



109 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.4356 of 2024 (O&M)
Date of decision : 13.09.2024

MAGMA HDI GENERAL INSURANCE COMPANY LIMITED
.....Appellant
Versus
RUKYYA AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajbir Singh, Advocate
 for the appellant.

PANKAJ JAIN, J. (ORAL)

Insurer is in appeal impugning the award dated 13th of June, 2024 passed by the Commissioner under the Employee’s Compensation Act, 1923 (hereinafter referred to as ‘the 1923 Act’).

2. Counsel for the appellant assails the impugned award claiming that it has been proved on record that the deceased Yusuf died of heart attack and thus it cannot be said that the death occurred during the course of employment as contemplated under Section 3 of the 1923 Act and the Commissioner thus erred in awarding compensation to the claimants. He further submits that in terms of non-compliance of Section 10 also the impugned award is bad.

3. I have heard counsel for the appellant and have gone through the records of the case.



4. As per the case of the claimants the deceased was working as driver/operator of JCB vehicle. While on duty, he felt pain in the chest. He was taken to the hospital wherein he was declared dead.

5. The question as to whether death occurred during the course of employment or not in the said circumstance, is no more *res integra* and has been dealt by the Supreme Court in the case of **Smt. Dariyao Kanwar and others vs. M/s United India Insurance Co. Ltd. and another, 2023 AIR (Supreme Court) 4161** wherein while dealing with the similar circumstances, Apex Court observed as under:

“8. The Commissioner accepted the application filed by the appellants. It was noticed in the order passed by the Commissioner that, the employer admitted that the deceased was employed as a driver and he was on duty from Delhi to Baroda on 15.09.2003. The wages being paid to him were also admitted. With these facts on records, the Commissioner accepted the application and assessed the compensation at Rs. 3,26,140/- (Rupees three lakh twenty-six thousand one hundred and forty). Aggrieved against the aforesaid order of the Commissioner, the Insurance Company preferred an appeal before the High Court. The arguments raised by the Insurance Company was that there is no material on record to suggest that the death of Sumer Singh occurred due to strain and stress during employment. In case, the deceased employee was already suffering from any existing disease and died on account of that, it cannot be said to be a case of death during the course of employment. The view of the High Court was that there is no relationship between the death and the work being done by the deceased. Hence, the order of the Commissioner was found to be unsustainable.

9. The judgment of this Court in Param Pal Singh's case (supra) relied upon by the counsel for the appellants, comes to their



rescue. In that case, the deceased was a truck driver. While on duty, he suddenly suffered health set back and parked his vehicle on roadside hotel. After parking the vehicle, he fainted and was taken to the hospital. He was declared brought dead. An application was filed by the dependents of the deceased for claiming compensation under the 1923 Act. The Commissioner accepted the claim whereas the order passed by the Commissioner was set aside by the High Court. The dependents filed an appeal before this Court. It is noticed in the aforesaid judgment that additional premium was paid for coverage of compensation payable under the 1923 Act.

10. This Court accepted the appeal filed by the dependents of the deceased and found that even if the death had not occurred on account of any accident but the driver was consistently driving the vehicle, there is every reason to assume that long spells of driving was a material contributory factor, if not the sole cause that accelerated his unexpected death at a young age. Such an untoward mishap can reasonably be described as an accident, only attributable to the nature of employment. In the aforesaid judgment, the employee was 45 years of age. It squarely covers the case of the appellants. The relevant paras of the decision are extracted below:

"29. Applying the various principles laid down in the above decisions to the facts of this case, we can validly conclude that there was causal connection to the death of the deceased with that of his employment as a truck driver. We cannot lose sight of the fact that a 45- year-old driver meets with his unexpected death, may be due to heart failure while driving the vehicle from Delhi to a distant place called Nimiaghat near Jharkhand which is about 1152 km away from Delhi, would have definitely undergone grave strain and stress due to such long-distance driving. The deceased being a professional heavy vehicle driver when undertakes the job of such driving as his regular avocation it can be safely held that such constant driving of heavy vehicle, being dependent solely upon his physical and mental



resources and endurance, there was every reason to assume that the vocation of driving was a material contributory factor if not the sole cause that accelerated his unexpected death to occur which in all fairness should be held to be an untoward mishap in his lifespan. Such an "untoward mishap" can therefore be reasonably described as an "accident" as having been caused solely attributable to the nature of employment indulged in with his employer which was in the course of such employer's trade or business.

30.In such circumstances, we are convinced that the conclusion of the Commissioner of Workmen's Compensation that the death of the deceased was in an accident arising out of and in the course of his employment with the second respondent was perfectly justified and the conclusion to the contrary reached by the learned Judge of the High Court in the order impugned in this appeal deserves to be set aside."

(emphasis supplied)

11. Similar view was expressed by this Court in Northeast Karnataka Road Transport Corpn's case. (supra)."

6. In the present case, the deceased was working as the driver/operator on a JCB vehicle. On the fateful day while on duty he felt pain in the chest. He was taken to General Hospital, Hyderabad where he was declared dead. There is nothing on record to suggest that he was suffering from the ailment prior thereto. At the time the deceased suffered heart attack he was on duty doing physical work. As held by the Apex Court in *Smt. Dariyao Kanwar's* case (supra) long spells of driving if not the sole cause, do contribute materially in such untoward mishaps. Thus, this Court finds that the plea raised w.r.t. death of deceased being not result of accident,



is misconceived and the same cannot be accepted in view of the ratio of law laid down in *Smt. Dariyao Kanwar's case ibid.*

7. Counsel for the appellant has raised plea w.r.t. non-compliance of Section 10 of the Act of 1923. Section 10 of the 1923 Act reads as under:

10. Notice and claim.- (1) No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death:

Provided that where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of 8 the days during which the *[employee] was continuously absent from work in consequence of the disablement caused by the disease:

Provided further that in case of partial disablement due to the contracting of any such disease and which does not force the *[employee] to absent himself from work, the period of two years shall be counted from the day the *[employee] gives notice of the disablement to his employer:

Provided further that if a *[employee] who, having been employed in an employment for a continuous period, specified under sub-section (2) of section 3 in respect of that employment, ceases to be so employed and develops symptoms of an occupational disease peculiar to that employment within two years of the cessation of employment, the accident shall be deemed to have occurred on the day on which the symptoms were first detected:

Provided further that the want of or any defect or irregularity in a notice shall not be a bar to the entertainment of a claim—



(a) if the claim is preferred in respect of the death of a *[employee] resulting from an accident which occurred on the premises of the employer, or at any place where the *[employee] at the time of the accident was working under the control of the employer or of any person employed by him, and the *[employee] died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(b) if the employer or any one of several employers or any person responsible to the employer for the management of any branch of the trade or business in which the injured *[employee] was employed had knowledge of the accident from any other source at or about the time when it occurred:

Provided further that the Commissioner may entertain and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been preferred, in due time as provided in this subsection, if he is satisfied that the failure so to give the notice or prefer the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured *[employee] was employed.

(3) The State Government may require that any prescribed class of employers shall maintain at their premises at which *[employees] are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured *[employee] employed on the premises and to any person acting bona fide on his behalf.

(4) A notice under this section may be served by delivering it at, or sending it by registered post addressed to, the residence or



any office or place of business of the person on whom it is to be served, or, where a notice-book is maintained, by entry in the notice-book.

8. The 5th proviso appended to Section 10 (1) provides that the Commissioner is well within its power to condone the defect or irregularity in a notice. Apart therefrom, as per the mandate of Section 10, notice is required to be served upon the employer to maintain the present petition. In the present case, the employer was proceeded *ex parte*. The claim was resisted by the insurer and at no point of time any effort was made by the appellant/insurer to prove that no notice under Section 10 was given. Thus, the said plea w.r.t. non-compliance of Section 10 raised by the appellant also sans merit. Keeping in view the provision of Section 30 of the Act of 1923 involvement of substantial question of law in the appeal is *sine qua non* to maintain the appeal. There being no question of law involved much less a substantial question of law, this Court does not find any reason to interfere in the well reasoned order passed by the Commissioner.

9. In view of above, finding no reason to interfere in the instant appeal, the same is ordered to be dismissed.

10. Pending application(s), if any, shall also stand disposed off.

September 13, 2024

Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes