

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Gaurang Kanth

FMAT (WC) 15 of 2024
IA No: CAN 1 of 2024
CAN 2 of 2024

The Oriental Insurance Company Limited
Vs.
Putul Das and others

For the appellant : Mr. Rajdeep Bhattacharya,
Ms. Adrija Bhattacharya

For the respondents : Mr. L.M. Ghosh

Heard on : 03.12.2024

Judgment on : 03.12.2024

Sabyasachi Bhattacharyya, J.:

1. We take up the appeal for admission and hearing.
2. In view of questions of both facts and law being involved, we admit the appeal and take it up for hearing.

3. Heard learned counsel for the parties.
4. The present challenge has been preferred by the Insurance Company on two-fold grounds. First, there was no negligence on the part of the employer in the demise of the deceased victim, which led to the grant of compensation under the Employees' Compensation Act, 1923 (hereinafter referred to as "the 1923 Act"). It is contended that the aspect of the liability for the death being of a third party vehicle, which was being driven in a rash and negligent manner, has been totally overlooked by the Commissioner in the impugned judgment.
5. Secondly, it is contended that whereas the Minimum Wages Act puts the minimum wages of persons such as the victim, who was a cleaner/"khalasi" of a vehicle, at Rs.7280/- per month, compensation has been calculated on the basis of earning of the said deceased to be Rs.8,000/- per month as wages.
6. It is submitted that the said wages were over-calculated and, as such, the impugned judgment ought to be set aside on such ground as well.
7. Learned counsel for the respondents places reliance on Section 3 of the 1923 Act and contends that third party liability is not a relevant factor in granting compensation under the said statute. Secondly, it is submitted that even apart from the wages, the deceased, as a 'khalasi', was entitled to his daily allowances on account of food etc. as well.

8. Upon careful consideration of the relevant statute, we are of the opinion that there is no scope of any defence on the basis of third party liability in Section 3 of the 1923 Act.
9. The said provision is set out below:

“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,

(2) If an employee employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an employee whilst in the service of one or more employers in any employment specified in Part C

of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved, -

(a) that an employee whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that an employee who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If an employee employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply [, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by sub-sections (2), (2A) and (3) no compensation shall be payable to an employee in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on an employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by an employee in any Court of law in respect of any injury —

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the employee and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

10. It is evident that if personal injury/death 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 Chapter-II of the 1923 Act. The proviso to Section 3(1)

contains certain exceptions. However, third party liability is not one of such exceptions. Moreover, the concept of contributory negligence cannot be imported to Section 3 of the 1923 Act, since it was not the intention of the Legislature itself to do so. The only germane considerations are whether the victim was an employee, he died by accident and such accident arose out of and in the course of employment, all of which factors are satisfied in the present case.

11. Insofar as the second ground of challenge is concerned, we are of the opinion that the bare minimum wages need not necessarily be the only relevant factor for grant of compensation. That much leeway is vested in the Compensation Commissioner to assess as to what would be a reasonable amount per month, including the minimum wages payable to the employee as well as the minimum daily allowances which befits an employee in the assessment of a prudent person.
12. Applying such test, we are of the opinion that the variance between Rs.8,000/- per month, which was calculated as the earning by the Commissioner in the impugned judgment, and the statutory minimum wages of Rs.7,280/- per month is not so germane so as to entail interference by this court.
13. In any event, since a plausible view was taken in the impugned judgment, it would not be prudent for the appellate court to interfere with the same by substituting its own views on the basis of the self-same facts.

14. Accordingly, FMAT (WC) 15 of 2024 is dismissed on contest.
15. IA No: CAN 1 of 2024 and CAN 2 of 2024 also stand disposed of accordingly.
16. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Gaurang Kanth, J.)