

In the High Court of Punjab and Haryana at Chandigarh

FAO-4499 of 2015 (O&M)

Date of Decision:13.2.2020

Sunder Pal

---Appellant

vs.

Smt. Sunder

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Manoj Chahal, Advocate
for the appellant
Mr. Arun Sharma, Advocate
for the respondent

Rekha Mittal, J.

The present appeal directs challenge against order dated 18.5.2015 passed by the Commissioner under the Employees' Compensation Act, 1923 (in short "the Act") whereby compensation has been assessed on account of death of Surat Singh on 23.6.2007.

The Commissioner assessed liability to the tune of Rs. 2,74,018/-, detailed in concluding para of the order under issue No. 4.

The sole submission made by counsel for the appellant is that as Surat Singh was murdered during the intervening night of 23/24.6.2007 while sleeping on tubewell in the fields of appellant, the case does not fall within the purview of incident arising out of and in the course of employment under Section 3(1) of the Act, therefore, findings of the Commissioner on this aspect can not sustain and are liable to be set aside.

In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Mackinnon Mackenzie & Co. Private Limited vs. Ibrahim Mahmmud Issak 1969 ACJ 422**. Further reliance has been placed upon judgment of the High Court of Judicature at Madras, Madurai Bench **Royal Sundaram Alliance Insurance Company Limited vs. Veerappan and others 2018 ACJ 2769**.

Counsel for the respondent-claimant has supported findings of the Commissioner on the aforesaid aspect of the matter. He has referred to judgment of Hon'ble the Supreme Court **Leela Bai and another vs. Seema Chouhan and another Civil Appeal Nos(s) 931 of 2019 arising out of SLP (C) No. 5576 of 2017** decided on January 22, 2019 and judgment of the Bombay High Court **State of Maharashtra vs. Arti and others 2008 ACJ 1406**.

The precise issue involved in the present appeal is, whether Surat Singh sustained injuries resulting in his murder out of and in the course of employment to fall within the ambit of Section 3(1) of the Act.

Before adverting to the facts of the case at hand, it is appropriate to note certain observations made by Hon'ble the Supreme Court in **Mackinnon Mackenzie & Co. Private Limited's case (supra)**, quoted thus:-

“5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are

understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a causal relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. In *Lancashire and Yorkshire Railway Co. v. Highley* Lord Sumner laid down the following test for determining whether an accident "arose out of the employment":

"There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this: Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yes, the accident arose out of his employment. If nay,

it did not, because, what it was not part of the employment to hazard, to suffer, or to do, cannot well be the cause of an accident arising out of the employment. To ask if the cause of the accident was within the sphere of the employment, or was one of the ordinary risks of the employment, or reasonably incidental to the employment, or conversely, was an added peril and outside the sphere of the employment, are all different ways of asking whether it was a part of his employment, that the workman should have acted as he was acting or should have been in the position in which he was, whereby in the course of that employment he sustained injury."

6. In the case of death caused by accident the burden of proof rests upon the workman to prove that the accident arose out of employment as well as in the course of employment. But this does not mean that a workman who comes to court for relief must necessarily prove: it by direct evidence. Although the onus of proving that the injury by accident arose both out of and in the course of employment rests upon the applicant these essentials may be inferred when the facts proved justify the inference. On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a

reasonable man to draw it. Lord Birkenhead L.C. in Lancaster

v. Blackwell Colliery Co. Ltd., observed:

"If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the Arbitrator is justified in drawing an inference in his favour."

Perusal of the aforesaid extract leaves no manner of doubt that there must be casual relationship between the incident and employment. The onus to prove that injury by accident arose both out of and in the course of employment rests upon the applicant-claimant and may be inferred when the facts proved justify the inference. On one hand, the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference.

Reverting to the case at hand, a relevant extract from findings recorded by the Commissioner, in this regard, reads as follows:-

"A perusal of the case file shows that admittedly the deceased was working as labourer with the respondent and on 23.6.07, he was sleeping on the tube well situated in the field of the respondent and during sleep he was murdered by some person.

The deceased was sleeping on the tube well under the direction of the respondent otherwise he had his own family and he could sleep in his house with family. When he was sleeping on the tube well, he was looking after the security of tube well and field which shows that he was on duty when he was murdered by someone. Hence I hold that there was relationship of employer and employee between the applicant and the respondent and the accident was occurred during the course of employment.”

Indisputably, as per case set up by the respondent-claimant, Surat Singh was working as labourer in the fields of appellant on monthly wage of Rs. 1500/- plus meals for three times. On 23.6.2007, Subhash son of appellant called Surat Singh and asked him to sleep at tubewell and in the night he was murdered by the appellant and others. The murder was committed during the course of employment and the applicant is entitle to receive compensation.

The respondent-claimant examined herself, to substantiate her claim for compensation. A relevant extract from her testimony with regard to deceased having gone to sleep at the tubewell of appellant on the fateful day, reads thus:-

“On the day of the supply of electric power to the tubewell, my husband used to sleep at the tubewell of Sunder Pal Sarpanch. On 23.6.2007 there was no turn of electric power but my husband on that day also went to sleep at the tubewell of Sunder Pal.”

She further deposed that:-

“on the same night her husband was murdered at the tubewell of Sunder Pal with incised weapon.”

Statement of respondent-claimant with regard to the circumstances under which Surat Singh slept at the tubewell of the appellant is in complete contradiction to her plea raised in the claim application meaning thereby that she changed her stance while appearing in the witness box. Not only this, she stated that her husband used to sleep at the tubewell on the day of supply of electric power but on 23.6.2007 there was no turn of electric power but still her husband had gone to sleep at the tubewell of appellant. In the given circumstances, it is difficult to accept contention of the respondent-applicant that Surat Singh was murdered out of and in the course of his employment with the appellant with whom he was working as a field labourer. If Surat Singh was not obligated, in discharge of his duties as a farm labourer to sleep on the tubewell of appellant particularly on the day there was no turn of electric power, findings of the Commissioner that Surat Singh was murdered out of and in the course of employment cannot sustain. The Commissioner failed to appreciate that plea raised by the respondent-claimant that deceased was sleeping on the tubewell under direction of appellant is not borne out from her testimony which is otherwise absolutely contrary to what has been pleaded in the application for compensation. In this view of the matter, I find merit in contention of the appellant that Surat Singh was not murdered in the course of employment with appellant, therefore, his case does not fall within the purview and ambit of Section 3(1) of the Act. The respondent-claimant can

not derive any advantage to her contention from the referred authorities decided in view of peculiar facts and circumstances of given cases. As the deceased did not receive accidental injuries out of and in the course of employment, the respondent can not be held entitle to receive compensation by invoking provisions of the Act.

For the foregoing reasons, the appeal is allowed. The impugned order is set aside. Application filed by the respondent for grant of compensation is dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

13.2.2020
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No