Shri NK Vyas, Advocate.
For Respondent No.6	:	Shri HB Agrawal, Sr. Adv. With Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

21/04/2019

Both these appeals arise from the same accident occurred on 22.1.2007 in which Nohru Ram Sahu, driver of vehicle bearing No. CG 07 ZC 3360 and Premlal Dewangan, Supervisor, who were working under the employment of non-applicant No.1 M/s Mahavir Construction Company, died. Hence they are being disposed of by this common judgment.

02. **MAC No.42/2013**: This appeal under Section 30 of the Employees Compensation Act has been filed against the judgment dated 8.11.2012 passed by Commissioner for Workmen Compensation-cum-Labour Court, Rajnandgaon in Case No.102/WC Act/Fatal/2007 whereby the Commissioner awarded Rs.3,84,280/- in favour of claimants for death of Premlal Dewangan fastening liability on non-applicant No.2/United India Insurance Co. Ltd. to pay the said sum within a period of two months from the date of order or else it shall carry interest @ 12% p.a. from the date of claim petition till realization. This apart, the Commissioner also imposed penalty on non-applicant No.1/employer of Rs.15,000/- under Section 4A(3) of the Workmen Compensation Act, 1923 (in short "the Act").

03. **MAC No.359/2013**: This appeal under Section 30 of the Employees Compensation Act has been filed against the judgment dated 8.11.2012 passed by Commissioner for Workmen Compensation-cum-Labour Court, Rajnandgaon in Case No.124/WC Act/Fatal/2007 whereby the Commissioner awarded Rs.3,01,910/- in favour of claimants for death of Nohru Ram Sahu fastening liability on non-applicant No.3/New India Insurance Co. Ltd. to pay the said sum within a period of two months from the date of order or else it shall carry interest @ 12% p.a. from the date of claim petition till realization. This apart, the Commissioner also imposed penalty on non-applicant No.1/employer of Rs.15,000/- under Section 4A(3) of the Act.

04. Brief facts of the case are that on the date of accident i.e. 22.1.2007 Premlal Dewangan, who was working under the employment of non-applicant No.1 as a Supervisor and Nohru Ram who was working under non-applicant No.1 as a driver, after taking their supper were sleeping in a rented house where at around 11-11.30 pm they suffered burn injuries and succumbed to the same.

05. On claim petitions being filed by the claimants against their death, the Commissioner considering the pleadings and evidence of the respective parties, awarded compensation in their favour as mentioned above.

06. **MAC No.42/2013**: Learned counsel for the appellant/United India Insurance Co. Ltd. submits that death of Premlal Dewangan was due to burn injuries sustained by him while he was taking rest and sleeping in the rented house. His death did not occur in an accident arising out of and during the course of his employment under non-applicant No.1 and therefore, as per insurance policy of Ex.D/1, risk of the deceased was not covered and the Tribunal has wrongly fastened liability upon the appellant to pay compensation to the claimants for the death of Premlal Dewangan.

07. On the other hand, learned counsel for respondents/claimants support the impugned judgment and submits that at the time of accident deceased Premlal was working as Supervisor under the employment of non-applicant No.1, and 24 hours he was residing in the workplace and during that stay there, due to burn injury he died. Therefore, his death having occurred in an accident during the course of his employment, the appellant/insurance company has rightly been saddled with the liability of paying compensation to the claimants.

08. Learned counsel for respondent No.6/employer supports the contention of the appellant whereas learned counsel for respondent No.7/New India Insurance Co. Ltd. submits that no liability has been fastened upon it for the death of Premlal Dewangan. He has duly assisted the Court.

09. **MAC No.359/2013**: Learned counsel for the appellant/New India Insurance Co. Ltd. submits that admittedly, the vehicle in question was insured with the appellant but in this case since there was no accident by the said vehicle which led to the death of Nohru Ram Sahu, he died due to burn injuries while sleeping in the rented house and as such, his death was not the result of any accident by use of the vehicle insured with the appellant during the course of his employment under non-applicant No.1, the appellant/insurance company has wrongly been saddled with the liability of paying compensation to the claimants for the death of Nohru Ram Sahu.

10. Learned counsel for the respondents/claimants supports the

award and opposing the contention of the appellant submits that at the time of accident deceased Nohru Ram Sahu was under the employment of non-applicant No.1, he was taking rest at the workplace and since he died during the course of his employment in an accident, the appellant/insurance company has rightly been fastened with the liability of paying compensation to the claimants as per insurance policy of Ex.D/1 by the Tribunal.

11. Learned counsel for respondent No.5/employer supports the contention of the appellant whereas learned counsel for the respondent No.6/United India Insurance Co. Ltd. has duly assisted the Court.

12. Heard learned counsel for the parties and perused the material available on record.

13. Both these appeals have been admitted for hearing on the following same substantial question of law:

“Whether the Tribunal/Commissioner was justified in law in holding that the employee died during the course of employment in the facts and circumstances of the case?”

14. It is not disputed by the parties that the deceased persons Nohru Ram Sahu and Premlal Dewangan were residing in Village-Muretitola in a rented house of one Govind Ram Singh and on the date of accident i.e. in the intervening night of 22/23.1.2007 while they were sleeping in the said house after taking their dinner, they suffered burn injuries as hay lying there caught fire and they succumbed to those burn injuries.

15. As per evidence of Devkumari, wife of deceased Premlal Dewangan (Claim Case No.102/WC Act/Fatal/2007) has stated that her husband Premlal Dewangan, who was working as supervisor under non-applicant No.1, he suffered 100% burn injuries at 12 o'clock in the night and died. She admits that the working time of her husband was from 8 am to 5 pm and that she has not produced any document to show that he was working 24 hours under non-applicant No.1.

16. Punitram Nishad was also working under non-applicant No.1 as Supervisor at the relevant time. He has stated that the time of working is very 9 am to 6 pm and thereafter, driver Nohru Ram and Premlal after completing their work at 6 pm went to market and thereafter in the night near about 12.30-1 am information was received from Rahul who informed him (Punitram) that the house in which Nohru and Premlal were sleeping has caught fire and both of them are badly burnt.

17. As per Devdhar (AW-1 in Case No.124/WC Act/Fatal/2007), both the deceased persons sustained burn injuries in the midnight of 22/23rd January, 2007 while they were sleeping. He has admitted that his father Nohru Ram Sahu did not die in an accident arising out of use of the truck.

18. In the matter of ***Shakuntala Chandrakant Shreshti Vs. Prabhakar Maruti Garvali and another, (2007) 11 SCC 668***, where the deceased working as a cleaner in the vehicle of respondent No.1 while travelling at night died of heart attack, the Hon'ble Supreme Court held that only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was caused by way of accident, no legal fiction can be raised therefor; circumstances must be shown to exist that the death caused by reason of cardiac arrest was because of stress and strain of work and in absence of such evidence, the Commissioner would have no jurisdiction to grant damages.

In the aforesaid matter, the Hon'ble Supreme Court observed that what is necessary for attracting the charging provision contained in Section 3 of the Act is that (i) an injury must be caused to a workman; (ii) such injury must have been caused by an accident; and (iii) it arose out of or in the course of his employment. Accident, ordinarily, would have to be understood as unforeseen or uncomprehended or could not be foreseen or comprehended. A finding of fact, thus, has to be arrived at, inter alia, having regard to the nature of the work and the situation in which the deceased was placed. There is a crucial link between the causal connections of employment with death. Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is

arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction. 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. Nothing could be simpler than the words 'arising out of and in the course of employment'. It is clear that there two conditions to be fulfilled. What arises '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 casualty. Not every accident which occurs 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. There must be a casual connection between the injury and the accident and the accident and the work done in the course of employment.

19. If the facts and evidence available on record of the present case are examined in light of the aforesaid principles of law, it is found that the death of both the deceased persons did not occur in any accident arising out of and during the course of employment under non-applicant No.1 by the use of the vehicle Tanker bearing No.CG 07 ZC 3360. As per unrebutted oral evidence of Devkumari, wife of deceased Premlal Dewangan (AW-1 in Claim Case No.102/WC Act/Fatal/2007), Punitram Nishad was also working under non-applicant No.1 as Supervisor at the relevant time, and Devdhar (AW-1 in Case No.124/WC Act/Fatal/2007), the working time was 8-9 am to 5-6 pm and both the deceased persons sustained burn injuries in the midnight of 22/23rd January, 2007 while they were sleeping in the rented house. Evidence goes to show that Premlal Dewangan was Supervisor under non-applicant No.1 and his job was to supervise the work of the labourers engaged in the construction of road being made by non-applicant No.1 and that deceased Nohru Ram Sahu was driver of vehicle Tanker bearing No.CG 07 ZC 3360 engaged in the said construction work. From the facts and circumstances of the case, the

manner in which the deceased persons died, it is evident that neither of the deceased persons was working at the time of accident, their death had no causal connection with their employment and it did not occur in an accident which arose out of and during the course of their employment under non-applicant No.1. Therefore, considering the insurance policies of Ex.D/1 in the respective claim cases, this Court is of the opinion that the Commissioner was not justified in fastening liability on the appellants of paying compensation to the claimants in the respective claim cases.

20. In the result, both the appeals are allowed. The impugned judgments are hereby set aside and the appellants are absolved of their liability to pay compensation to the respective claimants. The substantial questions of law framed by this Court are answered in the negative. However, in the given facts and circumstances of the case, considering the fact that the death took place in the year 2007, the judgments were passed on 8.11.2012, the dependency on the deceased as also the financial status of the claimants, this Court is of the opinion that if the compensation has been paid to the claimants, recovery of the same at this stage would cause them severe hardship. Therefore, this Court directs that in the event any amount has been paid to the claimants, the same need not be refunded or recovered.

Sd/

(Gautam Chourdiya)

Judge