



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1558 of 1994 (O&M)
Date of Decision: 15.10.2024

United India Insurance Co. Ltd.Appellant

Versus

Smt. Sharda Devi and anotherRespondents

CORAM : HON’BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Lalit Garg, Advocate
for the appellant.

None for the respondents.

PANKAJ JAIN, J. (ORAL)

Insurance Company is in appeal. Challenge is to the award passed by Commissioner under the Workmen's Compensation Act, 1923 (now renamed as Employee's Compensation Act, 1923 and hereinafter referred to as 'the Act of 1923').

2. The claimant approached Commissioner under the Act of 1923 seeking compensation on account of death of her husband Suraj Bhan who lost his life during the course of employment as a driver with respondent No.1 on truck bearing No.HR-20A-4932. As per the claimant, on 17th of December, 1991 while deceased was driving truck, when he reached near

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Toshan someone attacked the driver Suraj Bhan resulting in his death. Dead body was thrown. She thus claimed that the death of her husband Suraj Bhan occurred in an accident arising out of and during the course of employment and, thus, she is entitled to be compensated in terms of Section 4 of the Act of 1923.

3. The claim petition was resisted by the respondents. Employment was admitted. However, it was claimed that the death of Suraj Bhan being result of a criminal act, there was no accident. The murder had no causal connection with the employment of the deceased Suraj Bhan and thus it cannot be held that he died of an accident arising out of and during the course of employment.

4. Commissioner framed the following issues :

- “(1) Whether the accident occurred during the course of employment or not? If so to what extent ?
- (2) Whether the applicant is entitled to any of amount claimed in the claim-application? If so with what detailed and by whom ?
- (3) Relief.”

5. Answering both the issues in favour of the claimant, Tribunal awarded the claimant a sum of Rs.83,192/-. The vehicle being insured, appellant was saddled with the liability to indemnify the employer.

6. Mr. Garg while assailing the impugned award submits that the death of the deceased is a result of a criminal act of the murderer whose intention was to kill the driver and thus the same cannot be said to have any



relationship with the employment. In support of his contention, he relies upon the judgment rendered by the Supreme Court in the case of **Smt. Rita Devi vs. New India Assurance Co. Ltd., (2000) 5 SCC 113.**

7. I have heard counsel for the appellant and have carefully gone through the records of the case with their able assistance.

8. The issue that falls for consideration of this Court is:

“Whether the incident leading to death of the deceased in the present case, can be said to be an accident arising out of and during the course of employment?”

9. The test has been laid down by the Supreme Court in **Rita Devi's** case (supra) observing as under :

“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.

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11. In *Challis v. London and South Western Railway Company, 1905(2) King's Bench 154*, the Court of Appeal held where an engine driver while driving a train under a bridge was killed by a stone wilfully 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(1) 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

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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. The Judgment of the Court of Appeal in Nisbet's case was followed by the majority judgment by the House of Lords in the case of *Board of Management of Trim Joint District School v. Kelly, 1914 AC 667*.

14. Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the auto rickshaw, was duty bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw and in the course of achieving the said object of stealing the auto rickshaw, they had to eliminate the driver of the auto rickshaw then it cannot but be said that the death so caused to the driver of the auto rickshaw was an accidental murder. The stealing of the auto rickshaw was the object of the felony and the murder that was caused in the said process of stealing the auto rickshaw is only incidental to the act of stealing of the auto rickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the auto rickshaw."

10. There is no denial to the fact that the deceased lost his life in a murder. There is nothing on record that shows that the perpetrator of the act

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had any motive against the victim for the killing. Thus, it cannot be said that the dominant intention behind the act of felony was to kill the deceased. Thus, the inevitable conclusion in terms of the law laid down in **Rita Devi's case** (supra) is that the murder of the deceased being not intended, is an 'accidental murder' and would thus fall within the ambit of 'accident' as enumerated under Section 3 of the Act of 1923. It has also come on record that the deceased was on the duty, driving the vehicle as per the diktat of his employer and, thus, from the point of view of the claimant and the deceased the incident that led to loss of life of the deceased is nothing but an 'accident'.

11. In view of above, the contention raised by counsel for the appellant is rejected.
12. As a sequel of the discussion held hereinabove, the appeal preferred by the Insurance Company is hereby ordered to be dismissed.
13. Pending application(s), if any, shall also stand disposed off.

October 15, 2024	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No