



2023:DHC:9270



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on : 7th December, 2023

Pronounced on : 20th December, 2023

+ **W.P.(C) 5099/2019 & CM APPL. 22580/2019**

SH. RAJ KUMAR

.....Petitioner

Through: Ms. Preeti Singh, Adv.
Mr. Sunklan Porwal, Adv.
Ms. Saumya Dwivedi, Adv.
Mr. Rishabh Munjal, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Rishikesh Kumar, ASC-
GNCTD
with Ms. Sheenu Priya, Mr. Sudhir
Kumar Shukla, Mr. Muhammad
Zaid,
Ms. Roshini Haldhar & Mr. Sudhir,
Advocates

Mr. R.K. Nain, and Mr. Chandan
Prajapati, Advs. for R-3 to R-7.
SI Sachin, PS Gandhi Nagar.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed seeking stay on operation of the impugned recovery notice dated 2nd August, 2013 issued by respondent

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no.1 (Commissioner, Employees' Compensation Act, 1932) initiating proceedings for recovery of Rs.7,88,240/- from the petitioner herein. The said recovery notice was issued pursuant to an order dated 14th June, 2013 awarding respondent nos. 3 to 7 ("**claimants**") a sum of Rs.7,88,240/- as compensation along with interest at the rate of 12% per annum from 10th August, 2008 till its realisation. Since the said amount was to be paid by M/s. Patliputra Transport Agency (respondent no.8), through its owner (the petitioner) recovery proceedings were initiated for the said amount against the petitioner by way of the impugned notice.

2. Genesis of the matter is an application for compensation under Section 22 of the Employees' Compensation Act, 1923 ("**the Act**") preferred by the claimants (being the legal heirs of deceased Mr. Akbar Ali – namely Ms. Razia Begum, wife of the deceased and their minor children). As per the claimants, Mr. Akbar Ali was employed as a loader for loading and unloading on the vehicle owned by M/s. Patliputra Transport Agency (through Mr. Raj Kumar, the owner) arrayed as respondent no.8. On 11th August, 2008, deceased was injured in an accident during the course of employment, when he was mowed down by a vehicle. He was moved to Guru Teg Bahadur hospital by a PCR but succumbed to the injuries sustained by the time he reached there. *Post mortem* was conducted, dead body was handed over to the relatives of the deceased, and a First Information Report ("**FIR**") No.194/2008 was registered on 12th August, 2008 at Police Station Gandhi Nagar, Delhi. At the time of death, the deceased was 30 years of age and drawing wages of Rs.6,500/- per month along with allowances.



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3. As per the final report under Section 173, Code of Criminal Procedure, 1973 (“**Cr.P.C.**”) filed by the Investigating Officer, the offending vehicle remained untraced and therefore, no compensation could be recovered either from its owner or driver of the insurance company. Accordingly, notice dated 13th February, 2013 was issued by the Commissioner under the Act (“**Commissioner**”) to respondent no. 8 ‘*M/s. Patliputra Transport Agency*) through *Mr. Raj Kumar (owner)*’ with a direction to appear and reply to the claim application of the claimants. Summons were issued from time to time, however, the same were not received/accepted by the petitioner herein. As such, the Commissioner was left with no option but to proceed *ex-parte*.

4. The said application was disposed of by order dated 14th June, 2013 by the Commissioner. Based on the statement of the claimants supported by copy of FIR, *naksha mauka*, final report, *post mortem* report, medical documents, progress report, identification card, and ration card, the Commissioner concluded that the deceased Mr. Akbar Ali had sustained fatal injuries on 11th August, 2008 during the course of his employment and therefore, was entitled to death compensation. Wages of the deceased were taken as Rs.4,000/- per month in view of the restriction in Section 4 of the Act. The age of the deceased was 30 years at the time of the accident however, in the absence of supporting documents, it was taken as 35 years on the basis of the *post mortem* report. Compensation was therefore calculated with the relevant factor of 197.06 multiplied with Rs.4,000/- per month, totaling to Rs.7,88,240/- on which interest at the rate of 12 % per annum, as per Section 4A of the Act, from the date of accident was awarded.



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5. Two additional developments during the proceedings before this Court, need to be mentioned.

First, considering the petitioner's contention that he was merely an employee of M/s. Patliputra Transport Agency, time was accorded to him to place on record some document in support of this contention. However, nothing was filed in support of this contention as recorded in order dated 28th November, 2023.

Second, reliance was placed on the Lower Court Record and the documents filed by the Investigating Authority, i.e., the police for ascertaining employment status of the deceased, considering there was confusion as to whether he was employed with the petitioner or not. Directions had been given to the Additional Standing Counsel appearing on behalf of the Government of State of NCT of Delhi ("ASC") to file a detailed analysis of the relevant documents in this regard. An analysis report was filed by the ASC on 4th December, 2023. As per the said analysis, the following points were relevant:

- i. The petitioner had recorded a statement under Section 161, Cr.P.C. on 12th August, 2008;
- ii. The petitioner had stated that he was the owner of M/s. B R Parcel Movers and the deceased used to work in his company;
- iii. The deceased was working with the agency of the petitioner was also corroborated by the statement of co-workers (one Shankar and Surender) recorded under section 161 Cr.P.C.;
- iv. Dead body identification and hand-over statement of the brother of the deceased (Asgar Ali) and son of the deceased (Bajid) was signed by the petitioner as witness.



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- v. The accident took place during the course of the employment also finds mention in the statements of the colleagues of the deceased *viz* Shankar and Surender Kumar, who were also employed along with the deceased, with the petitioner.

Submissions on behalf of the Petitioner

6. Counsel for the petitioner assailed the impugned recovery notice which was issued to the petitioner and was duly received on 26th April, 2019, *inter alia*, on the following grounds:

- a. The recovery notice was actually issued to ‘M/s. Patliputra Transport Agency, Through Sh. Raj Kumar Owner’. Thus, the name of the petitioner was vaguely mentioned as ‘owner’, without any particulars such as residential address, etc.
- b. He was neither the respondent in the claim petition nor was the owner of the said company. The petitioner was merely an employee of M/s. Patliputra Transport Agency from June, 2012 to December, 2012.
- c. The said writ petition was maintainable despite objection of the respondent-claimants that an appeal ought to have been filed under Section 30 of the Act, and not this petition. The argument on maintainability focused on the plenary powers of this Court under Article 226 of the Constitution of India, 1950 and reliance was placed on decision of the Apex Court in ***U.P. State Spinning Company Ltd. v. R. S. Pandey and Anr.*** (2005) 8 SCC 264. In this regard, it was further stated that since the matter related to the very identity of the agency and the petitioner’s relationship with the same, question arises as



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to who would potentially be liable under the Act; thus, the petitioner had the right to approach this Court and invoke its writ jurisdiction.

- d. Reliance was further placed on a decision in ***Maharashtra Chess Association v. Union of India & Ors.***, Civil Appeal No. 5654/2019 dated 29th July, 2019, wherein the Hon'ble Supreme Court has stated that an alternate adequate remedy is merely an additional factor to be taken into consideration by the High Court in deciding whether or not to exercise its writ jurisdiction.
- e. The claimants had not been able to give concrete proof of the fact that the petitioner was indeed the employer of the deceased and only vague averments to that effect have been made.
- f. Reliance was placed on the statement of Surender Kumar as part of the analysis provided by the State, per which he and Akbar Ali worked as loader at M/s. B R Parcel Movers, Gandhi Nagar, Pushta Road, Delhi, thereby further corroborating that he was not employed at M/s. Patliputra Transport Agency to whom the impugned recovery notice was originally issued.
- g. Even if it is assumed that the petitioner was the employer of the deceased, the death of the deceased had not occurred during the course of his employment since, as per the statement of the co-workers, he died in a road accident when he had gone for defecation.



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- h. Reliance was placed on *Malikarjuna G. Hiremath v. The Branch Manager, The Oriental Insurance Co. Ltd. & Anr.* Civil Appeal No. 956/2009, on the issue whether an accident leading to death can be taken to have arisen during the course of employment:

"12. This Court in ESI Corpn. v. Francis De Costa (1996 (6) SCC 1) referred to, with approval, the decision of Lord Wright in Dover Navigation Co. Ltd. v. Isabella Craig (1940 AC 190) wherein it was held: (All ER p. 563) 'Nothing could be simpler than the words 'arising out of and in the course of the employment'. It is clear that there are 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 causality. 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. Hence the section imports a distinction which it does not define. The language is simple and unqualified."

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15. 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."

Submissions on behalf of the Respondents

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7. Refuting the submissions of petitioner's counsel, counsel appearing on behalf respondent nos. 3 to 7 stated as under:

a. Reliance was placed on statements recorded under Section 161, Cr.P.C. by the petitioner Raj Kumar that the said deceased was working with him.

b. Reliance was also placed on the statements of the co-workers Surender Kumar and Shankar who corroborated the fact of employment of the deceased with Raj Kumar.

c. Reliance was further placed on the statement of identification of the dead body where the petitioner was a witness, and has signed so.

d. Maintainability of the writ petition was objected to in light of the Section 30 of the Act providing for filing an appeal before the High Court on a substantive question of law. In this regard, reliance was placed on ***North East Karnataka Road Transport Corporation v. Sujatha*** Civil Appeal No.7470/2009 decided on 2nd November, 2018 and ***Naresh Kumar v. Sh. Jawahar Singh & Anr.*** LPA No. 80/2009.

e. For the purpose of proving a claim (which deals with sufficiency of evidence), rules of evidence do not apply strictly. Reliance in this regard was placed on ***Mackinnon Mackenzie & Co. (P) Ltd. v. Ibrahim Mahmmmed Issak*** (1969) 2 SCC 607 whereby it was held that the Commissioner has to take inference in a given case and if the scale is tilted towards the claimants, the same must be allowed. Furthermore, a reading of Rule 41 of the Workmen's Compensation Rules, 1924 shows that Order VI of



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the Code of Civil Procedure, 1908 (rules of pleadings) do not apply.

f. Considering that the offending vehicle was untraceable as per the final report of the police, the duty was of the employer to pay compensation considering that the deceased was at work of loading and unloading with the agency of the petitioner. In this regard, reliance was placed on *Pratap Narain Singh Deo v. Srinivas Sabata & Anr.* (1976) 1 SCC 289 and *Oriental Insurance Co. Ltd. vs Thankappan* 2005 SCC OnLine Ker 278 and *Manju Sarkar & Ors. v. Mabish Miah & Ors.* (2014) 14 SCC 21.

g. Further reliance was placed on *Chiman Surakhia Vasava v. Ahmed Musa Ustad & Ors.* 1986 SCC OnLine Guj 4, a decision of High Court of Gujarat where it was held that despite a potential confusion about the true employer, in the absence of contradictory evidence, it would lead to the conclusion that the worker was indeed employed by the truck owner.

h. Therefore, counsel for the respondent contended that there was a clear connection between the petitioner and the deceased as established from the statements noted above, and strict rules of evidence are not applicable to prove that the accident was out of and during the course of employment.

Analysis

8. The Court heard detailed submissions by the parties and also perused the documents placed on record. The assessment of the Court is as under.



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Statutory Appeal and Bar on Writ Jurisdiction of this Court

9. The first issue raised herein pertains to the maintainability of the present writ petition, in that a statutory appeal is provided by Section 30 of the Act. Without going into the merits of contentions of both the parties, this Court is of the opinion that the issue raised in this writ petition regarding the identity of the petitioner deserves to be addressed. This is for the reason that having heard the parties at considerable length, and perused the Lower Court Record, the analysis report made by the State, no purpose would be served to relegate the parties to a statutory appeal, which in any event, would also lie to this Court itself. The petitioner has challenged the recovery notice on the ground that the compensation awarded was not intended to be satisfied by him and he had no connection with the deceased. Taking cue from the statement of the Hon'ble Supreme Court in ***Maharashtra Chess Association*** (*supra*), particularly on the paragraphs extracted hereunder, this Court does not wish to relegate the parties to a statutory appeal, at this stage, in addition to the reasons mentioned above. The relevant portion of the decision in ***Maharashtra Chess Association*** (*supra*) is extracted as under:

“18. The existence of an alternate remedy, whether adequate or not, does not alter the fundamentally discretionary nature of the High Court's writ jurisdiction and therefore does not create an absolute legal bar on the exercise of the writ jurisdiction by a High Court. The decision whether or not to entertain an action under its writ jurisdiction remains a decision to be taken by the High Court on an examination of the facts and circumstances of a particular case.

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21. The mere existence of alternate forums where the aggrieved party may secure relief does not create a legal bar on a High Court to exercise its writ jurisdiction. It is a factor to be taken into consideration by the High Court amongst several factors. Thus, the mere fact that the High Court at Madras is capable of granting adequate relief to the Appellant does not create a legal bar on the Bombay High Court exercising its writ jurisdiction in the present matter.

(emphasis supplied)

Service of Summons and Knowledge of Proceedings before the Commissioner

10. The issue relating to service of summons would have some relationship with the determination of identity of the petitioner and the employment connect with the deceased. As recorded in order dated 14th June, 2013 by the Commissioner allowing the claim application, the initial notice was received but signatures on receipt of the same were refused to be given. The second summons were issued on 21st March, 2013 through speed post and *dasti* and a report was filed on affidavit stating that when the representative went to the address specified, they met one Mr. Sushil, who gave his introduction as brother of owner of the company and refused to receive the summons. The third summons were issued on 15th April, 2013 through a process server who reported that Sh. Sanjay Kumar, worker, who was present at that time, received the summons but did not gave his signatures.

11. Counsel for the respondent drew attention to the summons dated 15th April, 2013 issued in the name of M/s. Patliputra Transport Agency at 9/23, Union Bank ATM wali gali, Shyam Block, Kailash Nagar, Delhi-110031 to Sh. Raj Kumar, owner, which was returned with the note of the process



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server dated 30th April, 2013 stating that at that address one Mr. Sanjay Kumar was found who received the said notice but refused to sign. Furthermore, attention has also been drawn to an affidavit of the process server dated 3rd April, 2013 stating that he had gone on that day at 4 o'clock to the address of M/s. Patliputra Transport Agency where one Mr. Sushil was available and stated that he was the brother of owner of the company and after calling his lawyer, he refused to accept the summons. Yet again, another affidavit by process server dated 14th February, 2013 was also placed on record which states that at that address, one Mr. Sajjan was found who gave his introduction as the employee of Raj Kumar and after speaking to said Raj Kumar on the phone, he refused to receive the summons.

12. It is noted that the impugned recovery notice addressed to the Sub Divisional Magistrate (“SDM”), Gandhi Nagar is in the name of M/s. Patliputra Transport Agency through Sh. Raj Kumar, owner at Kailash Nagar / Gandhi Nagar address. Subsequently, the notice issued by the SDM dated 7th November, 2016 was also at the same address through Sh. Raj Kumar as owner and was to be served through the SHO, Police Station Gandhi Nagar. The report of the server from P.S. Gandhi Nagar stated that there was no agency by the name of M/s. Patliputra Transport Agency at the given address.

13. In response to a direction by this Court dated 21st May, 2019 permitting the petitioner to file an affidavit in defence regarding the issues of service of summons and existence of an employer-employee relationship between the petitioner and the deceased, the former filed an affidavit dated 25th July, 2019. In the said affidavit, even though he mentioned that he was neither the owner of the transport vehicle, the company mentioned, nor had



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any relationship with the deceased, he does state that his wife received the impugned recovery notice on 5th May, 2019.

14. Despite his denial regarding service of notices during the period of 2013 to 2019 and his averments about not being the owner of M/s. Patliputra Transport Agency and not having any connection with the deceased, it is imperative to note that *firstly*, the petitioner does admit that he was, at the very least, employed by M/s. Patliputra Transport Agency. The existence of such an agency therefore, cannot be doubted, even as per the petitioner. Despite an opportunity provided by this Court, the petitioner did not provide any document to show that he was merely an employee of the said agency. Hence, his connection with the agency cannot be doubted; the various contentions made by the petitioner are merely to create a smoke screen in order to avoid liability.

15. *Secondly*, at no point of time has the petitioner denied having recorded the statement under Section 161, Cr.P.C. or having signed as witness to the identification of the body of the deceased by his family, analysis of which was filed by the ASC. Thus, petitioner's denial regarding existence of an employer-employee relationship is a glaring contradiction to his statements recorded by the police and in fact, weakens his case. His connection with the deceased is also therefore clear and without any doubt. In this regard, it may be apposite to note certain observations made by the Apex Court in ***Khatris and Ors. v. State of Bihar*** (1981) 2 SCC 493; same are extracted as under for ease of reference:

“It bars the use of any statement made before a police officer in the course of an investigation under chapter XII, whether recorded in a police diary or otherwise, but by the express terms of the Section this bar is applicable only



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where such statement is sought, to be used 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made'. If the statement made before a police officer in the course of an investigation under chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted."

16. *Thirdly*, the consistent denial to accept notice by one Sushil, who introduced himself as brother of owner of the company, but refused to receive summons, and one Sanjay, who did not deny the existence of Raj Kumar but refused to receive summons as well further shows that there were consistent attempts made to evade liability. In light of these attempts, the contention of the petitioner that he was completely unaware of the proceedings going on before the Commissioner and he only found out about it when his wife received the impugned recovery notice cannot be accepted.

Employer-Employee Relationship & 'During Course of Employment'

17. The respondent's contention that the deceased was employed with the petitioner is clearly established and corroborated by statements of co-workers Surender Kumar and Shanker stating that Akbar Ali, the deceased, worked as a loader at M/s. B R Parcel Movers at Gandhi Nagar, Pushta, Delhi, at the godown of Raj Kumar. In fact, the petitioner's own statement under section 161, Cr.P.C. also notes that he has the godowns in the name and style of M/s. B R Parcel Movers and amongst those who were engaged for the purpose of loading and unloading in the godown, the deceased too was employed with him since 7th August, 2008 and also that he used to stay



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there. This date of 7th August, 2008 holds some significance as it is the same date as stated by co-worker Shankar (who, as per the petitioner, worked with him for the last about 2 years). These statements establish that the deceased was indeed working with the petitioner.

18. The *sine qua non* of establishing an employer-employee relationship, for the purpose of compensation of the Act, thus, stands satisfied in the present case. The fact that the employer is stated as Mr. Raj Kumar, does not exonerate him from the liability to pay death compensation as provided for in the Act. In this regard, reference may be made to the following decisions:

(i) ***Manju Sarkar & Ors. v. Mabish Miah & Ors.*** (2014) 14 SCC 21 – a case involving a claim under the Workman' Compensation Act, where a driver drove a truck and got down to make arrangements for the repair of the vehicle but met with the road accident, the Hon'ble Supreme Court dealt with an issue of when is the duty of a worker within the course of employment or outside the scope of employment. In this regard, the Hon'ble Supreme Court noted the submissions as under:

“4. The learned counsel for the appellants contended that Sajal Sarkar met with a road accident resulting in his death during the course of his employment as truck driver under respondent Nos.1 and 2 and the Courts below have failed to note the principle of notional extension at both the entry and exit by time and space and apply the same to the present case and the appellants are entitled to compensation.

5. Per contra the learned counsel for the respondents contended that Sajal Sarkar parked the truck in the godown complex of FCI Churaibari and considering the delay of



loading goods, he left the truck and went away towards an unknown destination in connection with his personal affairs, saying to helper Bikram Deb that he would return by night, and the appellants have not proved that there was mechanical trouble in the truck on the way to Churaibari FCI godown as pleaded by them and Sajal Sarkar did not suffer the injuries in the course of his employment and, therefore, the appellants are not entitled to receive any compensation under the Act, as rightly held by the Courts below.”

It further held as under:

“11. As rightly contended by learned counsel appearing for the appellants there is a notional extension in the present case also and we would, therefore, hold that Sajal Sarkar met with the road accident in the course of his employment under respondent Nos.1 and 2. The Courts below have misdirected themselves while dealing with this question and the finding rendered by them is perverse and unsustainable.”

(emphasis supplied)

(ii) **Chiman Surakhia Vasava v. Ahmed Musa Ustad & Ors.** 1986 SCC OnLine Guj 4 – in a case under the Workman Compensation Act, involving some confusion about who was the true employer, relating to death of a worker who was engaged in lifting stones from quarry to the truck, the High Court of Gujarat observed as under:

Thus a funny, but a very unfortunate, situation has arisen. Here is an employee without there being an employer. The person who took work from him and paid wages to him, either the truck owner or the owner of the quarry, has found it convenient to disown him. Both of them have been able to create a smoke screen of technicalities and the learned Commissioner has not been able to come out of the hidebound thinking influenced by the provisions of the Civil



Procedure Code and the Evidence Act with which he is more familiar as Civil Judge, Senior Division. He ought to have realised that the functions and duties of the Commissioner are radically different than that of a Civil Judge, Senior Division. It is unfortunate that the learned Commissioner who appears to have been obsessed by the procedural rules and technicalities of Civil Procedure Code and Evidence Act is not sufficiently aware about the underlying principles and object of the Workmen's Compensation Act, 1923 (hereinafter referred to as the Act). In the Statement of Objects and Reasons articulated at the time of moving the Bill which ultimately resulted in passing of the Act, it is stated: “. . The growing complexity of industry in this country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents.” In the Statement of Objects and Reasons it is further stated: “The general principle is that compensation should ordinarily be given to workmen who sustained personal injuries by accidents arising out of and in the course of their employment. Compensation will also be given in certain limited circumstances for disease At the same time, on unanimous recommendation of the committee, provision has been made for Special Tribunals to deal cheaply and expeditiously with any disputes that may arise, and generally to assist the parties in a manner which is not possible for the ordinary Civil Courts.”

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In the instant case, the workman has categorically stated in his deposition that he was employed by respondent 1 the truck owner and that he was being paid wages by him. The workman has further stated that for the last two days before the accident he was working on the truck. In the instant case, the workman was not employed in a factory or farm



belonging to one person. The very nature of the work to be performed by the workman forced him to move from one place to another, i.e., from quarry to the place where the stones were taken and again to quarry. When workmen are being employed in such type of employment, there may be some understanding between the owner of the quarry and the truck owner with regard to the payment of wages to be made to the workmen engaged in lifting stones and filling the same in the truck. It may be that some servant of the quarry owner or that of the truck owner might be making payment. Therefore, the workman is likely to be in doubt as to who is his real employer. But the learned Commissioner ought to have exercised his common sense. Just as there cannot be a child, either legitimate or illegitimate, without parents, there cannot be an employee without an employer. In the instant case, when the workman deposed on oath that he was employed by respondent 1 the truck owner and when there was no contrary evidence led either by the owner of the truck (respondent 1) or by the owner of the quarry (respondent 3) the inevitable inference to be drawn is that the workman was employed by respondent 1 the truck owner.

(emphasis supplied)

(iii) ***Oriental Insurance Co. Ltd.*** (*supra*). While dealing with a claim of compensation arising from death of a worker who was driving a bus and after parking the same, went to a nearby stream where he died. The High Court of Kerala noted as under:

“6. We cannot consider any case divorced from the facts situation. In the case on hand the evidence clearly disclosed that he had been staying in the bus for the purpose of commencing its trip early morning at 3.30 a.m. The bus was being parked in a petrol bunk and the accident occurred when he went to the nearby stream for the purpose of taking bath along with the driver and the conductor. Thus it has come out in evidence that the deceased workman along with his colleagues had been there with the bus for the purpose



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of commencing duty early in the next morning at 3.30 a.m. So there was connection between the accident that had occurred and the duty that he had to perform immediately after that. He had gone for taking bathing just before commencing duty at 3.30 a.m. as he had been staying in the bus for the purpose of taking the bus at that time. So the connection between the accident and the employment is thus manifest.

7. Another Division Bench of this Court in Devshi Bhanji's case, 1985 KLT 78, cited supra has made it clear that when there is casual connection between the employment and the death of a workman in an unexpected way, it could be certainly be considered as an accident arising out of and in the course of employment which would entitle the dependent legal heir to claim compensation. Of course the facts situation in that case arose when a workman fell down due to heart attack which resulted because of the exertion arising out of the employment and that was the causal connection between the accident and the employment in that case.

8. Similarly in this case also as the workman was expected to be in the bus for the purpose of commencing his duty in the early morning at 3.30 a.m. He had to attend to his human needs before commencing duty as he was staying in the bus. There was no arrangement made for that purpose. He had to go to the nearby stream for taking bath. It was at that time there occurred the accident resulting loss of life of the workman. Necessarily it shall be taken as one arising in any way out of his employment and has its origin in the employment, as held by the Supreme Court in Francis De Costa's case, 1996 (2) KLT 799. Necessarily, it cannot be stated that the death had not arisen out of and in the course of employment. The question of law raised is thus answered in negative against the appellant."

(emphasis supplied)



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19. Counsel for the respondent has, therefore, rightly relied upon these decisions that: *firstly*, advert to the larger context of the Act and its intent, and *secondly*, refer to the elasticity/notional extension which needs to be attributed while considering death during the course of employment.

20. So far as the first aspect is concerned, the Act is a social security legislation providing compensation to persons engaged in certain kinds of employment. The need for such social security arose keeping in mind such individuals who depend upon their earnings to put food on the table and make ends meet. Being faced with humble earnings from the work done, these individuals tend to take risks at the workplace just to ensure continuity of income. As is the case at hand, the deceased was living in Delhi since the last 15-20 years working odd jobs supporting a family of 5 dependents who primarily reside far away in a village in Jammu. The Act was enacted to secure such workers and their dependents by providing reasonable quantum of compensation and saving them from being left to fend for themselves in the event of a catastrophe. For demise of the sole bread earner is nothing less than a catastrophe when means were already meagre.

21. As regards the second aspect, as a general rule, compensation under the Act is granted to a workman when death occurs arising out of and during the course of employment. However, the pertinent question is whether the deceased continued to remain in the course of employment when he went to defecate and thereafter sustained injuries in the road accident on that fateful day. What constitutes as 'during course of employment' needs to be determined after careful examination of the facts and circumstances of each case. In the present case, the statement of



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Shankar recorded under Section 161, Cr.P.C. states that the deceased was with a few of their colleagues before he left with a bottle of water to relieve himself. In the present case, the doctrine of notional extension would be applicable at both entry and exit of 'time' and 'place'. Course of employment does not start and end at the stroke of the clock, especially in line of work such as loading and unloading of transport vehicles. He was at the place of his employment, where he also used to reside. That time of night if he had to cross the road or go elsewhere in order to defecate, he would still continue to be in the range and ambit of his work as an employee and the circumstance cannot be segregated and severed. The fact that the deceased left the godown to tend to a natural need will very well come within the purview of such extension. Loading/unloading of vehicles does take place in the late hours at night in the transport industry and there is no reason to disbelieve the claimants in this regard. Therefore, the petitioner's contention that the deceased's death occurred outside of course of employment as he had gone for defecation cannot be accepted.

22. Therefore, not only is the identity of the petitioner established but also the employer-employee relationship with the deceased is clear. Ergo, the liability under the Act would fall on him being the employer despite his attempts to create a smoke screen and opacity around the facts.

23. In view of the above, the present writ petition stands dismissed; the impugned recovery notice dated 2nd August, 2013 is hereby upheld.

24. Petition stands disposed of accordingly along with pending applications, if any.

25. Copy of the judgment be uploaded forthwith on the website of this Court.



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(ANISH DAYAL)
JUDGE

DECEMBER 20, 2023/sm

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 21.12.2023
05:19:05

W.P.(C) 5099/ 2019

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