

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 795 of 2013

1. Smt. Hemlata, W/o Late Ashwani Kumar Sahu Aged About 35 Years
2. Divyansh S/o Late Ashwani Kumar Sahu Aged About 7 Years Minor,
3. Smt. Kaushlya Bai W/o Late Lakhanlal Sahu Aged About 58 Years

Appellant-2 is minor through his mother natural guardian Smt Hemlata, w/o Ashwani Kumar Sahu

All R/o village-Dhano, Thana- Anjora, Distt. Durg, Chhattisgarh

---- Appellants

Versus

1. Rungata Re-Rolling Mill Devada S/o Thana- Somni, Distt. Rajnandgaon C.G., Thru- Manager., Chhattisgarh
2. New India Insu.Co.Ltd. Regional Office, Power House Bhilai, Distt. Durg C.G., District : Durg, Chhattisgarh

----Respondents

For Appellants	: Shri SP Kale, Advocate
For Respondent-1	: Shri Pallav Mishra, Advocate
For Respondent- 2	: Shri Raj Awasthi, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
26.06.2020

1. Appellants/Claimant have filed this appeal questioning the legality, validity and propriety of the impugned award dated 14.05.2013 passed in Claim Case-47/WC Act/09, passed by Commissioner for Workmen Compensation, Labour Court, Rajnandgaon, (for short, 'Commissioner, Labour Court') whereby the Commissioner dismissed the case filed by the appellants for grant of compensation.

2. Facts relevant for disposal of this appeal are that, appellants have filed application seeking compensation under the Workmen's Compensation Act, 1923 (for short, 'Act 1923') mentioning therein that late

Ashwani Kumar Sahu (since deceased), aged about 30 years, was in employment with respondent-1/NA1 on the post of Supervisor, posted at Rungta Rolling Mill, Devada, District Rajnandgaon. On 24.12.2008 during the course of his employment, he was sent to Chandulal Chandrakar Memorial Hospital, Bhilai (for short,'CCM Hospital') for taking care of another employee, admitted in the hospital where Ashwani Kumar Sahu fell sick of some health issue and therefore, immediately he was taken to Sector-9 Hospital, Bhilai, where he died during the course of his employment on the same day ie 24.01.2008. Being an employee of NA1, he was earning Rs.4,500/- per month as wages. It was pleaded that as death was during the course of employment, therefore, NA1, employer is liable for payment of amount of compensation but even after making several requests orally, compensation has not been paid and claimed Rs.5,00,000/- as compensation and further interest of penalty on it.

3. NA1 filed reply to the claim application under Section 22 of the Act 1923, denying claim of appellants/claimants. NA1 admitted that deceased Ashwani Kumar Sahu was working in their factory but he was on leave on 24.12.2008 and at no point of time on that day during the course of employment NA1 has sent the deceased to the CCM Hospital to look after another employee.

4. In view of aforementioned pleadings, NA1 further pleaded that at the time of death late Ashwani Kumar Sahu was not in employment but he died natural death and therefore, claimants are not entitled for any amount of compensation. In alternate, it was also pleaded that NA1 has taken Insurance Policy for workmen engaged in the factory premises which was

in force from 22.06.2008 from 22.06.2009 and if it is held that claimants are entitled for compensation, then, liability would be on the Insurance Company.

5. Respondent- 2/Insurance Company submitted its separate reply denying contents of claim application. It was specifically pleaded that death of Ashwani Kumar Sahu on 24.12.2008 was not during the course of his employment. It was also pleaded that information with regard to accident has not been given to the Insurance Company. There was no contract between the claimants and Insurance Company and there is no contractual liability for payment of compensation, amongst other pleadings.

6. The Commissioner, based on the pleadings of respective parties, formulated six issues for consideration. On appreciation of pleadings and evidence placed on record by respective parties, held that death of late Shri Ashwani Kumar Sahu was not on account of accident arising out of and in the course of his employment and dismissed the application for compensation.

7. Shri SP Kale, learned counsel for the appellants submits that Commissioner, Labour Court has not taken into consideration that the deceased is required to travel 16 kms from Tedi to Bhilai, which caused the deceased strain, stress and exertion, causing his death. There is specific evidence of AW1 and 2 that deceased during the course of his employment was sent to the CCM Hospital to look after another employee, and there , due to which health condition of Ashwani Kumar Sahu got affected and during the course of his treatment in Sector 9 Hospital, he died. He further

argues that as per entry and exit register maintained by respondent- 1, which is available on record shows that deceased on 24.12.2008 has attended his duty from 8 am to 9 am and thereafter, went to Bhilai which was not considered. He submits that the finding reported by learned Commissioner is perverse which requires interference by this Court.

8. Shri Pallav Mishra, learned counsel for respondent-1 opposes the submission made by learned counsel for the appellants. He submits that the deceased was not sent to the hospital for any discharge of his official duty. There is no evidence that the death was on account of any stress or exertion from the work assigned to the deceased. It was also submitted that the deceased was not on duty at the time of his death.

9. Shri Raj Awasthi, learned counsel for respondent-2/Insurance Company submits that the claimants have failed to prove the requirement as envisaged under Section 3 of the Act of 1923. The claimants have not brought any evidence on record and the Commissioner has rightly dismissed the claim. He also made his submission in view of the reply filed by the Company before the Commissioner, Workmen's Compensation, under the Act, 1923.

10. We have heard learned counsel for the appellant.

11. This case was filed on 14.08.2013 and Order Sheet of proceedings of the case would show that on 30.10.2014 it is recorded as admitted, call for the record, issue notice to the respondents as per rules but the substantial question of law as required to be framed under Section 30 of the Act 1923 has not been formulated. The first Proviso to Section 30 of

the Act 1923 envisages that no appeal shall lie against any order, unless any question of law is involved in the appeal.

12. Chapter II of the Act 1923 deals with 'Employee's compensation'. Section 3 prescribes 'Employer's liability for compensation', which is abstracted below for ready reference:

“Section 3 Employer's liability for compensation — (1) If personal injury is caused to an 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:

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to —

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.”

13. Perusal of aforementioned provision envisages that for becoming entitled to seek compensation from any employer, twin conditions as envisaged in Section 3 are required to be fulfilled.

14. Firstly, the accident arising out of the employment and secondly, accident in the course of employment.

15. In view of aforementioned provisions, if the pleading of appellants in an application under Section 22 of the Act 1923 is perused, it only mentions that on 24.12.2008 deceased Ashwani Kumar Sahu was under employment of respondent-1 on the post of Supervisor and he was sent to look after another employee at CCM Hospital where health of deceased got affected and from there, he was taken to Sector 9 Hospital. During the course of treatment, he died. Except this pleading, there is no specific pleading with regard to the reason of death of late Ashwani Kumar Sahu.

16. Police examined applicant-1 as AW1 and Lekhram as AW2. Both these witnesses have stated about employment of late Ashwani Kumar Sahu with respondent-1 and also that on 24.12.2008 he was in employment from where he was sent to CCM Hospital to look after another employee. Except this, there is no other evidence with regard to cause and nature of death of late Ashwani Kumar Sahu.

17. Appellant-1 Smt Hemlata was examined as AW1 and Lekhram as AW2. Both these witnesses have stated about employment of late Ashwani Kumar Sahu with respondent-1 and also that on 24.12.2008, deceased was in employment, from where he was sent to CCM hospital to look after another employee. Except this, there is no other statement with regard to the cause and nature of death of late Ashwani Kumar Sahu.

18. Smt Hemlata/AW1 in her cross-examination at para-13 admits that accident was not reported to the Police. She has not filed any document

that death was due to stress and work pressure, no medical report showing the cause of death of late Ashwani Kumar is placed on record. She also submits that she is not aware of cause of death of her husband.

19. Even other witness Lekhram (AW2) in his evidence not stated anything about the cause of death or placed any material before the Court of the Commissioner, Labour Court.

20. The provision under Section 3 of the Act 1923 is very clear and specific that injury caused to any workman by accident arising out of and in course of employment merely death as taken place in course of employment will not amount to accident, where there is no presumption of accident practically in that circumstances, the accidental death can be proved by establishing stress, strain and exertion during the course of employment and the injury is aggravated due to such stress and strain.

21. Hon'ble Supreme Court has considered this issue in case of **Shakuntala Chandrakant Shreshti Vs Prabhakar Maruti Garvali and another** reported in (2007) 11 SCC 668 and held thus:

“25. 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.

26. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are :

1. stress and strain arising during the course of employment

2. nature of employment

3. injury aggravated due to stress and strain

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29. Circumstances must exist to establish that death was caused by reason of failure of heart was because of stress and strain of work. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefor can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own fact and no hard and fast rule can be laid down therefor.

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38. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages. In other words, the claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. It is now well-settled that for arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the fact of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto himself the right question.”

22. The Commissioner will have its jurisdiction to award compensation under Section 22 of the Act 1923, only when both the conditions of Section 3(1) of the Act 1923 are proved by the applicants.

23. In the case at hand, by going through the pleadings and evidence placed on record by the appellants, it is apparent that the claimants have only pleaded and stated that death of Ashwani Kumar Sahu was during the course of his employment. But, other conditions required to be proved ie death out of the accident during the course of employment because, there is no material and evidence available on record to show that deceased was under any stress or strain during the course of employment in which he was engaged or death aggravated due to such stress and strain.

24. For the foregoing reason, we do not find any error in the finding recorded by Commissioner that the applicants failed to prove that death of Ashwani Kumar Sahu was due to accident arising out of and in the course of employment.

25. In view of above discussions, we do not find any substantial question of law in this appeal.

26. Appeal fails and is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge