



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO. 558 OF 2010

APPELLANT : ICICI Lombard General Insurance Co.
Ltd. through its Manager (Legal) Head
Office at : Zenith House, Keshavrao
Khare Marg, Mahalaxmi, Mumbai.

//VERSUS//

RESPONDENTS : 1. Smt. Sharda w/o. Annarao Naik, Aged
Adult, Occ. Household.
2. Annarao S/o. Ramchandra Naik, Aged
Adult, Occ. Service.
3. Kum. Sandhya d/o. Annarao Naik,
Aged Adult, Occ. Household.
All R/o. Village – Patansaongi, Tah.
Saoner, Distt. Nagpur.
4. Sanjay S/o. Mahadeorao Tekade, Aged
Adult, Occ. Business, R/o. Baba Farid
Nagar, Zingabai Takali, Nagpur, Tah.
& Dist. Nagpur.

Mr. S.B. Bangde, Advocate for the Appellant.
Mr. A.J. Pathak, Advocate for Respondent Nos.1 to 3.

CORAM : G. A. SANAP, J.
DATED : 21st MARCH, 2024.

JUDGMENT

. In this appeal, filed under Section 30 of the Workmen's Compensation Act, 1923 (for short, "the Act of 1923") by the appellant/original non-applicant No.2, challenge is to the judgment and order dated 17th July, 2009, passed by learned Commissioner under the Workmen's Compensation Act, 1923, and Judge, Labour Court, Nagpur, whereby the application under Section 22 of the Act of 1923 for compensation filed by respondent Nos.1 to 3 was allowed.

02] BACKGROUND FACTS:

The deceased Krushna was the son of respondent Nos.1 and 2 and brother of respondent No.3. According to respondent Nos.1 to 3, the deceased Krushna was working as a driver with respondent No.4. He was engaged to drive a Scorpio Jeep bearing registration No.MH-31/CM-6968, owned by respondent No.4. It is stated that on 13th September, 2005, the deceased Krushna was proceeding to Pachmarhi by the said vehicle. The deceased Krushna did not return home. Thereafter, respondent Nos.1 to 3 learnt from a news report dated 22nd September, 2005, that he was murdered by unknown persons. The inquiry revealed that those unknown persons tried to commit theft of the vehicle driven by the deceased while proceeding to Pachmarhi. The offence of murder

was registered and investigated. The deceased was employed by respondent No.4 for driving the vehicle on a monthly salary of Rs.3,500/-. The deceased was 23 years old. The vehicle was insured with the appellant on the date of the accident. The risk of the driver was covered under the insurance policy. The deceased was holding a valid driving licence. The respondent Nos.1 to 3 claimed compensation being the dependents of the deceased. They claimed interest as well as penalty.

03] Respondent No.4 filed the reply. He has admitted the relationship of employer and employee between him and the deceased. He denied his liability to pay the compensation. According to him, the vehicle was insured with the appellant. The appellant was, therefore, liable to satisfy the claim amount. He further contended that, on the date of the incident, the deceased was driving the vehicle and, on the way to Pachmarhi, he was murdered.

04] The authorized signatory of the appellant filed the reply and opposed the statement. They admitted that the vehicle was insured with the appellant. However, the appellant denied the liability to pay the compensation. It was contended that the death was not in an accident and, therefore, the appellant was not liable

to pay the compensation. It was also contended that there was no relationship of employer and employee between respondent No.4 and deceased Krushna.

05] Before the Commissioner, respondent No.1 examined herself as witness No.1. Witness No.2 is from the R.T.O. Office, Nagpur, to prove the driving licence of the deceased. Learned Commissioner, on appreciation of the evidence, recorded a finding that the deceased was murdered while performing his duty as a driver of respondent No.4 and, as such, in the course of his employment, and awarded the compensation. Being aggrieved by the judgment and order, the appellant has filed this appeal.

06] I have heard Mr. S.B. Bangde, learned advocate for the appellant and Mr. A.J. Pathak, learned advocate for respondent Nos.1 to 3. Perused the record and proceedings.

07] In this appeal, following substantial question of law has been framed:

(i) Whether the murder of the employee during the course of employment while working for and on behalf of the employer would vest right with the dependents to claim the compensation under the Employee's Compensation Act, 1923 ?

08] Learned advocate for the appellant submitted that, on the date of the incident, the deceased was proceeding to Pachmarhi by vehicle for a picnic. Learned advocate submitted that, on the date of the incident, he was not discharging his duties as a driver of respondent No.4. Learned advocate submitted that the death of a workman must have a casual connection with his employment to grant compensation under the provisions of the Act of 1923. Learned advocate submitted that the deceased was proceeding towards Pachmarhi for his personal work and not for the work of respondent No.4. Learned advocate submitted that the murder of the deceased in the circumstances could not be said to be in an accident arising out of and in the course of his employment. Learned advocate submitted that, therefore, the appellant/insurer of the vehicle would not be liable to pay the compensation. In order to seek support to his submission, learned advocate has relied upon two reported decisions of the Hon'ble Apex in the cases of *Ningamma & Anr. Vs. United India Insurance Co. Ltd. [2010 (1) ALL MR 441]* and *Malikarjuna G. Hiremath Vs. Branch Manager, Oriental Insurance Company Limited and Another [(2009) 13 SCC 405]*.

09] Learned advocate for respondent Nos.1 to 3 submitted that learned Commissioner has properly appreciated the evidence

on record as well as properly applied the provisions of law and awarded the compensation. Learned advocate submitted that respondent No.4 has admitted in his written statement that the deceased was employed by him as a driver for driving the vehicle. Learned advocate submitted that the deceased, while proceeding towards Pachmarhi by the said vehicle in the course of his employment, was murdered by unknown persons while committing theft of the vehicle driven by the deceased. Learned advocate submitted that the murder committed while discharging the official duties would be squarely covered within the definition of 'accident' under the Act of 1923. Learned advocate submitted that there is no material on record to substantiate the contention of the appellant that the deceased was proceeding to Pachmarhi for his personal work and, for that purpose, he had taken the vehicle with the permission of respondent No.4. Learned advocate submitted that there has been a proximate connection between the accident and employment and, therefore, learned Commissioner was right in granting the claim. In order to seek support to his submission, learned advocate has relied upon the following decisions:

*(1) Smt. Satiya and Others Vs. Sub-Divisional Officer, P.W.D.
(Buildings and Roads), Narsimhapur and Others [Misc.*

First Appeal No.59 of 1970, dated 11th April, 1974].

(2) Senior Divisional Personnel Officer, Southern Railway, Trichy Vs. Kanagambal (Smt) [1994 LawSuit (Mad) 473].

(3) Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another [AIR 2000 SC 1930].

(4) State of Maharashtra Vs. Arti wd/o. Ashok Kapshikar and Others [2007(6) Mh.L.J. 108].

10] Undisputedly, the appellant has not adduced oral as well as documentary evidence. The appellant has admitted that the vehicle was insured with the appellant. Respondent No.4 has admitted in his written statement that the deceased was employed by him as a driver for driving his vehicle. He has also admitted that, on the date of the incident, the deceased was driving the vehicle as his driver. The only question that needs to be addressed is whether, on the given date, the deceased met with an accident while proceeding to Pachmarhi for his personal work or in the discharge of his duties as an employee of respondent No.4.

11] The evidence on record is not sufficient to accept the contention of the appellant that, on the given date, the deceased was proceeding to Pachmarhi for his personal work. It has come on record that the deceased was proceeding to Pachmarhi for a picnic.

In view of this, it cannot be assumed that the deceased himself was proceeding for a picnic. The deceased was attacked by unknown persons on the way to Pachmarhi with the intention of committing theft of the jeep, and, in the assault, he was murdered. The investigation was conducted. The unknown persons were arrested. The appellant has not adduced any evidence to substantiate the contention. The one important aspect that needs to be considered while appreciating the submissions is that it is nobody's case that the deceased was accompanied by some persons or his friends while proceeding to Pachmarhi in the jeep. The case of the appellant that the vehicle was used on the given date for a picnic purpose by the deceased alone cannot be accepted. The deceased was employed as a driver. In the ordinary circumstances, for picnic purpose, he would not have travelled to Pachmarhi by jeep. If it was his private picnic or tour, then he would have taken his family members or friends with him. The deceased was the employee of respondent No.4. His monthly income was Rs.3,500/-. Respondent No.4 has admitted that, on the date of the incident, the deceased was in his employment and was driving the jeep as his employee. In my view, this material on record is sufficient to negate the contention of the appellant. The appellant was required to adduce sufficient evidence to prove this fact. There is no admission

in the evidence of witness No.1, the mother of the deceased, that on the date of the incident, the jeep was taken by the deceased for his personal work. The admission that the deceased was proceeding to Pachmarhi for a picnic has been highlighted during the course of the argument to substantiate the contention that the deceased himself was proceeding to Pachmarhi for a picnic. It is common knowledge that the picnikers use the vehicle to go to the picnic spot, and sometimes the vehicle is used to return back from the picnic spot. Pachmarhi is the picnic spot. Therefore, the possibility of the deceased proceeding to Pachmarhi, which is a picnic spot to bring some people to Nagpur, cannot be ruled out.

12] In this case, the evidence is sufficient to establish that, on the date of the incident, the deceased was discharging his duties as an employee of respondent No.4. In the decisions relied upon by learned advocate for respondent Nos.1 to 3, it has been held that the murder of an employee arising out of and in the course of his employment tantamounts to an accident. The Hon'ble Apex Court in the case of *Smt. Rita Devi and Others* (supra) has held that the death of the auto rickshaw driver and employee while driving the auto rickshaw is an accident and, therefore, the dependents are entitled to get compensation from the employer. Paragraphs 10, 11

and 12 of this decision are very relevant for the purpose of addressing this issue. The same is extracted below:

“10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that ‘murder’, as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a ‘murder’ which is not an accident and a ‘murder’ which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simplicitor, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

11. In Challis vs. London and South Western Railway Company, (1905) 2 KB 154, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone willfully dropped on the train by a boy from the bridge, that his injuries were caused by an accident. In the said case, the Court rejecting an argument that the said incident cannot be treated as an accident held:

“The accident which befell the deceased was, as it appears to me, one which was incidental to his employment as an engine driver in other words it arose out of his employment. The argument for the respondents really involves the reading into the Act of a proviso to the effect that an accident shall not be deemed to be within the Act, if it arose from the mischievous act of a person not in the service of the employer. I see no reason to suppose that the Legislature intended so to limit the operation of

the Act. The result is the same to the engine driver, from whatever cause the accident happened; and it does not appear to me to be any answer to the claim for indemnification under the Act to say that the accident was caused by some person who acted mischievously.

12. *In the case of Nisbet v. Rayne and Burn, (1910) 2 KB 689, where a cashier, while travelling in a railway to a colliery with a large sum of money for the payment of his employers' workmen, was robbed and murdered. The Court of Appeal held:*

"That the murder was an "accident" from the standpoint of the person who suffered from it and that it arose "out of" an employment which involved more than the ordinary risk, and consequently that the widow was entitled to compensation under the Workmen's Compensation Act 1906. In this case the Court followed its earlier judgment in the case of Challis (supra). In the case of Nisbet, the Court also observed that "it is contended by the employer that this was not an "accident" within the meaning of the Act, because it was an intentional felonious act which caused the death, and that the word "accident" negatives the idea of intention. In my opinion, this contention ought not to prevail. I think it was an accident from the point of view of Nisbet, and that it makes no difference whether the pistol shot was deliberately fired at Nisbet or whether it was intended for somebody else and not for Nisbet."

13] It is held that the difference between a murder which is not an accident and a murder which is an accident, depends on the proximity of the cause of such murder. The murder is an accident, if the cause is proximate and there is a casual connection with the

employment.

14] The decisions in the cases of *Ningamma & Anr.* (supra) and *Malikarjuna G. Hiremath* (supra) relied upon by learned advocate for the appellant are not applicable to the facts of this case. In the case of *Ningamma & Anr.* (supra), it is held that if an accident occurs while driving a motor cycle borrowed from the owner, it cannot be said to be an accident in the discharge of the duties of the owner. In the case of *Malikarjuna G. Hiremath* (supra), it is held that there must be a casual connection between the death of workman and his employment to award the compensation. In the case before the Hon'ble Apex Court, on evidence, it was proved that there was no casual connection between the death of workman and his employment. It is held that compensation can be paid in case of death or injury to the workman if the accident arises out of and in the course of employment.

15] In this case, the casual connection between the death and the employment has been established. The deceased was discharging his duties as an employee of respondent No.4. The evidence is sufficient. The murder of the deceased in the factual situation tantamounts to an 'accident'. In view of this, I answer the

above question in the affirmative. In view of this, I conclude that there is no substance in the appeal. The appeal deserves to be dismissed. The appeal is, accordingly, **dismissed**.

(G. A. SANAP, J.)

Vijay